

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 470**

BY SENATORS WOELFEL, IHLENFELD, RUCKER, LINDSAY,

CAPUTO, ROMANO, AND WOODRUM

[Originating in the Committee on Government

Organization; reported on March 24, 2021]

1 A BILL to amend and reenact §5A-8-21 and §5A-8-22 of the Code of West Virginia, 1931, as  
2 amended; and to amend said code by adding thereto a new section, designated §5A-8-  
3 24, all relating to clarifying that disclosure of certain information such as home addresses  
4 are exempt and disclosure would constitute an unreasonable invasion of privacy; providing  
5 prohibition of disclosure of home address or unpublished telephone number of certain  
6 public officials within the justice system; creating a cause of action for intentional or  
7 reckless disregard for disclosure of protected information of certain public officials within  
8 the justice system; providing a procedure for removal request of certain information for  
9 certain public officials within the justice system; and providing a cause of action for failure  
10 to comply with a removal request of certain information for certain public officials within  
11 the justice system.

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

## **ARTICLE 5A. DEPARTMENT OF ADMINISTRATION**

### **§5A-8-21. Limitation on release of certain personal information maintained by state agencies and entities regarding state employees.**

1 (a) The following personal information maintained by executive, legislative or judicial  
2 branch agencies of the State of West Virginia regarding persons in their capacity as state officers,  
3 employees, retirees, or the legal dependents thereof is hereby deemed to be confidential and  
4 exempt from disclosure as an unreasonable invasion of privacy to non-governmental entities in  
5 documents otherwise subject to disclosure under the provisions of ~~chapter twenty-nine-b [§§~~  
6 ~~29B-1-1 et seq.] §29B-1-1 et seq.~~ of this code:

- 7 (1) An individual's home address;
- 8 (2) An individual's Social Security number;
- 9 (3) An individual's credit or debit card numbers;
- 10 (4) An individual's driver's license identification number; and
- 11 (5) An individual's marital status or maiden name.

12 (b) It is the policy of the State of West Virginia that the information enumerated in  
13 subsection (a) of this section is personal and confidential and should only be released to non-  
14 governmental entities for such purposes as are authorized by federal law or regulation, a provision  
15 of this code or a legislative rule promulgated pursuant to the provisions of ~~chapter twenty-nine-a~~  
16 ~~[[§§ 29A-1-1 et seq.]~~ §29A-1-1 et seq. of this code.

**§5A-8-22. Personal information maintained by state entities.**

17 (a) The following information maintained by state executive branch agencies with respect  
18 to individuals and their dependents, is personal information, exempted from disclosure as an  
19 unreasonable invasion of privacy under the provisions of ~~article one, chapter twenty-nine-b~~ §29B-  
20 1-1 et seq. of this code, and may not be released to non-governmental entities:

- 21 (1) An individual's Social Security number; or  
22 (2) An individual's credit or debit card number.

23 (b) Notwithstanding the provisions of subsection (a) of this section, the information  
24 enumerated in said subsection may be released for such purposes as are authorized by federal  
25 law or regulation, a provision of this code or a legislative rule promulgated pursuant to the  
26 provisions of ~~chapter twenty-nine-a of this code~~ §29A-1-1 et seq.

**§5A-8-24. Protection of personal information relating to judicial officers, prosecutors, and  
law-enforcement officers.**

27 (a) This section shall be known as "Daniel's Law."

28 (b) This act shall be liberally construed in order to accomplish its purpose and the public  
29 policy of this state, which is to enhance the safety and security of certain public officials in the  
30 justice system, including judicial officers, prosecutors, and law-enforcement officers, who serve  
31 or have served the citizens of West Virginia, and the immediate family members of these  
32 individuals, to foster the ability of these public servants who perform critical roles in the justice  
33 system, and to carry out their official duties without fear of personal reprisal from affected  
34 individuals related to the performance of their public functions.

35 (c) Definitions. — As used in this section:

36 (1) “Disclose” means to publish, publicly display, distribute, deliver, circulate, post, lend,  
37 provide, advertise, or disseminate by any means including, but not limited to, electronic  
38 transmission and on any medium including, but not limited to, the internet.

39 (2) “Immediate family member” means spouse, child, parent, or any other family member  
40 related by blood or by law to the judicial officer, prosecutor, or law-enforcement officer who lived  
41 in the same residence.

