

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Engrossed

Committee Substitute

for

Senate Bill 595

BY SENATOR AZINGER

[Originating in the Committee on the Judiciary;

Reported on February 26, 2018]

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 Right
3 to Unite Act; providing its purpose and intent; defining terms; providing that no public
4 agency may require any entity to provide it with donor information, subject to certain
5 exceptions; providing that where the state or a public agency obtains donor information it
6 may not be released, subject to certain exceptions; providing exemption from Freedom of
7 Information Act requests; providing for redaction of donor information; providing exception
8 for court orders; providing exception for discovery requests under certain conditions;
9 providing civil remedies; providing for the payment of attorneys' fees and costs; and
10 providing for trebled damages.

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 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 non-citizen.

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 three and six-b of this code, or as specified
2 in §1-7-3(c) and §1-7-3(d) of this code, no public agency may require any entity organized under
3 Section 501(c) of the Internal Revenue Code to provide it with donor information: *Provided, That*
4 where the state or a public agency nevertheless obtains donor information, it may not be released
5 unless otherwise permitted in chapters three and six-b 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 §1-7-3(a) of this code by redacting from a
15 record any donor information that would tend to show association of citizens, including nonspecific
16 information that would allow a reasonable person to identify the citizen or citizens involved.

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

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

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

22 (2) The donor information is subject to a protective order barring distribution of the donor
23 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