

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Originating

House Bill 3562

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[Originating in the Committee on Government
Organization; Reported on February 25, 2023]

1 A BILL to amend and reenact §15A-12-1, §15A-12-2, §15A-12-3, §15A-12-4, §15A-12-5 and
2 §15A-12-7 of the Code of West Virginia, 1931, as amended, all generally relating to
3 clarifying security clearance and/or non-disclosure agreement requirements, the duties,
4 functions, reporting requirements, prohibitions and restrictions applicable to the West
5 Virginia Fusion Center and to add certain criminal penalties for violations of prohibitions
6 and restrictions applicable to the West Virginia Fusion Center.

Be it enacted by the Legislature of West Virginia:

§15A-12-1. West Virginia Fusion Center Established.

1 (a) The Governor shall establish, organize, equip, staff, and maintain a multiagency
2 information fusion center ("Fusion Center") to receive, analyze, and disseminate all hazard, crime,
3 and threat information. The Department of Homeland Security shall operate the facility, as directed
4 by the Governor, with oversight auditing and accountability to the Joint Fusion Center Oversight
5 Committee ~~select committee of the Legislature~~ as set forth herein, and in collaboration among
6 federal, state, and local agencies, as well as private sector persons, organizations, entities, or
7 agencies, including, but not limited to, those with the primary purposes of homeland security,
8 counter-terrorism, public safety, public protection, and identification of threats to critical
9 infrastructure: *Provided*, That the Fusion Center shall not knowingly participate in activity, or
10 knowingly cooperate, with any federal agency, or a contractor for any federal agency, when that
11 participation or cooperation involves ~~illegal or improper actions~~ any action prohibited or restricted
12 by §15A-12-1 et seq of this Code and/or by federal or state law prohibiting intelligence gathering
13 activities upon any person. The Fusion Center will exercise due diligence to ensure that the
14 services and capabilities of the Fusion center are only used for legitimate law enforcement
15 purposes. Further, the Fusion Center shall not allow a federal agency or contractor for a federal
16 agency to work inside the Fusion Center when it knows or has reason to know that such federal
17 agency or federal contractor is presently engaged or intends to engage in unlawful intelligence-
18 gathering activity against ~~a citizen of West Virginia~~ any U.S. person.

19 (b) The Fusion Center shall collect, integrate, analyze, disseminate, and maintain such
20 information to support local, state, and federal law-enforcement agencies, other governmental
21 agencies, and private persons, organizations, entities, or agencies in detecting, preventing,
22 investigating, preparing for, responding to, mitigating and/or recovering from any possible or
23 actual criminal or terrorist activity, as well as any hazard or threat, including to the state's critical
24 infrastructure, in compliance with applicable state and federal laws and regulations, including 28
25 CFR 23: *Provided*, That as used in this article, "terrorism" shall mean only foreign or international
26 terrorist groups or individuals, or domestic groups or individuals involved in transnational or
27 domestic terrorism as defined in ~~6 U.S.C. §485~~ 18 U. S. Code §2331: *Provided, however*, That
28 under no circumstance shall the Fusion Center or its officers, directors, agents, or employees
29 engage in, or be ordered or directed to engage in prohibited ~~non-law enforcement~~ intelligence
30 gathering activities on citizens of the United States as set forth in any federal or state law or in
31 contravention of the Constitution of the United States, nor shall the Fusion Center engage in, or
32 collaborate with any other entity on, any information or intelligence gathering for any political
33 purpose nor be solicited for, or cooperate in, any investigation of a public official or candidate for
34 elected office, unless reasonable grounds exist to suspect the subject of the investigation is, or
35 may be, involved in criminal conduct. Any such information or intelligence gathering will be
36 reported to the United States Attorney for the Southern District of West Virginia, the Kanawha
37 County Prosecuting Attorney's Office, and the leadership of the Joint Fusion Center Oversight
38 Committee within 72 hours. This provision shall not prohibit the Fusion Center from ~~participating in~~
39 investigating matters dealing with election fraud, election tampering, or other issues designed to
40 provide the citizens of the state with tamper-free elections, and shall not restrict the Fusion Center
41 from assisting in security matters involving political or dignitary visits to or within the State of West
42 Virginia. Any information or intelligence gathered regarding election fraud will be reported to the
43 West Virginia Secretary of State's Office and the leadership of the Joint Fusion Center Oversight
44 Committee within 72 hours.

