

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 2189**

BY DELEGATE SHOTT

[Introduced January 9, 2019; Referred  
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §27-3-1 of the Code of West Virginia, 1931, as amended, relating  
2 generally to the disclosure of certain confidential information; establishing additional  
3 requirements.

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

### **ARTICLE 3. CONFIDENTIALITY.**

#### **§27-3-1. Definition of confidential information; disclosure.**

1 (a) Communications and information obtained in the course of treatment or evaluation of  
2 any client or patient are confidential information. Such confidential information includes the fact  
3 that a person is or has been a client or patient, information transmitted by a patient or client or  
4 family thereof for purposes relating to diagnosis or treatment, information transmitted by persons  
5 participating in the accomplishment of the objectives of diagnosis or treatment, all diagnoses or  
6 opinions formed regarding a client's or patient's physical, mental, or emotional condition, any  
7 advice, instructions, or prescriptions issued in the course of diagnosis or treatment, and any  
8 record or characterization of the matters hereinbefore described. It does not include information  
9 which does not identify a client or patient, information from which a person acquainted with a  
10 client or patient would not recognize such client or patient, and de-identified information from  
11 which there is no possible means to identify a client or patient.

12 (b) Confidential information shall not be disclosed, except:

13 (1) In a proceeding under §27-5-4 of this code to disclose the results of an involuntary  
14 examination made pursuant to §27-5-2, §27-5-3, or §27-5-4 of this code;

15 (2) In a proceeding under §27-6A-1 et seq. of this code to disclose the results of an  
16 involuntary examination made pursuant thereto;

17 (3) Pursuant to an order of any court based upon a finding that the information is  
18 sufficiently relevant to a proceeding before the court to outweigh the importance of maintaining  
19 the confidentiality established by this section;

20 (4) To provide notice to the federal National Instant Criminal Background Check System,  
21 established pursuant to section 103(d) of the Brady Handgun Violence Prevention Act,  
22 18 U.S.C. § 922, in accordance with §61-7A-1 *et seq.* of this code;

23 (5) To protect against a clear and substantial danger of imminent injury by a patient or  
24 client to himself, herself, or another;

25 (6) Pursuant to and as provided for under the federal privacy rule of the Health Insurance  
26 Portability and Accountability Act of 1996 in 45 CFR §164, as amended under the Health  
27 Information Technology for Economic and Clinical Health Act of the American and the Omnibus  
28 Final Rule, 78 FR 5566: Provided, That disclosures made pursuant to 45 CFR §164/512(e)  
29 comply with §27-3-1(b)(3) of this code; ~~or~~

30 (7) In a proceeding held under §44A-3-17 of this code or as required by §44A-3-18 of this  
31 code; or

32 (8) Upon execution of a duly executed release in compliance with the Health Insurance  
33 Portability and Accountability Act of 1996.

NOTE: The purpose of this bill is to establish additional requirements for disclosure of certain confidential information.

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