

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

House Bill 2884

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[Introduced March 3, 2021; referred to the Committee
on the Judiciary]

1 A BILL to amend and reenact §29B-1-2 and §29B-1-4 of the Code of West Virginia, 1931, as
2 amended, all relating to exempting customer records of publicly-administered utility
3 enterprises from production under the Freedom of Information Act; defining “publicly-
4 administered utility enterprise”; establishing exemption from production; and allowing
5 certain uses and disclosures of information under certain circumstances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. PUBLIC RECORDS.

§29B-1-2. Definitions.

1 As used in this article:

2 (1) “Custodian” means the elected or appointed official charged with administering a public
3 body.

4 (2) “Law-enforcement officer” shall have the same definition as this term is defined in
5 W.Va. Code §30-29-1: *Provided*, That for purposes of this article, “law-enforcement officer” shall
6 additionally include those individuals defined as “chief executive” in W.Va. Code §30-29-1.

7 (3) “Person” includes any natural person, corporation, partnership, firm or association.

8 (4) “Public body” means every state officer, agency, department, including the executive,
9 legislative and judicial departments, division, bureau, board and commission; every county and
10 city governing body, school district, special district, municipal corporation, and any board,
11 department, commission council or agency thereof; and any other body which is created by state
12 or local authority or which is primarily funded by the state or local authority.

13 (5) “Public record” includes any writing containing information prepared or received by a
14 public body, the content or context of which, judged either by content or context, relates to the
15 conduct of the public’s business.

16 (6) “Writing” includes any books, papers, maps, photographs, cards, tapes, recordings or
17 other documentary materials regardless of physical form or characteristics.

18 (7) “Publicly-administered utility enterprise” includes electric power generation,
19 transmission, and distribution systems; water supply and distribution systems; wastewater
20 including stormwater collection, treatment, and disposal systems of all types; public transportation
21 systems; solid waste collection and disposal systems and facilities; or other public entity providing
22 utility services, excluding airports, which are owned or administered by a governmental entity.

§29B-1-4. Exemptions.

1 (a) There is a presumption of public accessibility to all public records, subject only to the
2 following categories of information which are specifically exempt from disclosure under this article:

3 (1) Trade secrets, as used in this section, which may include, but are not limited to, any
4 formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or
5 compilation of information which is not patented which is known only to certain individuals within
6 a commercial concern who are using it to fabricate, produce, or compound an article or trade or
7 a service or to locate minerals or other substances, having commercial value, and which gives its
8 users an opportunity to obtain business advantage over competitors;

9 (2) Information of a personal nature such as that kept in a personal, medical, or similar
10 file, if the public disclosure of the information would constitute an unreasonable invasion of
11 privacy, unless the public interest by clear and convincing evidence requires disclosure in this
12 particular instance: *Provided*, That this article does not preclude an individual from inspecting or
13 copying his or her own personal, medical, or similar file;

14 (3) Test questions, scoring keys, and other examination data used to administer a
15 licensing examination, examination for employment, or academic examination;

16 (4)(A) Records of law-enforcement agencies that deal with the detection and investigation
17 of crime and the internal records and notations of such law-enforcement agencies which are
18 maintained for internal use in matters relating to law enforcement;

19 (B) Records identifying motor vehicles used, and the agencies using them, for undercover
20 investigation activities conducted by state law-enforcement agencies or other agencies that are
21 authorized by this code to use undercover or unmarked vehicles;

22 (5) Information specifically exempted from disclosure by statute;

23 (6) Records, archives, documents, or manuscripts describing the location of undeveloped
24 historic, prehistoric, archaeological, paleontological, and battlefield sites or constituting gifts to
25 any public body upon which the donor has attached restrictions on usage or the handling of which
26 could irreparably damage the record, archive, document, or manuscript;

27 (7) Information contained in or related to examination, operating or condition reports
28 prepared by, or on behalf of, or for the use of any agency responsible for the regulation or
29 supervision of financial institutions, except those reports which are by law required to be published
30 in newspapers;

31 (8) Internal memoranda or letters received or prepared by any public body;

32 (9) Records assembled, prepared, or maintained to prevent, mitigate, or respond to
33 terrorist acts or the threat of terrorist acts, the public disclosure of which threaten the public safety
34 or the public health;

35 (10) Those portions of records containing specific or unique vulnerability assessments or
36 specific or unique response plans, data, databases and inventories of goods or materials collected
37 or assembled to respond to terrorist acts; and communication codes or deployment plans of law-
38 enforcement or emergency response personnel;