42 (3) “Judicial officer” means the Chief Justice or Associate Justice of the United States  
43 Supreme Court, Judge of the United States Court of Appeals, Judge of a federal district court,  
44 Magistrate Judge of a federal district court, any other Judge for a court established by federal law,  
45 Chief Justice or Associate Justice of the West Virginia Supreme Court of Appeals, Circuit Judge,  
46 Family Law Judge, Magistrate, Administrative Law Judge, Municipal Court Judge, any other judge  
47 established by state law.

48 (4) “Law-enforcement officer” shall have the same definition as that term is defined in  
49 W.Va. Code Section 29B-1-2.

50 (5) “Prosecutor” means the United States Attorney or his or her Assistant United States  
51 Attorneys, any other prosecutor established by federal law, Attorney General of the State of West  
52 Virginia and his or her Assistant Attorneys General, a county Prosecuting Attorney and his or her  
53 Assistant Prosecuting Attorneys, and any other prosecutor established by state law.

54 (d) Unless first obtaining written permission from the individual, a State or local  
55 government agency shall not knowingly disclose, re-disclose, or otherwise make available the  
56 home address or unpublished home telephone number of any active, formerly active, or retired  
57 judicial officer, prosecutor, or law-enforcement officer.

58 (e) Unless first obtaining written permission from the individual, a person, business, or  
59 association shall not disclose, re-disclose, or otherwise make available the home address or  
60 unpublished home telephone number of any active, formerly active, or retired judicial officer,

61 prosecutor, or law-enforcement officer under circumstances in which a reasonable person would  
62 believe that providing that information would expose another to harassment or risk of harm to life  
63 or property.

64 (1) A civil action may be maintained for any violations of subsection (e) of this section by  
65 the active, formerly active, or retired judicial officer, prosecutor, or law-enforcement officer, or any  
66 other person residing at the home address of the active, formerly active, or retired judicial officer,  
67 prosecutor, or law-enforcement officer.

68 (2) The court may award actual damages, but not less than \$1,000 for each violation of  
69 this act; punitive damages, if applicable, in accordance with §55-7-29 of this code, reasonable  
70 attorney's fees and other litigation costs reasonably incurred, and any other preliminary or  
71 equitable relief as the court deems appropriate.

72 (f) Any active, formerly active, or retired judicial officer, prosecutor, or law-enforcement  
73 officer whose home address or unpublished telephone number is disclosed, re-disclosed, or  
74 otherwise made available by any person, business, or association may request that the person,  
75 business, or association that disclosed, re-disclosed, or otherwise made available that information  
76 to refrain from that action and remove the information.

77 (g) Any immediate family member of any active, formerly active, or retired judicial officer,  
78 prosecutor, or law-enforcement officer whose name, home address, or unpublished telephone  
79 number, which may be used alone or in conjunction with any other information to identify the  
80 person as the family member of an active, formerly active, or retired judicial officer, prosecutor,  
81 or law-enforcement officer, is disclosed, re-disclosed, or otherwise made available by any person,  
82 business, or association may request that the person, business, or association that disclosed, re-  
83 disclosed, or otherwise made available that information to refrain from that action and remove the  
84 information.

85 (1) A request to refrain and remove information pursuant to subsection (g) of this section  
86 shall be made in writing and addressed to the person, business, or association that disclosed, re-

87 disclosed, or otherwise made available the information.

88 (2) Upon receipt of a written request to refrain and remove information, the person,  
89 business, or association that disclosed, re-disclosed, or otherwise made available the information  
90 shall have 72 hours to remove that information.

91 (3) Failure to comply with a request to refrain and remove information made pursuant to  
92 (g)(1) of this section is actionable and the court may award injunctive or declaratory relief. If the  
93 court grants injunctive or declaratory relief, the person, business, or association responsible for  
94 the violation shall be required to pay reasonable attorney's fees and other litigation costs  
95 reasonably incurred by the judicial officer, prosecutor, law-enforcement officer, or immediate  
96 family member thereof, as applicable and appropriate.

97 (h) This section does not prohibit disclosures required by state or federal law.

NOTE: The purpose of this bill is to implement "Daniel's Law" for the protection of the home address and unpublished telephone number of certain public officers (judicial officers, prosecutors, and law-enforcement officer) to ensure their and their families' safety and permit them to do their public duties without fear of physically harmful public reprisal.

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