

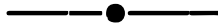
HB 2787 S

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2007



ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 2787**

(By Delegates Brown, Miller, Longstreth, Marshall, Fleischauer,
Sobonya, Sumner, Mahan, Guthrie, Rowan and Stagers)



Passed March 10, 2007

In Effect Ninety Days from Passage

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COMMITTEE SUBSTITUTE OFFICE WEST VIRGINIA
SECRETARY OF STATE
FOR

H. B. 2787

(BY DELEGATES BROWN, MILLER, LONGSTRETH, MARSHALL,
FLEISCHAUER, SOBONYA, SUMNER, MAHAN, GUTHRIE, ROWAN
AND STAGGERS)

[Passed March 10, 2007; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding a new article, designated §3-1D-1, §3-1D-2, §3-
1D-3, §3-1D-4, §3-1D-5, §3-1D-6, §3-1D-7, §3-1D-8, §3-
1D-9, §3-1D-10, all relating to the creation of the Address
Confidentiality Program.

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 §3-1D-1, §3-
1D-2, §3-1D-3, §3-1D-4, §3-1D-5, §3-1D-6, §3-1D-7, §3-1D-8, §3-
1D-9, §3-1D-10, all to read as follows:

ARTICLE 1D. ADDRESS CONFIDENTIALITY PROGRAM.

§3-1D-1. Purpose.

1 The Legislature finds that persons attempting to escape
2 from actual or threatened domestic violence, sexual assault,
3 or stalking frequently find it necessary to establish a new

4 address in order to prevent their assailants or probable
5 assailants from finding them. The purpose of this article is to
6 enable state and local agencies to respond to requests for
7 public records without disclosing the location of a victim of
8 domestic abuse, sexual assault, or stalking; to enable
9 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.

§3-1D-2. Definitions.

1 As used in this section, unless the context otherwise
2 indicates, the following terms have the following meanings.
3

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

12 (2) "Designated address" means the address assigned to
13 a program participant by the Secretary of State pursuant to
14 section three of this article. This designated address may be
15 a post office box and may be used by a participant for voter
16 registration purposes, as long as the Secretary of State has on
17 file for this participant a residential and mailing address, as
18 provided in section three of this article.

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

21 (4) "Program" means the Address Confidentiality
22 Program established by this article.

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

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

§3-1D-3. Address Confidentiality Program.

1 (a) On or after the first day of July, two thousand seven,
2 the Secretary of State, shall create an Address Confidentiality
3 Program to be staffed by full time employees who have been
4 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 pieces;

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) One or more residential and/or mailing addresses that
28 the applicant requests not be disclosed for the reason that
29 disclosure will jeopardize the applicant's safety or increase
30 the risk of violence to the applicant or members of the
31 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 (c) 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 the applicant's
48 residential and/or mailing address threatens the safety of the
49 applicant or the applicant's children or the minor or
50 incapacitated person on whose behalf the application is made.
51

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 the applicant's
57 residential and/or mailing address threatens the safety of the

58 applicant or the applicant's children or the minor or
59 incapacitated person on whose behalf the application is made.

60

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.

§3-1D-4. 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 three of this article.

§3-1D-5. 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 may 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 as provided in
17 section eight of this article.

§3-1D-6. 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
5 (1) Upon request of a law enforcement agency in the
6 manner provided for by rule; or

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

§3-1D-7. Disclosure pursuant to court order or canceled certification.

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

8 (b) The Secretary of State may make a program
9 participant's residential and/or mailing address available for
10 inspection or copying if the program applicant or

11 participant's certification has been canceled because the
12 applicant or program participant has violated subsection (f),
13 section three of this article.

3-1D-8. Confidentiality.

1 A program participant's application and supporting
2 materials are not a public record and must 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 or residential
6 and/or mailing address of a program participant in violation
7 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.

§3-1D-9. 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.

§3-1D-10. 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.



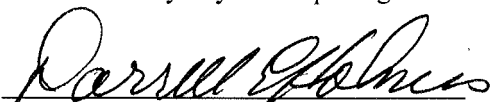
Chairman Senate Committee



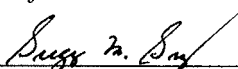
Chairman House Committee

Originating in the House.

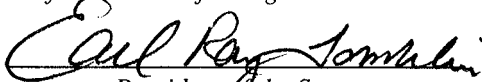
In effect ninety days from passage.



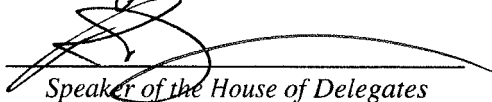
Clerk of the Senate



Clerk of the House of Delegates

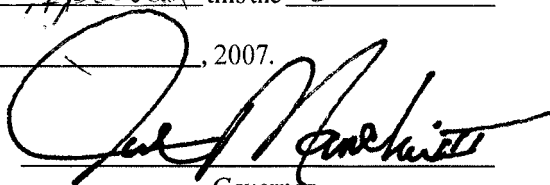


President of the Senate



Speaker of the House of Delegates

The within is disapproved this the 3rd
day of April, 2007.



Governor

PRESENTED TO THE
GOVERNOR

MAR 22 2007

Time 3:50 pm