45 (c) Any improperly or inadvertently collected or gathered information must be reported to
46 the Director of the Fusion Center within 72 hours. The Director will investigate the causes of the
47 improper or inadvertent collection and will take corrective measures. No improperly or
48 inadvertently collected or gathered information may be shared with any other entity outside the
49 Fusion Center other than a law enforcement agency in the course of an official and active
50 investigation to determine whether the collection or gathering of such information constitutes a
51 crime under federal or state law, The Director will include any incidents of improper or inadvertent
52 collection, together with corrective actions in his annual report to the Joint Fusion Center Oversight
53 Committee.

54 ~~(e)~~(d) The West Virginia Fusion Center shall be housed within secure facilities in order to
55 access sensitive information, as permitted by state and federal law. Within the secure facilities, the
56 Fusion Center shall house a ~~Homeland Secure Data Network (HSDN)~~ homeland secure
57 information systems and networks in order to access classified information as permitted by state
58 and federal law and ensure that appropriate security measures are in place for: (1) the secure
59 facilities; (2) data collected or stored at the secure facilities; and (3) personnel working at the
60 secure facilities.

61 ~~(d)~~ (e) The West Virginia Fusion Center shall do all acts necessary and proper to carry out
62 the powers granted to the board of the State Resiliency Office.

§15A-12-2. Operation of center.

1 (a) The West Virginia Department of Homeland Security shall operate the West Virginia
2 Fusion Center under the direction of the Governor, with oversight auditing and accountability to the
3 ~~select~~ Joint Fusion Center Oversight committee of the Legislature as set forth herein, and shall
4 cooperate with the United States Department of Homeland Security, local, county, state, or federal
5 government agencies, and private organizations: *Provided*, That the Fusion Center shall not
6 knowingly participate in activity, or knowingly cooperate, with any federal agency, or a contractor
7 for any federal agency, when that participation or cooperation involves illegal or improper actions.

8 Further, the Fusion Center shall not allow a federal agency or contractor for a federal agency to
9 work inside the Fusion Center when it knows or has reason to know that such federal agency or
10 federal contractor is presently engaged or intends to engage in unlawful intelligence-gathering
11 activity against ~~a citizen of West Virginia~~ any U.S. person: *Provided, however,* That all Fusion
12 Center operations shall be subject to applicable state and federal laws and regulations, including,
13 but not limited to, 28 CFR Part 23, and shall at all times strictly abide by all restrictions and
14 prohibitions against conducting non-law enforcement intelligence operations against U.S. ~~citizens~~
15 persons as set forth in any federal or state law or in contravention of the Constitution of the United
16 States, including, but not limited to, 50 U.S.C. §3036(d)(1).

17 (b) The West Virginia Fusion Center shall: (1) Be the primary clearinghouse for the State of
18 West Virginia for the collection, analysis, and proper distribution of information and actionable
19 intelligence as defined in this section; (2) generate intelligence analyses critical for homeland
20 security policy and relevant threat warning in order to protect life, liberty, and property in West
21 Virginia; (3) promote and improve intelligence sharing among public safety and public service
22 agencies at the federal, state, and local levels, and with critical infrastructure and key resource
23 entities within the private sector subject to all restrictions and prohibitions recited in this article; (4)
24 receive and integrate intelligence and information related to terrorism and other homeland security
25 threats; (5) collect, analyze, produce, disseminate, and maintain such intelligence and
26 information, as allowed by law, to support local, state, and federal law enforcement agencies,
27 other governmental agencies, and private organizations in: preventing, preparing for, responding
28 to, and recovering from any possible or actual terrorist attack or other homeland security threat;
29 and (6) maximize intelligence and information sharing in strict accordance with all applicable state
30 and federal laws, restrictions, and prohibitions: *Provided,* That the Fusion Center shall not
31 knowingly participate in activity, or knowingly cooperate, with any federal agency, or a contractor
32 for any federal agency, when that participation or cooperation involves ~~illegal or improper actions~~
33 any action prohibited or restricted as set forth in §15A-12-1(a) of this code. Further, the Fusion

34 Center shall not allow a federal agency or contractor for a federal agency to work inside the Fusion
35 Center when it knows or has reason to know that such federal agency or federal contractor is
36 presently engaged or intends to engage in unlawful intelligence-gathering activity against a ~~citizen~~
37 U. S. person of West Virginia.

