

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5342

By Delegates Rohrbach, Forsht, and Sheedy

[Introduced January 30, 2024; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §62-1D-12 of the Code of West Virginia, 1931, as amended, relating
2 to the applicability of civil causes of action in cases involving surveillance.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1D. WIRETAPPING AND ELECTRONIC SURVEILLANCE ACT

§62-1D-12. Civil liability; defense to civil or criminal action.

1 (a) Any person whose wire, oral or electronic communication is intercepted, disclosed,
2 used or whose identity is disclosed in violation of this article shall have a civil cause of action
3 against any person who so intercepts, discloses, or uses, or procures any other person to
4 intercept, disclose, or use the communications, and shall be entitled to recover from any such
5 person or persons:

6 (1) Actual damages, but not less than \$100 for each day of violation;

7 (2) Punitive damages, if found to be proper; and

8 (3) Reasonable attorney fees and reasonable costs of litigation incurred.

9 (b) A good faith reliance by a provider of electronic or wire communication services on a
10 court order or legislative authorization constitutes a complete defense to any civil or criminal action
11 brought under this article or any other law

12 (c) The provisions of this section are not applicable if the information in question was
13 regarding a political, social, or other matter of public concern, and was published by a person who:

14 (1) Did not engage in the illegal interception of the material; or

15 (2) Did not know that the communications were illegally obtained.

NOTE: The purpose of this bill is to clarify that civil remedies are not available for those aggrieved by the disclosure of illegally intercepted materials if the materials were on a matter of public concern, and were published by those who did not engage in illegal conduct.

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