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2007 SEP -6 AM 9:23

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND EXTRAORDINARY SESSION, 2007

—●—
ENROLLED

House Bill No. 203

(By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]

—●—
Passed August 21, 2007

In Effect from Ninety Days from Passage

HB 203

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H. B. 203

OFFICE WEST VIRGINIA
SECRETARY OF STATE

(BY MR. SPEAKER, MR. THOMPSON, AND DELEGATE ARMSTEAD)
[BY REQUEST OF THE EXECUTIVE]

[Passed August 21, 2007; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §48-^{28A}28-101, §48-^{28A}28-102, §48-^{28A}28-103, §48-^{28A}28-104, §48-^{28A}28-105, §48-^{28A}28-106, §48-^{28A}28-107, §48-^{28A}28-108, §48-^{28A}28-109 and §48-^{28A}28-110 all relating to the creation and implementation of the Address Confidentiality Program; providing for administration by the Secretary of State; providing address confidentiality for victims of domestic abuse, sexual assault or stalking; providing eligibility and application requirements for participation in program; requiring contents of an application be kept confidential; establishing a process for certification of applicants as program participants; providing for cancellation of a participant's certification; providing for use of a designated confidential address; allowing disclosure of actual residential or mailing address under certain circumstances; establishing criminal penalties for the filing of false information or breaching the program's confidentiality; limiting the Secretary of State's liability in certain circumstances; and requiring the Secretary of State propose legislative and emergency rules.

*de
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Clod of the House*

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §48-^{28A}28-101,

*de
Brygg in Gov
Clod of the House*

^{28A} §48-~~28~~-102, ^{28A} §48-~~28~~-103, ^{28A} §48-~~28~~-104, ^{28A} §48-~~28~~-105, ^{28A} §48-~~28~~-106, ^{28A} §48-~~28~~-107, ^{28A} §48-~~28~~-108, ^{28A} §48-~~28~~-109 and ^{28A} §48-~~28~~-110, all to read as follows:

^{28A}
ARTICLE 28. ADDRESS CONFIDENTIALITY PROGRAM.

^{28A}
§48-~~28~~-101. Purpose.

1 The Legislature finds that persons attempting to escape
2 from actual or threatened domestic violence, sexual
3 assault, or stalking frequently find it necessary to establish
4 a new address in order to prevent their assailants or
5 probable assailants from finding them. The purpose of this
6 article is to enable state and local agencies to respond to
7 requests for public records without disclosing the location
8 of a victim of domestic abuse, sexual assault, or stalking; to
9 enable interagency cooperation with the Secretary of State in
10 providing address confidentiality for victims of domestic
11 abuse, sexual assault, or stalking; and to enable state and
12 local agencies to accept an address designated by the
13 Secretary of State by a program participant as a substitute for
14 a residential or mailing address.

^{28A}
§48-~~28~~-102. Definitions.

1 As used in this article, unless the context otherwise
2 indicates, the following terms have the following meanings.

3 (1) "Application assistant" means an employee of a state
4 or local agency, or of a nonprofit program that provides
5 counseling, referral, shelter or other specialized service to
6 victims of domestic abuse, rape, sexual assault or stalking,
7 and who has been designated by the respective agency or
8 nonprofit program, and trained, accepted and registered by
9 the Secretary of State to assist individuals in the completion
10 of program participation applications.

11 (2) "Designated address" means the address assigned to
12 a program participant by the Secretary of State pursuant to
13 section one hundred three of this article.

14 (3) "Mailing address" means an address that is recognized
15 for delivery by the United States Postal Service.

16 (4) "Program" means the Address Confidentiality
17 Program established by this article.

18 (5) "Program participant" means a person certified by the
19 Secretary of State to participate in the program.

20 (6) "Residential Address" means a residential street,
21 school or work address of an individual, as specified on the
22 individual's application to be a program participant under this
23 article.

25A

§48-28-103. Address Confidentiality Program.