38 (c) The Governor shall provide facilities, budget, and administrative support for the West
39 Virginia Fusion Center and its employees and participants. The cabinet secretary shall serve as
40 security manager for the West Virginia Fusion Center.

41 (d) Private sector persons, organizations, entities, or agencies participating in the West
42 Virginia Fusion Center shall not be considered governmental entities, nor shall employees or
43 agents of private sector persons, organizations, entities, or agencies assigned to the West Virginia
44 Fusion Center be considered state employees; however, private sector entities and their
45 employees or agents are subject to the same confidentiality requirements and held to the same
46 standards as an employee of the West Virginia Fusion Center, including, but not limited to, any and
47 all restrictions and prohibitions against conducting non-law enforcement intelligence operations
48 against U.S. ~~persons citizens~~ as set forth in federal or state law or in contravention of the
49 Constitution of the United States, including, but not limited to, 50 U.S.C. §3036(d)(1): *Provided,*
50 That the Fusion Center shall not knowingly participate in any activity, or knowingly cooperate, with
51 any federal agency, or a contractor for or any person or entity utilizing or collaborating with any
52 federal agency, when that participation or cooperation involves illegal or improper actions:
53 *Provided, however,* that the Fusion Center shall not allow a federal agency or contractor for a
54 federal agency to work inside the Fusion Center when it knows or has reason to know that such
55 federal agency or federal contractor is presently engaged or intends to engage in unlawful
56 intelligence-gathering activity against U. S. persons ~~a citizen of West Virginia~~.

57 (e) The operations of the West Virginia Fusion Center shall be overseen by the cabinet
58 secretary and deputy cabinet secretary of the West Virginia Department of Homeland Security,

59 with oversight auditing and accountability to the ~~select~~ Joint Fusion Center Oversight Committee
60 ~~committee of the Legislature~~ as set forth herein.

61 (f) The cabinet secretary and deputy cabinet secretary shall either have a current, valid
62 federal security clearance at the appropriate level, and training and certifications commensurate
63 with the position, or be eligible for that clearance, and be in the process of obtaining the
64 appropriate clearance.

65 (g) The cabinet secretary and deputy cabinet secretary may adopt policies and
66 procedures for the operation of the West Virginia Fusion Center. All such policies and procedures
67 shall be subject to the full and unlimited inspection and review of the Joint Fusion Center Oversight
68 Committee as set forth in §15A-12-3 of this code. The cabinet secretary and deputy cabinet
69 secretary may adopt rules and regulations as may be necessary to carry out the provisions of this
70 act, including rules and regulations concerning the operations of the West Virginia Fusion Center:
71 *Provided*, That all policies, procedures, rules, ~~and regulations,~~ and use of the Fusion Center by
72 any party shall be subject to any and all restrictions and prohibitions against conducting non-law
73 enforcement intelligence operations against U.S. persons ~~citizens~~ as set forth in federal or state
74 law or in contravention of the Constitution of the United States, including but not limited to, 50
75 U.S.C. §3036(d)(1).

76 (h) Subject to appropriations, the West Virginia Fusion Center shall have the following
77 employees, all in the unclassified service of the civil service act:

78 (1) A director, who shall be appointed by and serve at the pleasure of the cabinet secretary.
79 The director shall either have a current, valid federal security clearance at the appropriate level,
80 and training and certifications commensurate with the position, or be eligible for that clearance,
81 and be in the process of obtaining the appropriate clearance, and shall:

82 (A) Be responsible for all operations of the West Virginia Fusion Center and shall report to
83 the cabinet secretary or deputy cabinet secretary;

84 (B) Be responsible for:

