

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Secretary of State TITLE NUMBER: 153

CITE AUTHORITY: § 48-28A-110

AMENDMENT TO AN EXISTING RULE: YES NO

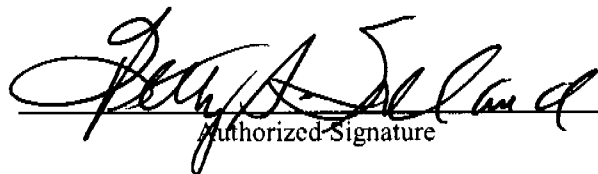
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 37

TITLE OF RULE BEING AMENDED: Administration of the Address Confidentiality Program

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Authorized Signature

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TITLE 153
LEGISLATIVE RULE
SECRETARY OF STATE

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES 37
ADMINISTRATION OF THE
ADDRESS CONFIDENTIALITY PROGRAM

§153-37-1. General.

1.1. Scope. -- This legislative rule is written to facilitate the administration of the Address Confidentiality Program. The rule describes the manner and process for application to the program by prospective participants and application assistants. The rule further includes sections on cancellation of program certification, exercise of program participant privileges, program participation renewal, application for agency disclosure requests, disclosure to law enforcement, service of process and establishes uniform statewide procedures for maintaining the confidentiality of a program participant's name and address information in voting records.

1.2. Authority.-- W.Va. Code § 48-28A-110.

1.3. Filing Date. --

1.4. Effective Date. --

§153-37-2. Definitions.

2.1. "Agency" means an office, department, division, bureau, board, commission, or other statutory unit of state or local government or any functional subdivision of that agency.

2.2. "Applicant" means an adult, a parent or guardian acting on behalf of an eligible minor, or a guardian on behalf of an

incapacitated person applying for certification in the Address Confidentiality Program as a program participant.

2.3. "Application" means a standard application form provided by the Secretary of State which must be completed by an applicant with an application assistant.

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

2.5. "Authorization card" means a card issued by the Secretary of State to a program participant upon certification, which includes program participant's name, authorization code, designated address and certification expiration date.

2.6. "Authorization code" means a number assigned to a program participant upon acceptance into the program.

2.7. "Certification" means the process by which an applicant is determined eligible to participate in the program.

2.8. "Critical precinct list" means a list of precincts maintained by each county clerk's office in which program participants are registered to vote.

2.9. "Designated address" means the address assigned to a program participant by the Secretary of State.

2.10. "Designated county contact" means the county clerk or her or his designee who will be the primary contact for the Secretary of State for this program.

2.11. "Mailing address" means an address that is recognized for delivery by the United States Postal Service.

2.12. "Program" means the Address Confidentiality Program established by WV Code 48-28A-101.

2.13. "Program manager" means the employee, within the Office of the Secretary of State, designated by the Secretary of State to operate and manage the Address Confidentiality Program.

2.14. "Program participant" means a person certified by the Secretary of State to participate in the Address Confidentiality Program.

2.15. "Protected records voter" means a program participant who has applied and qualified as a registered voter during the time she or he is certified as a program participant.

2.16. "Record" means any information relating to the conduct or performance of a governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

2.17. "Residential address" means a residential street, school or work address of an individual, as specified on the individual's application to be a program participant.

§153-37-3. Application Assistant Registration.

3.1. All application assistants must be registered by the Secretary of State to participate in this program, and application assistants will be given a registration number once registered.

3.2. Application assistant registration will only be awarded when the prospective application assistant:

3.2.a. Is a service provider or works with an agency and can demonstrate to the Secretary of State relevant experience to work with victims of domestic abuse, rape, sexual assault or stalking;

3.2.b. Successfully completes any program orientation or training session sponsored by the Office of the Secretary of State;

3.2.c. Completes an application for prospective application assistants which includes the applicant's name, address, service provider or agency, supervisor's name and relevant experiences;

3.2.d. Agrees to adhere to the policies, procedures and directions provided by the Secretary of State for rendering assistance to program applicants; and

3.2.e. Agrees to adhere to the instructions and terms provided in the

application assistant agreement proscribed by the Secretary of State.

3.3. An application assistant's registration shall be valid for two years, unless terminated sooner as provided herein.

3.4. The application assistant agrees not to discriminate against any client, or potential program participant, because of race, creed, color, national origin, gender, sexual orientation, age, or mental, physical or sensory disability.

