

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

Senate Bill 16

SENATORS AZINGER, MAYNARD, AND RUCKER

[Originating in the Committee on the Judiciary;

reported on January 15, 2020]

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 an
3 individual's constitutional right to privacy in association; creating the Protect Our Right to
4 Unite Act; declaring legislative purpose; defining terms; providing that a public agency may
5 not require a nonprofit entity to disclose the entity's donor or membership information,
6 subject to certain exceptions; providing that donor or membership information obtained by
7 a public agency may not be released, subject to certain exceptions; providing that
8 membership and donor information is exempt from the disclosure requirements of the
9 state's Freedom of Information Act; permitting disclosure of records when donor or
10 membership information is redacted; permitting compliance with a lawful court order;
11 providing that an individual has a private cause of action to enjoin unlawful disclosure of
12 donor or membership information and to recover actual damages; providing for the
13 payment of attorney's fees and costs in certain circumstances; and providing for treble
14 damages in certain circumstances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. THE PROTECT OUR RIGHT TO UNITE ACT.

§1-7-1. Legislative purpose.

1 The purpose of this article is to protect an individual's constitutional right to privately
2 associate with advocacy groups that represent his or her beliefs. As the Supreme Court of the
3 United States held in NAACP v. Alabama ex rel. Patterson, 357 U.S. 449 (1958), compelled
4 disclosure of an advocacy group's donor or membership lists, where such disclosure would
5 discourage association, is a trespass upon the fundamental freedoms protected by the Due
6 Process Clause of the Fourteenth Amendment. Therefore, this article should be liberally
7 construed in favor of an individual's right to association, to ensure that private association is not
8 discouraged or suppressed by any actions of the public agencies of this state.

§1-7-2. Definitions.

1 For the purposes of this article:

2 (1) "Donor or membership information" means any record which identifies an individual's
3 membership in, or support of, any tax-exempt entity under 26 U.S.C. §501(c), including
4 information that does not directly identify the individual but which, in combination with other
5 information, would allow a reasonable person to identify the individual. Donor or membership
6 information includes, but is not limited to, a member, donor, or supporter's name, address,
7 occupation, employer, or any electronic or technical data, including social media accounts, email
8 accounts, location data, or other identifying information.

9 (2) "Individual" means a person who is a United States citizen, or who is domiciled in the
10 United States, but does not include a foreign agent, foreign government, or foreign principal.

11 (3) "Public agency" means:

12 (A) Any department, body, office, commission, board, unit, political subdivision, court, or
13 division of state or local government, however designated; and

14 (B) Any official, employee, or agent of an entity described in paragraph (A) of this
15 subdivision.

§1-7-3. Protecting privacy of association.

1 (a) Except as otherwise provided in chapter 3 of this code, chapter 6B of this code, or
2 subsection (e) of this section, a public agency may not require any tax-exempt organization under
3 26 U.S.C. §501(c) to provide the agency with donor or membership information: *Provided*, That
4 where the public agency nevertheless obtains donor or membership information, such information
5 may not be released unless pursuant to chapter 3 of this code, chapter 6B of this code, or
6 subsection (e) of this section.

7 (b) A public agency may not release, permit to be released, nor be compelled to release
8 any record which identifies an individual's association with any tax-exempt organization under 26
9 U.S.C. §501(c), or which reveals an individual's financial or nonfinancial support for such an entity,
10 without the express written permission of the entity and the citizen, or at the request of the citizen.

11 (c) All donor or membership information is exempt from production or disclosure under the
12 state's Freedom of Information Act, §29B-1-1 et seq. of this code.

13 (d) A public agency does not violate subsection (a) of this section if donor or membership
14 information is redacted from a disclosed record.

15 (e) Nothing in this section precludes compliance with a lawful order issued by a court of
16 competent jurisdiction.

§1-7-4. Civil remedies.

1 (a) An individual may bring a civil action to enjoin any violation of this article and to recover
2 actual damages incurred by him or her as a result of the violation.

3 (b) If the plaintiff prevails in a civil action pursuant to this section, he or she is entitled to
4 be reimbursed by the state or public agency for actual costs and such reasonable attorney's fees
5 he or she has incurred in the litigation.

6 (c) If the judge or jury in a civil action brought pursuant to this section finds that a public
7 agency intentionally disclosed donor or membership information in violation of this article, the
8 amount of the judgment, which for this purpose includes actual damages, costs, and attorney's
9 fees, may be trebled as exemplary 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.