

# **WEST VIRGINIA LEGISLATURE**

## **2018 REGULAR SESSION**

**Introduced**

### **House Bill 4415**

BY DELEGATES KESSINGER, PHILLIPS, LANE, HILL,  
OVERINGTON, BLAIR, HOWELL, SOBONYA AND ESPINOSA

[Introduced February 2, 2018; Referred  
to the Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §1-7-1, §1-7-2, §1-7-3, and §1-7-4, all relating to creating The Protect Our  
 3 Right to Unite Act; providing its purpose and intent; providing for the protection of privacy  
 4 of association; authorizing enforcement by state or citizen action; providing for damages  
 5 and attorneys fees; and defining terms.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 7. THE PROTECT OUR RIGHT TO UNITE ACT.**

**§1-7-1. Purpose; intent.**

1 (a) The purpose of this article is to protect an individual's right to support organizations  
 2 that represent their beliefs without threat of intimidation or loss of employment. If a state actor or  
 3 entity violates this protection by making an individual's name, address and support for nonprofit  
 4 groups public, either by publication on a public website or other type of broadcast, this article  
 5 gives the citizen a right to bring suit for relief.

6 (b) It is the intent of this article to recognize that the individual freedom to associate with  
 7 others for the purpose of advancing ideas and beliefs is a fundamental right, and that such a right  
 8 is violated when an individual's privacy is invaded merely due to their association with a group  
 9 advocating a particular point of view. Guilt by association has no place in a free society. Therefore,  
 10 this article should be liberally construed in favor of the individual right to association to ensure  
 11 that private association is not discouraged or suppressed by any actions of the public servants of  
 12 this state.

**§1-7-2. Definitions.**

1 For the purposes of this article:

2 "Attorney General" includes both the agents of the State Attorney General's office and the  
 3 prosecuting authorities of political subdivisions of this state.

4 "Donor information" means any record, which identifies the association of a private person  
 5 with an entity, including information that does not directly identify a person but which, in

6 combination with other information, would allow a reasonable person to identify the person  
7 involved. Donor information includes, but is not limited to, a person's name, address, occupation,  
8 employer, or any electronic or technical data, including social media accounts, email accounts,  
9 location data, or other identifying information.

10 "Investigate" includes the power to require any member of any public agency who there is  
11 reason to believe is or has been acting in violation of this article to appear at a time and place  
12 designated in the county in which such person resides or is found, to give such information under  
13 oath and to produce all accounts, bills, receipts, books, paper and documents which may be  
14 relevant or material to the investigation.

15 "Public Agency" means any department, office, commission, board, or division of state  
16 government; and any county, city, district, or other political subdivision or municipal corporation  
17 or any department, office, commission, court, or board or any other state or local government unit,  
18 however designated.

**§1-7-3. Protecting privacy of association.**

1 (a) Except as provided in §6B-1-1 et seq. of this code or successor provisions, and as  
2 specified in subsections (d) and (e) of this section, no public agency may require any entity to  
3 provide it with donor information.

4 (b) Where the state or a public agency nevertheless obtains donor information, it may not  
5 be released.

6 (1) In particular, the state or public agency may not release, allow to be released, nor be  
7 required to release any record which identifies the association of a private person with an entity  
8 organized under Section 501(c)of the Internal Revenue Code (or any successor provision of  
9 federal tax law), or which identifies the type or level of financial or nonfinancial support of a private  
10 person for such an entity, without the express written permission of the entity or person or at the  
11 request of the person.

12 (2) All donor information is exempt from production under the state's Freedom of

13 Information Act, §29B-1-1 et seq. of this code.

14 (c) A public agency may satisfy subsections (a) and (b) of this section by redacting from a  
15 record any donor information that would tend to show association of private persons, including  
16 nonspecific information that would allow a reasonable person to identify the person or persons  
17 involved.

18 (d) This section does not preclude any lawful warrant for information issued by a court of  
19 competent jurisdiction.

20 (e) This section does not preclude any lawful request for discovery in litigation, provided  
21 that both of the following qualifications are met:

22 (1) The state or public agency demonstrates a compelling need for the donor information  
23 by clear and convincing evidence, and

24 (2) The state or public agency obtains a protective order barring distribution of donor  
25 information to any governmental employee not directly involved in the litigation or enforcement  
26 matter, and to any other person whatsoever.

27 (f) Whenever possible, record filing rules issued by the state or public agencies should not  
28 require the collection of the kind of private association information meeting the definition of donor  
29 information or described in §1-7-3(b)(1) of this code. Or, if collected, such information should be  
30 discarded when retention is no longer necessary for the original purpose of collection.

**§1-7-4. Enforcement by state or private citizen action.**

1 (a) An individual who believes his individual right to privacy has been invaded in violation  
2 of this statute may bring suit for any appropriate civil remedy.

3 (b) If the person who brings the citizen's action prevails, he or she is entitled to be  
4 reimbursed by the state for costs and attorneys fees he or she has incurred, and to be made  
5 whole for any personal or property damage that would not have occurred but for the violation of  
6 this article.

7 (c) If the defendant state or public agency prevails, each party is responsible for their own

- 8 attorneys fees and the costs of the trial shall be split between the parties, except as determined  
9 by any applicable statutes concerning frivolous cases.
- 10 (d) If the violation is found to have been intentional by the state or public agency, the  
11 amount of the judgment, which for this purpose includes costs and attorneys fees, may be trebled  
12 as punitive damages.

NOTE: The purpose of this bill is to create The Protect Our Right to Unite Act. The bill provides its purpose and intent. The bill provides for the protection of privacy of association. The bill authorizes enforcement by state or citizen action. The bill provides for damages and attorneys fees. The bill defines terms.

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