3.5. The application assistant performing under this agreement is not an employee of the Secretary of State or an agent of the Secretary of State in any manner whatsoever. The application assistant will not hold herself or himself out as, nor claim to be an agent or employee of the Secretary of State or the State of West Virginia simply because she or he is a program application assistant and will not make any claim, demand, or application to or for any right or privilege applicable to an agent or employee of the Secretary of State or the State of West Virginia.

3.6. An application assistant's registration may be terminated by the Secretary of State for failing to abide by any requirement set forth by the Secretary of State or for failing to act in accordance with requirements of the Address Confidentiality Program.

§153-37-4. Program Participant Application and Certification Process.

4.1. An applicant shall complete, date, sign and provide all the information required under W.Va. Code § 48-28A-103, and as requested on the application.

4.2. The application shall include an attestation by the applicant that disclosure of the applicant's address threatens the safety of the applicant or the applicant's children or the minor or incapacitated person on whose behalf the application is made.

4.3. An applicant shall specify a residential or mailing address in West Virginia for which confidentiality is requested and a telephone number where the applicant may be contacted by the Office of the Secretary of State.

4.4. The application form shall include, but not be limited to, the applicant's name and date of birth, a listing of all minor children residing with the applicant, including each minor child's date of birth, and each minor child's relationship to the applicant, a statement that the applicant shall not disclose her or his residential or mailing address to the alleged batterer, stalker, or person threatening her or his safety or that of her or his minor children, or an incapacitated person on whose behalf the application is made, the application preparation date, the printed name and signature and recommendation of the application assistant.

4.5. Acceptance into the program shall be effective on the day an applicant is certified by the program manager.

4.6. An individual who is certified as a program participant shall be issued a program participant's authorization card which includes her or his name, authorization code, designated address and certification expiration date.

4.7. The term of a program participant's certification shall be four years unless the

certification is withdrawn or canceled pursuant to W.Va. Code § 48-28A-104.

4.8. If there is a change in the program participant's residential or mailing address from the one listed on the application, the program participant shall notify the program manager in writing of such change within 10 days of the change in residence.

§153-37-5. Exercise of Program Participant's Privileges.

5.1. A program participant shall request, at the time of creation of a new record, that an agency use the designated address assigned by the Secretary of State as her or his residential or mailing address.

5.2. A program participant shall show her or his authorization card to the agency official creating a new record and request address confidentiality through use of the designated address in lieu of her or his residential or mailing address. The designated address shall appear on the program participant's authorization card.

5.3. Agency personnel may make a file photocopy of the authorization card and shall immediately return the authorization card to the program participant.

5.4. An agency shall accept the designated address. However, an agency may obtain the program participant's residential or mailing address pursuant to Section 10 of this rule.

5.5. An agency shall not question the program participant about the details or circumstances of her or his inclusion in the program. Rather, the agency shall accept the determination made by the Secretary of State that she or he is a qualified program participant.

§153-37-6. Program Participant Renewal.

6.1. A program participant may renew her or his program participation by filing a reapplication form accompanied by the printed name, signature and recommendation of the application assistant. The Secretary of State shall send a reapplication form to the program participant at least four weeks before the expiration of the current authorization.

6.2. The Secretary of State may certify a program participant, who has filed a reapplication form, to participate in the program for an additional four year term unless the certification is withdrawn or canceled before that date.

6.3. Upon renewal, the program manager shall issue to the program participant a new authorization card which includes the program participant's name, authorization code, designated mailing address and certification expiration date.

6.4. Upon receipt of the renewed authorization card, the participant shall return his or her expired authorization card to the Secretary of State to be destroyed.

§153-37-7. Cancellation of Program Certification.

7.1. Program certification shall be canceled if any of the following occur:

7.1.a. The program participant fails to notify the program manager in writing of a change in the program participant's residential or mailing address or a change in the program participant's name within 10 days;

7.1.b. Any one of the cancellation conditions provided for by W.Va. Code § 48-28A-103(f); or,

7.1.c. The program participant discloses her or his residential or mailing address to the alleged batterer, stalker, or person threatening her or his safety or that of her or his minor children or an incapacitated person on whose behalf the application is made.