1 (a) On or after the effective date of the enactment of this
2 article, the Secretary of State shall create an Address
3 Confidentiality Program to be staffed by full time employees
4 who have been subjected to a criminal history records search.

5 (b) Upon recommendation of an application assistant, an
6 adult person, a parent or guardian acting on behalf of a
7 minor, or a guardian acting on behalf of an incapacitated
8 person may apply to the Secretary of State to have a
9 designated address assigned by the Secretary of State.

10 (c) The Secretary of State may approve an application
11 only if it is filed with the office of the Secretary of State in
12 the manner established by rule and on a form prescribed by
13 the Secretary of State. A completed application must contain
14 the following information:

15 (1) The application preparation date, the applicant's
16 signature and the signature and registration number of the
17 application assistant who assisted the applicant in applying to
18 be a program participant;

19 (2) A designation of the Secretary of State as agent for
20 purposes of service of process and for receipt of certain first-
21 class mail;

22 (3) The mailing address where the applicant may be
23 contacted by the Secretary of State or a designee and the
24 telephone number or numbers where the applicant may be
25 contacted by the Secretary of State or the Secretary of State's
26 designee; and

27 (4) A residential or mailing address or both types of
28 addresses that the applicant requests not be disclosed for the
29 reason that disclosure will jeopardize the applicant's safety or
30 increase the risk of violence to the applicant or members of
31 the applicant's household.

32 (d) Upon receipt of a properly completed application, the
33 Secretary of State may certify the applicant as a program
34 participant. A program participant is certified for a period of
35 four years following the date of initial certification unless the
36 certification is withdrawn or invalidated before that date.
37 The Secretary of State shall send notification of a lapsing
38 certification and a reapplication form to a program participant
39 at least four weeks prior to the expiration of the program
40 participant's certification.

41 (e) The Secretary of State shall forward to the program
42 participant first-class mail received at the program
43 participant's designated address.

44 (f)(1) An applicant may not file an application knowing
45 that it:

46 (A) Contains false or incorrect information; or

47 (B) Falsely claims that disclosure of either the applicant's
48 residential or mailing address or both types of addresses
49 threatens the safety of the applicant or the applicant's children
50 or the minor or incapacitated person on whose behalf the
51 application is made.

52 (2) An application assistant may not assist or participate
53 in the filing of an application that the application assistant
54 knows:

55 (A) Contains false or incorrect information; or

56 (B) Falsely claims that disclosure of either the applicant's
57 residential or mailing address or both types of addresses
58 threatens the safety of the applicant or the applicant's children
59 or the minor or incapacitated person on whose behalf the
60 application is made.

61 (g) A person who violates the provisions of subsection (f)
62 of this section shall be guilty of a misdemeanor, and upon
63 conviction thereof, shall be confined in jail for a period of not
64 more than one year.

28a

§48-28-104. Cancellation.

1 Certification for the program may be canceled if one or
2 more of the following conditions apply:

3 (1) If the program participant obtains a name change,
4 unless the program participant provides the Secretary of State
5 with documentation of a legal name change within ten
6 business days of the name change;

7 (2) If there is a change in the residential address of the
8 program participant from the one listed on the application,
9 unless the program participant provides the Secretary of State
10 with notice of the change in a manner prescribed by the
11 Secretary of State; or

12 (3) The applicant or program participant violates
13 subsection (f), section one hundred three of this article.

28a

§48-28-105. Use of designated address.

1 (a) Upon demonstration of a program participant's
2 certification in the program, state and local agencies and the
3 courts of this state shall accept the designated address as a
4 program participant's address for the purposes of creating a
5 new public record unless the Secretary of State has
6 determined that:

7 (1) The agency or court has a bona fide statutory or
8 administrative requirement for the use of the program
9 participant's residential or mailing address, such that the
10 agency or court is unable to fulfill its statutory duties and
11 obligations without the program participant's residential or
12 mailing address; and

13 (2) The program participant's residential or mailing
14 address will be used only for those statutory and
15 administrative purposes, and shall be kept confidential,
16 subject to the confidentiality provisions of section one
17 hundred eight of this article.