85 (i) Facilitating and implementing applicable federal standards and programs by the West
86 Virginia Fusion Center;

87 (ii) Ensuring compliance with all applicable laws and federal requirements, including, but
88 not limited to, any and all restrictions and prohibitions against conducting non-law enforcement
89 intelligence operations against U.S. persons ~~citizens~~ as set forth in federal or state law or in
90 contravention of the Constitution of the United States, including, but not limited to, 50 U.S.C.
91 §3036(d)(1);

92 (iii) Maintaining proper separation between military and civilian capacities;

93 (iv) Providing support, as needed, to the cabinet secretary and deputy cabinet secretary;

94 and

95 (v) Other duties and responsibilities as may be assigned by the cabinet secretary and
96 deputy cabinet secretary, subject to all restrictions and prohibitions described in this article.

97 (5) A deputy director, who shall be appointed by and serve at the pleasure of the director.
98 The deputy director shall either have a current, valid federal security clearance at the appropriate
99 level, and training and certifications commensurate with the position, or be eligible for that
100 clearance, and be in the process of obtaining the appropriate clearance, and shall be responsible
101 for assisting the director in: (A) facilitating and implementing applicable federal standards and
102 programs by the West Virginia Fusion Center; (B) ensuring compliance with all applicable laws
103 and federal requirements; (C) maintaining proper separation between military and civilian
104 capacities; (D) providing support, as needed, to the cabinet secretary and deputy cabinet
105 secretary; and (E) other duties and responsibilities as may be assigned by the Fusion Center
106 director.

§15A-12-3. Joint Fusion Center Oversight Committee.

1 (a) The Speaker of the House of Delegates and President of the Senate shall establish a
2 ~~select the Joint Fusion Center Oversight Committee~~ committee which shall have oversight of the
3 information collected by the West Virginia Fusion Center to ensure the proper collection,

4 dissemination, storage, and destruction of information or intelligence, and adherence to any and
5 all applicable federal and/or state law. The Joint Fusion Center Oversight Committee ~~committee~~
6 shall be composed of: (1) The Speaker of the House of Delegates and ~~four~~ two members of the
7 House of Delegates, one from each party, to be appointed by the Speaker of the House of
8 Delegates, ~~no more than two of whom shall be appointed from the same political party;~~ and (2) the
9 President of the Senate and ~~four~~ two members of the Senate, one from each party, to be appointed
10 by the President of the Senate, ~~no more than two of whom shall be from the same political party;~~
11 ~~and~~ counsel and staff to the Speaker and the Senate President; the president of the West Virginia
12 Chiefs of Police Association or designee; the president of the West Virginia Sheriffs Association or
13 designee; one senior status judge to be selected by agreement between the Speaker of the House
14 and the President of the Senate: *Provided,* That in the event the membership of a political party is
15 less than 15 percent in the House of Delegates or Senate, then the membership of that political
16 party from the legislative house with less than 15 percent membership may be one from that
17 ~~house.~~ The committee shall be chaired by the President of the Senate and the Speaker of the
18 House of Delegates or their respective designees. The senior status judge shall be appointed to
19 serve a term of four years, subject to reappointment. All other members appointed to the select
20 Joint Fusion Center Oversight Committee ~~committee~~ by the select committee chairs serve until
21 either they vacate office through which they gained membership, are removed by the agreement
22 of the Speaker of the House and the President of the Senate, or the conclusion of the Legislature
23 within which they were appointed. Additionally, the Secretary of the Department of Homeland
24 Security shall appoint a liaison who shall serve as a member of the joint committee. The liaison
25 appointee may be permitted to attend meetings held upon executive session, or parts thereof, only
26 on permission of the committee chair, but shall not be permitted to vote on matters as they appear
27 before the committee.. ~~their successors are appointed as provided in this section.~~ The select joint
28 oversight committee members, counsel, and staff must have the appropriate security clearance
29 execute an appropriate non-disclosure agreement in a form satisfactory to the West Virginia

30 Department of Homeland Security in order to ~~obtain~~ review law enforcement sensitive information
31 or intelligence ~~that is classified~~ and shall be subject to the same rules, regulations, and laws as the
32 employees of the West Virginia Fusion Center for safeguarding both classified and law
33 enforcement sensitive information or intelligence. These ~~select~~ joint oversight committee
34 members, counsel, and staff shall be advised of the restrictions and protocol for handling such
35 information or intelligence and shall sign a statement of understanding as well as a ~~confidentiality~~
36 non-disclosure agreement.