7.2. If certification for the program is canceled, the program manager will notify the program participant of the cancellation by mail addressed to the participant's last known residential or mailing address.

7.3. Upon cancellation of program certification, the program participant shall return the authorization card to the Secretary of State.

§153-37-8. Withdrawal and Expiration.

8.1. A program participant may withdraw from program participation by submitting to the Secretary of State written notification of withdrawal and her or his current authorization card. Certification shall be terminated on the date of receipt of this notification.

8.2. If the program participant verbally requests withdrawal from the program, but does not return her or his current authorization card, the Secretary of State may, at her or his discretion, cancel program participation based solely on the verbal request. However, before cancellation is effective based on a verbal request, the program manager shall send, via certified mail return receipt requested, written notification to the program participant stating that the verbal request has been received and that the program participant has

thirty (30) days from receipt of the letter to inform the program manager that she or he objects to the cancellation.

8.3. A program participant's certification shall expire if the program participant's certification term has lapsed and certification has not been renewed.

8.4. The Secretary of State shall send written notification of the expiration to the participant's last known mailing or residential address. The program participant shall have ten business days in which to appeal the expiration in writing to the Secretary of State.

8.5. In the event that a person is no longer a program participant for any reason, including but not limited to, cancellation, termination or expiration, the Secretary of State shall:

8.5.a. Notify the designated county contact and the Division of Motor Vehicles that the person is no longer a program participant and provide the person's last known residential and mailing address.

8.5.b. Return any mail received from an agency with a letter explaining the person is no longer a program participant and provide the person's last known residential and mailing address.

8.5.c. Return all other mail that is not sent from an agency with an indication on the envelope that the person can no longer receive mail at the designated address.

§153-37-9. Disclosure to Law Enforcement.

9.1. A law enforcement agency requesting a program participant's

residential or mailing address must provide the request to the Secretary of State, in the following manner:

9.1.a. The request shall be submitted in writing by the county prosecutor or the United States Attorney having the appropriate jurisdiction for the requesting law enforcement agency.

9.1.b. The request shall be on the letterhead of the county prosecutor or the United States Attorney, shall state the reason the address is required by that law enforcement officer or agency and shall state the identification of the individuals who will have access to the record.

9.2. Once a properly submitted request is received, the program manager shall provide the county prosecutor or United States Attorney with the program participant's address and document the program participant's file with the request from law enforcement.

§153-37-10. Agency Disclosure Request.

10.1. An agency requesting a disclosure of the program participant's residential or mailing address under W.Va. Code § 48-28A-106(a)(2), must provide in writing to the Secretary of State:

10.1.a. Identification of the statute or administrative rule which demonstrates the agency's bona fide requirement and authority for the use of the residential address of an individual;

10.1.b. Identification and description of the specific record or record series for which the disclosure is requested; and

10.1.c. Identification of the individuals who will have access to the record.

10.2. The Secretary of State shall review an agency's request for a disclosure.

10.3. During the review and evaluation or reconsideration of an agency's disclosure request, the agency shall accept the use of a program participant's designated address.

10.4. The Secretary of State's determination to grant or deny a disclosure request shall be based on, but not limited to, an evaluation of the information provided by the agency in conformance with the statutory standard of a bona fide statutory or administrative requirement for the use of a program participant's residential address.

10.5. If the Secretary of State determines that an agency has a bona fide statutory or administrative requirement for the use of a program participant's residential or mailing address information which will only be used for those statutory and administrative purposes, the Secretary may issue the granted disclosure in writing. When granting a disclosure request, the Secretary may include:

10.5.a. Any obligations for the agency to maintain the confidentiality of a program participant's residential or mailing address;

10.5.b. Any limitations on use and access to the residential or mailing address;

10.5.c. Any term during which the granted disclosure is authorized for the agency;

10.5.d. Any designation of the record format on which the residential or mailing address may be maintained;

10.5.e. A date by which an agency may no longer maintain a record of the residential or mailing address; and

10.5.f. Any other provisions and qualifications determined appropriate by the Secretary of State including addressing any particular provisions pertinent to the requesting agency.

10.5.g. If an agency request is based on the safety and welfare of a minor or an incapacitated person, then the Secretary of State shall respond to such request in an expedited manner.