39 (11) Specific intelligence information and specific investigative records dealing with
40 terrorist acts or the threat of a terrorist act shared by and between federal and international law-
41 enforcement agencies, state and local law-enforcement, and other agencies within the
42 Department of ~~Military Affairs and Public Safety~~ Homeland Security;

43 (12) National security records classified under federal executive order and not subject to
44 public disclosure under federal law that are shared by federal agencies and other records related

45 to national security briefings to assist state and local government with domestic preparedness for
46 acts of terrorism;

47 (13) Computing, telecommunications, and network security records, passwords, security
48 codes, or programs used to respond to or plan against acts of terrorism which may be the subject
49 of a terrorist act;

50 (14) Security or disaster recovery plans, risk assessments, tests, or the results of those
51 tests;

52 (15) Architectural or infrastructure designs, maps, or other records that show the location
53 or layout of the facilities where computing, telecommunications, or network infrastructure used to
54 plan against or respond to terrorism are located or planned to be located;

55 (16) Codes for facility security systems; or codes for secure applications for facilities
56 referred to in subdivision (15) of this subsection;

57 (17) Specific engineering plans and descriptions of existing public utility plants and
58 equipment;

59 (18) Customer proprietary network information of other telecommunications carriers,
60 equipment manufacturers and individual customers, consistent with 47 U.S.C. §222;

61 (19) Records of the Division of Corrections, Regional Jail and Correctional Facility
62 Authority and the Division of Juvenile Services relating to design of corrections, jail and detention
63 facilities owned or operated by the agency, and the policy directives and operational procedures
64 of personnel relating to the safe and secure management of inmates or residents, that if released,
65 could be used by an inmate or resident to escape a facility, or to cause injury to another inmate,
66 resident, or to facility personnel;

67 (20) Information related to applications under §61-7-4 of this code, including applications,
68 supporting documents, permits, renewals, or any other information that would identify an applicant
69 for or holder of a concealed weapon permit: *Provided*, That information in the aggregate that does
70 not identify any permit holder other than by county or municipality is not exempted: *Provided*,

71 *however, That* information or other records exempted under this subdivision may be disclosed to
72 a law-enforcement agency or officer: (i) To determine the validity of a permit, (ii) to assist in a
73 criminal investigation or prosecution, or (iii) for other lawful law-enforcement purposes;

74 (21) Personal information of law-enforcement officers maintained by the public body in the
75 ordinary course of the employer-employee relationship. As used in this paragraph, “personal
76 information” means a law-enforcement officer’s Social Security number, health information, home
77 address, personal address, personal telephone numbers, and personal email addresses and
78 those of his or her spouse, parents, and children as well as the names of the law-enforcement
79 officer’s spouse, parents, and children; ~~and~~

80 (22) Information provided by a person when he or she elects to remain anonymous after
81 winning a draw game prize, pursuant to §29-22-15a of this code; and

82 (23) Individually identifiable customer information created or maintained by a city or county
83 or other public entity providing utility services in connection with the ownership or operation of a
84 publicly-administered utility enterprise, including, but not limited to, customer names, addresses,
85 and billing and usage records. Nothing contained herein is intended to limit public disclosure by
86 a city or county of billing information:

87 (A) That the city or county determines will be useful or necessary to assist bond counsel,
88 bond underwriters, underwriters’ counsel, rating agencies or investors or potential investors in
89 making informed decisions regarding bonds or other obligations incurred or to be incurred with
90 respect to the publicly-administered utility enterprise;

91 (B) That is necessary to assist the city, county, state, or public enterprise to maintain the
92 integrity and quality of services it provides; or

93 (C) That is necessary to assist law enforcement, public safety, fire protection, rescue,
94 emergency management, or judicial officers in the performance of their duties.

95 (b) As used in subdivisions (9) through (16), inclusive, subsection (a) of this section, the
96 term “terrorist act” means an act that is likely to result in serious bodily injury or damage to property
97 or the environment and is intended to:

98 (1) Intimidate or coerce the civilian population;

99 (2) Influence the policy of a branch or level of government by intimidation or coercion;

100 (3) Affect the conduct of a branch or level of government by intimidation or coercion; or

101 (4) Retaliate against a branch or level of government for a policy or conduct of the
102 government.

103 (c) The provisions of subdivisions (9) through (16), inclusive, subsection (a) of this section
104 do not make subject to the provisions of this chapter any evidence of an immediate threat to public
105 health or safety unrelated to a terrorist act or the threat of a terrorist act which comes to the
106 attention of a public entity in the course of conducting a vulnerability assessment response or
107 similar activity.

NOTE: The purpose of this bill is to exempt customer billing records maintained by a publicly-administered utility enterprise from the requirement of production under the Freedom of Information Act.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.