18 (b) Notwithstanding the provisions of subsection (a) and
19 upon the request of the Secretary of State, the Division of
20 Motor Vehicles shall use the designated address for the
21 purposes of issuing a driver's license or identification card:
22 *Provided*, That the division of motor vehicles shall not be
23 prohibited from collecting and retaining a program
24 participant's residential or mailing address or both addresses
25 to be used only for statutory and administrative purposes.
26 Any residential or mailing address of a program participant
27 collected and retained pursuant to this subsection shall be
28 kept confidential, subject to the provisions of section one
29 hundred eight of this article.

30 (c) A designated address may be a post office box and
31 may be used by a participant for voter registration purposes,
32 as long as the Secretary of State has on file for the participant
33 a residential and mailing address, as provided in section one
34 hundred three of this article.

28A

§48-28-106. Disclosure to law enforcement and state agencies.

1 (a) The Secretary of State may make a program
2 participant's residential or mailing address available for
3 inspection or copying, under the following circumstances:

4 (1) Upon request of a law enforcement agency in the
5 manner provided for by rule; or

6 (2) Upon request of the head of a state agency or
 7 designee in the manner provided for by rule and upon a
 8 showing of a bona fide statutory or administrative
 9 requirement for the use of the program participant's
 10 residential or mailing address, such that the agency head or
 11 designee is unable to fulfill statutory duties and obligations
 12 without the program participant's residential or mailing
 13 address.

28A

**§48-28-107. Disclosure pursuant to court order or
 canceled certification.**

1 (a) The Secretary of State shall make a program
 2 participant's residential or mailing address or both addresses
 3 available for inspection or copying to a person identified in
 4 a court order, upon receipt of a certified court order that
 5 specifically requires the disclosure of a particular program
 6 participant's residential or mailing address or both addresses
 7 and the reasons for the disclosure; or

8 (b) The Secretary of State may make a program
 9 participant's residential or mailing address both addresses
 10 available for inspection or copying if the program applicant
 11 or participant's certification has been canceled because the
 12 applicant or program participant has violated subsection (f),
 13 section one hundred three of this article.

28A

§48-28-108. Confidentiality.

1 A program participant's application and supporting
 2 materials are not a public record and shall be kept
 3 confidential by the Secretary of State. Any employee of any
 4 agency or court who willfully breaches the confidentiality of
 5 these records or willfully discloses the name, residential or
 6 mailing address both addresses of a program participant in
 7 violation of the provisions of this article, shall be guilty of a
 8 misdemeanor and, upon conviction thereof, shall be fined not
 9 less than five hundred dollars nor more than one thousand
 10 dollars or confined in jail not more than one year, or both
 11 fined and confined.

28A

§48-28-109. Secretary of State; liability.

- 1 This article creates no liability upon the Secretary of State
- 2 for any transaction compromised by any illegal act or
- 3 inappropriate uses associated with this article.

28A

§48-28-110. Rules.

- 1 The Secretary of State is hereby directed to propose
- 2 legislative rules and emergency rules implementing the
- 3 provisions of this article in accordance with the provisions of
- 4 article three, chapter twenty-nine-a of this code.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.




Chairman Senate Committee



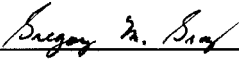
Chairman House Committee

Originating in the House.


In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates

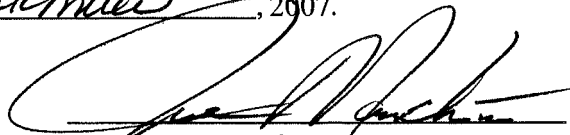


President of the Senate



Speaker of the House of Delegates

The within is approved this the 5th
day of September, 2007.



Governor

PRESENTED TO THE
GOVERNOR

Date 8/27/07

Time 11:15am