10.6. The Secretary of State's denial of an agency's disclosure request shall be made in writing and include a statement of the specific reasons therefore.

10.7. An agency may seek reconsideration of the denial of its request by resubmitting its written request within 60 days of the issuance of a denial. The request may be accompanied by additional information and an explanation of corrective action taken to alleviate concerns and considerations included in the Secretary of State's denial determination. Final administrative determination shall be made by the Secretary of State.

§153-37-11. Service of Process.

11.1. The Secretary of State shall be an agent of the program participant upon whom any service of process, notice or demand may be served.

11.2. Service on the Secretary of State of any such service of process, notice or

demand shall be made by mail or delivery to the Secretary of State at her or his office two copies of the process, notice or demand. If by mail, such service of process, notice or demand shall be made on the Secretary of State at her or his regular mailing address and not at the designated address of the program participant.

11.3. If such service of process, notice or demand is served on the Secretary of State on behalf of the program participant, the Secretary of State shall immediately forward, via certified mail return receipt requested, a copy to the program participant at the participant's residential or mailing address.

11.4. The Secretary of State shall maintain, in the program participant's file, a record of any service of process, notice or demand served upon the Secretary of State for that participant. The Secretary of State shall include in the file the date of such service and the Secretary of State's action.

11.5. Service or acceptance of process, notice or demand is sufficient if return receipt is signed by the program participant, or if the registered or certified mail sent by the Secretary of State is refused by the program participant and the registered or certified mail is returned to the Secretary of State, or to her or his office, showing the stamp of the United States Postal Service that delivery has been refused, and the return receipt or registered or certified mail is appended to the original process or notice and filed in the clerk's office of the court from which the process or notice was issued. The Secretary of State may redact the residential address from any document filed with the court unless otherwise ordered by the court.

§153-37-12. Protected Records Voter

Registration.

12.1. A program participant shall have the opportunity to apply through the Secretary of State's office for a new voter's registration using her or his designated address and may cancel any previous registration.

12.2. The Secretary of State will determine the correct precinct for the program participant and notify the designated county contact.

12.3. The designated county contact will add the determined precinct to the critical precinct list and notify the program manager of any changes made to precincts maintained on the list.

12.4. The program manager will maintain a list of precincts and program participants' residential and mailing addresses.

§153-37-13. Maintaining Protected Records Voter Information.

13.1. The residential or mailing address for a protected records voter shall not be maintained on any voter registration data base and shall not be publicly accessible regardless of the type of records management system.

13.2. At least sixty days before every special, primary, or general election, the designated county contact shall review all critical precinct lists and update the appropriate voter records as necessary. Notification shall be sent to the affected program participant.

13.3. A program participant shall have the right to vote in the same manner as any

other qualified voter within the state.

13.4. The designated county contact shall maintain a record of absentee ballots sent to protected records voters and a record of ballots returned.

§153-37-14. Undeliverable Ballot.

14.1. If any protected records voter's absentee ballot is declared undeliverable by the post office and returned to the Secretary of State, the program manager shall attempt to determine the cause of this occurrence and inform the designated county contact of any relevant information regarding the reason for the ballot's return.

§153-37-15. Election Contest Procedures.

15.1. If any post election challenges are brought pertaining to the outcome of any election and it becomes necessary to check the validity of all absentee ballots cast in the election by verifying the names and addresses of all voters casting absentee ballots, a protected records voter's ballot shall not be included in the review unless the county canvassing board determines that such a ballot would be determinative of the election outcome. When the county canvassing board has determined that review of a protected records voter's ballot is necessary, the designated county contact shall verify the protected records voter's ballot, in executive session, using extreme caution to ensure continued confidentiality.

§153-37-16. Confidentiality.

16.1. All records pertaining to the program participant shall be kept confidential. A request to ascertain if an individual is a program participant shall be in writing and addressed to the program manager. Upon receipt of a written request,

the program manager shall confirm, in writing within ten (10) days, whether or not an individual is a program participant, but the program manager shall not disclose any further information about the program participant. A copy of such written confirmation shall also be sent to the program participant.

§153-37-17. Mail Procedures.

17.1. The Secretary of State shall take reasonable precautions to ensure outgoing mail from the Secretary of State's office addressed to participants at their residential or mailing address remains secure and confidential.