

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

Committee Substitute

for

Senate Bill 470

BY SENATORS WOELFEL, IHLENFELD, RUCKER, LINDSAY,

CAPUTO, ROMANO, AND WOODRUM

[Originating in the Committee on the Judiciary;

reported on March 27, 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5 prohibition of disclosure of home address or unpublished telephone number of certain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~~ former legal 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.

1 (a) The following information maintained by state executive branch agencies with respect
2 to individuals and their dependents is personal information exempted from disclosure as an
3 unreasonable invasion of privacy under the provisions of ~~article one, chapter twenty-nine-b~~ §29B-
4 1-1 et seq. of this code, and may not be released to non-governmental entities:

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

7 (b) Notwithstanding the provisions of subsection (a) of this section, the information
8 enumerated in said subsection may be released for such purposes as are authorized by federal
9 law or regulation, a provision of this code, or a legislative rule promulgated pursuant to the
10 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.

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

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

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

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

13 (2) “Immediate family member” means spouse, child, parent, or any other family member
14 related by blood or by law to the judicial officer, prosecutor, or law-enforcement officer, and who
15 resides in the same residence as the judicial officer, prosecutor, or law-enforcement officer.

16 (3) “Judicial officer” means the chief justice or an associate justice of the United States
17 Supreme Court, a judge of the United States Court of Appeals, a judge of a federal district court,
18 a magistrate judge of a federal district court, any other judge for a court established by federal
19 law, the chief justice or a justice of the Supreme Court of Appeals of West Virginia, a circuit judge,
20 a family law judge, a magistrate, an administrative law judge, a municipal court judge, or any other
21 judge established by state law.

22 (4) “Law-enforcement officer” shall have the same definition as that term is defined in
23 §29B-1-2 of this code.

24 (5) “Prosecutor” means United States Attorney or his or her assistant United States
25 attorneys, any other prosecutor established by federal law, the Attorney General of the State of
26 West Virginia or his or her assistant attorneys general, a county prosecuting attorney or his or her
27 assistant prosecuting attorneys, or any other prosecutor established by state law.

28 (d) Unless written permission is first obtained from the individual, a state or local
29 government agency shall not knowingly disclose, redisclose, or otherwise make available the
30 home address or unpublished home or personal telephone number of any active, formerly active,
31 or retired judicial officer, prosecutor, or law-enforcement officer.

32 (e) Unless written permission is first obtained from the individual, a person, business, or
33 association shall not disclose, redisclose, or otherwise make available the home address or
34 unpublished home or personal telephone number of any active, formerly active, or retired judicial

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

38 (1) A civil action may be maintained by the active, formerly active, or retired judicial officer,
39 prosecutor, or law-enforcement officer, or any other person residing at the home address of the
40 active, formerly active, or retired judicial officer, prosecutor, or law-enforcement officer, for any
41 violation of subsection (e) of this section.

42 (2) The court may award:

43 (A) Actual damages, but not less than \$1,000, for each violation of this act;

44 (B) Punitive damages, if applicable, in accordance with §55-7-29 of this code;

45 (C) Reasonable attorney's fees and other litigation costs reasonably incurred; and

46 (D) Any other preliminary or equitable relief as the court deems appropriate.

47 (f) Any active, formerly active, or retired judicial officer, prosecutor, or law-enforcement
48 officer whose home address or unpublished home or personal telephone number is disclosed,
49 redisclosed, or otherwise made available by any person, business, or association may request
50 that the person, business, or association that disclosed, redisclosed, or otherwise made available
51 the information to refrain from that action and remove the information.

52 (g) Any immediate family member of any active, formerly active, or retired judicial officer,
53 prosecutor, or law-enforcement officer whose name, home address, or unpublished home or
54 personal telephone number, which may be used alone or in conjunction with any other information
55 to identify the person as the family member of an active, formerly active, or retired judicial officer,
56 prosecutor, or law-enforcement officer, is disclosed, redisclosed, or otherwise made available by
57 any person, business, or association may request that the person, business, or association that
58 disclosed, redisclosed, or otherwise made available the information to refrain from that action and
59 remove the information.

60 (h) A request to refrain and remove information pursuant to subsection (f) or (g) of this
61 section shall be made in writing to the person, business, or association that disclosed,
62 redisclosed, or otherwise made available the information.

63 (1) Upon receipt of a written request to refrain and remove information, the person,
64 business, or association that disclosed, redisclosed, or otherwise made available the information
65 shall immediately remove the information from any location where the information has been
66 disclosed which is within the control of the person, business, or association.

67 (2) A civil action may be maintained by the individual whose information is disclosed,
68 redisclosed, or otherwise made available for failure to comply with a request to refrain and remove
69 the information made pursuant to subdivision (1) of this subsection, and the court may award
70 injunctive or declaratory relief. If the court grants injunctive or declaratory relief, the person,
71 business, or association responsible for the violation shall be required to pay reasonable
72 attorney's fees and other litigation costs reasonably incurred by the judicial officer, prosecutor,
73 law-enforcement officer, or immediate family member thereof, as applicable and appropriate.

74 (3) A person who willfully refuses to remove information within 24 hours of receipt of the
75 written request pursuant to subdivision (1), subsection (h) of this section is guilty of a
76 misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or confined for
77 up to six months, or both fined and confined.

78 (i) This section does not prohibit disclosures required by state or federal law.