

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 16

BY SENATORS AZINGER, RUCKER, AND MAYNARD

[Introduced January 8, 2020; referred
to the Committee on the Judiciary]

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 generally to protecting the right
 3 to privacy and association of the citizens of West Virginia; creating the Protect Our Right
 4 to Unite Act; declaring legislative purpose; defining terms; providing that no public agency
 5 may require nonprofit entities to disclose donor information, subject to certain exceptions;
 6 providing that where the state or a public agency obtains donor information may not be
 7 released, subject to certain exceptions; providing exemption from Freedom of Information
 8 Act requests; providing for redaction of donor information; providing exception for court
 9 orders; providing exception for discovery requests under certain conditions; providing civil
 10 remedies; and providing for the payment of attorneys' fees and costs, and, in certain
 11 circumstances, treble damages.

Be it enacted by the Legislature of West Virginia:

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.

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.