

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

Senate Bill 414

SENATORS AZINGER, CLINE, MAYNARD, TARR AND BOSO,

original sponsors

[Originating in the Committee on the Judiciary;

Reported on February 25, 2019]

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; and to amend and reenact §20-2-27 of
3 said code, all relating generally to protecting the right to privacy and association of the
4 citizens of West Virginia; creating the Protect Our Right to Unite Act; declaring legislative
5 purpose; defining terms; providing that no public agency may require nonprofit entities to
6 disclose donor information, subject to certain exceptions; providing that where the state
7 or a public agency obtains donor information it may not be released, subject to certain
8 exceptions; providing exemption from Freedom of Information Act requests; providing for
9 redaction of donor information; providing exception for court orders; providing exception
10 for discovery requests under certain conditions; providing civil remedies; providing for the
11 payment of attorneys' fees and costs, and in certain circumstances, treble damages; and
12 providing that the name, address, and other contact information of persons having
13 obtained certain fishing and wildlife authorizations from the Division of Natural resources
14 are exempt from the Freedom of Information Act.

Be it enacted by the Legislature of West Virginia:

CHAPTER 1. THE STATE AND ITS SUBDIVISIONS.

ARTICLE 7. THE PROTECT OUR RIGHT TO UNITE ACT.

§1-7-1. Legislative purpose.

1 (a) The purpose of this article is to protect an individual's right to support nonprofit
2 organizations that represent their beliefs and the nonprofit organization's right to keep the names
3 and addresses of its supporters confidential by codifying the landmark United States Supreme
4 Court decision in NAACP v. Alabama ex rel. Patterson, 357 U.S. 449 (1958). If a public agency
5 actor violates this protection by making an individual's name, address, and support for nonprofit
6 groups public, either by publication on a public website or other type of broadcast, this article
7 gives the citizen a right to bring suit for relief.

8 (b) It is the intent of this article to recognize that compelled disclosure of membership lists
9 by a public agency actor is a trespass upon fundamental freedoms protected by the Due Process
10 Clause of the Fourteenth Amendment, as held by the United States Supreme Court in NAACP v.
11 Alabama ex rel. Patterson. Therefore, this article should be liberally construed in favor of the
12 individual right to association to ensure that private association is not discouraged or suppressed
13 by any actions of the public servants of this state.

§1-7-2. Definitions.

1 For the purposes of this article:
2 “Citizen” means an individual who is a United States citizen and any entity domiciled in
3 the United States, but does not include any foreign agent, foreign government, or noncitizen.
4 “Donor information” means any record which identifies the association of a citizen with an
5 entity, including information that does not directly identify the citizen but which, in combination
6 with other information, would allow a reasonable person to identify the citizen involved. Donor
7 information includes, but is not limited to, a citizen’s name, address, occupation, employer, or any
8 electronic or technical data, including social media accounts, email accounts, location data, or
9 other identifying information.
10 “Public agency” means any department, office, commission, board, or division of state
11 government; and any county, city, district, or other political subdivision or municipal corporation
12 or any department, office, commission, court, or board or any other state or local government unit,
13 however designated.

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

1 (a) Except as otherwise provided in chapters 3 and 6B of this code, or as specified in
2 subsection (c) or subsection (d) of this section, no public agency may require any entity organized
3 under Section 501(c) of the Internal Revenue Code to provide it with donor information: *Provided,*
4 That where the state or a public agency nevertheless obtains donor information, it may not be

5 released unless otherwise permitted in chapters 3 and 6B of this code or as otherwise permitted
6 under this section.

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

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 (b) The state or a public agency may satisfy subsection (a) of this section by redacting
15 from a record any donor information that would tend to show association of citizens, including
16 nonspecific information that would allow a reasonable person to identify the citizen or citizens
17 involved.

18 (c) This section does not preclude any lawful order or request for information issued by a
19 court of competent jurisdiction.

20 (d) This section does not preclude any lawful request for discovery by a public agency in
21 litigation: *Provided*, That both of the following qualifications are met:

22 (1) The requesting party demonstrates a compelling need for the donor information; and

23 (2) The donor information is subject to a protective order barring distribution of the donor
24 information to any individual not directly involved in the litigation.

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

1 (a) A citizen has a cause of action to enjoin any violation of this article and to recover any
2 actual damages incurred by him or her as a result of the violation.

3 (b) If the plaintiff prevails, he or she is entitled to be reimbursed by the state or public
4 agency for costs and attorneys' fees he or she has incurred. If the defendant state or public

5 agency prevails, each party is responsible for their own attorneys' fees and costs, except as
6 determined by any applicable statutes or common law rule concerning frivolous cases.

7 (c) If the judge or jury finds that the violation by the state or public agency was intentional,
8 the amount of the judgment, which for this purpose includes costs and attorneys' fees, may be
9 trebled as punitive damages.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-27. Necessity for license.

1 (a) Except as otherwise provided by law, no resident who has reached his or her 15th
2 birthday and who has not reached his or her 65th birthday before January 1, 2012, and no
3 nonresident shall at any time take, hunt, pursue, trap for, kill, or chase any wild animals, wild birds,
4 or fish for, take, kill or catch any fish, amphibians, or aquatic life of any kind whatsoever in this
5 state without first having secured a license or permit and then only during the respective open
6 seasons, except that a nonresident who has not reached his or her 15th birthday may fish for,
7 take, kill, or catch any fish, amphibians, or aquatic life of any kind whatsoever in this state without
8 first having secured a license or permit. A person under the age of 15 years shall not hunt or
9 chase any wild animals or wild birds upon lands of another unless accompanied by a licensed
10 adult.

11 (b) A resident or nonresident member of any club, organization, or association or persons
12 owning or leasing a game preserve or fish preserve, plant, or pond in this state shall not hunt or
13 fish therein without first securing a license or permit as required by law: *Provided*, That resident
14 landowners or their resident children, or bona fide resident tenants of land, may, without a permit
15 or license, hunt and fish on their own land during open seasons in accordance with laws and rules
16 applying to such hunting and fishing unless the lands have been designated as a wildlife refuge
17 or preserve.

18 (c) Licenses and permits shall be of the kinds and classes set forth in this article and shall
19 be conditioned upon the payment of the fees established for the licenses and permits.

20 (d) The list of names, addresses, and other contact information of all licensees compiled
21 and maintained by the division as a result of the sale and issuance of any resident or nonresident
22 licenses or stamps under this chapter is exempt from disclosure under the Freedom of Information
23 Act, §29B-1-1 et seq. of this code: *Provided*, That the records specified in this section shall be
24 available to all law-enforcement agencies and other governmental entities authorized to request
25 or receive such records.

NOTE: The purpose of this bill is to create the Protect Our Right to Unite 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.