37 (b) Members of the ~~select~~ Joint Fusion Center Oversight Committee ~~committee~~ may enter
38 and inspect the West Virginia Fusion Center at any time staff is present with ~~select~~ joint oversight
39 committee counsel and staff, with or without notice to the West Virginia Fusion Center.

40 (c) Meetings of the ~~select~~ Joint Fusion Center Oversight Committee ~~committee~~ shall be
41 confidential and the information and materials, in any medium, including hard copy and electronic,
42 coming to the attention of or placed in the custody of the ~~Select~~ Joint Fusion Center Oversight
43 Committee shall not be subject to the West Virginia Freedom of Information Act as set forth in
44 §29B-1-1 *et seq.* of this code.

45 (d) The ~~select~~ Joint Fusion Center Oversight Committee ~~committee~~ may conduct
46 proceedings in a confidential executive session for the purpose of conducting business,
47 establishing policy, reviewing investigations, and interrogating a witness or witnesses.

48 (e) All witnesses appearing before the ~~select~~ Joint Fusion Center Oversight Committee
49 ~~committee~~ shall testify under oath or affirmation, and any member of the ~~select~~ Joint Fusion
50 Center Oversight Committee ~~committee~~ or its counsel may administer oaths or affirmations to
51 such witnesses. To compel witnesses to attend a hearing or produce any books, records,
52 documents, or papers, or any other tangible thing except where the records, documents, data, or
53 items are protected from disclosure by privilege recognized by state or federal courts, the ~~select~~
54 Joint Fusion Center Oversight Committee ~~committee~~ may issue subpoenas, signed by one of the
55 co-chairs: *Provided*, That the ~~select~~ Joint Fusion Center Oversight Committee ~~committee~~ may

56 specifically authorize or delegate the power to any member of the ~~select~~ Joint Fusion Center
57 Oversight Committee ~~committee~~ to sign subpoenas on its behalf. The subpoenas shall be served
58 by any person authorized by law to serve and execute legal process, and service shall be made
59 without charge. Witnesses subpoenaed to attend hearings shall be allowed the same mileage and
60 per diem as is allowed witnesses before any petit jury in this state.

61 (f) If any person subpoenaed to appear at any hearing shall refuse to appear or to answer
62 inquiries there propounded, or shall fail or refuse to produce books, records, documents, papers,
63 or any other tangible thing within his or her control when the same are demanded, ~~select~~ the Joint
64 Fusion Center Oversight Committee ~~committee~~ shall report the facts to the circuit court of
65 Kanawha County or any other court of competent jurisdiction and that court may compel
66 obedience to the subpoena as though the subpoena had been issued by that court in the first
67 instance: *Provided*, That prior to seeking circuit court relief, ~~select~~ the Joint Fusion Center
68 Oversight Committee ~~committee~~ may, in its discretion, first demand the Secretary of Homeland
69 Security or the director of the West Virginia Fusion Center under whom an employee has failed to
70 appear or which has failed to produce requested or subpoenaed material to appear before ~~select~~
71 the Joint Fusion Center Oversight Committee ~~committee~~ and address the basis for the failure to
72 comply and whether compliance will be forthcoming.

73 (g) The ~~select~~ Joint Fusion Center Oversight Committee ~~committee~~ may direct the West
74 Virginia Fusion Center to send its budgetary accounting to the State Auditor: *Provided*, That if
75 budgetary expenditures are classified, or security or law enforcement sensitive such that
76 disclosure would compromise an investigation, those entry descriptions, but not the expenditure
77 amounts, may be redacted from the West Virginia Fusion Center accounting provided to the State
78 Auditor: *Provided, however*, That the State Auditor shall bring any accounting issues of concern to
79 the attention of ~~select~~ the Joint Fusion Center Oversight Committee ~~committee~~, upon which ~~select~~
80 the Joint Fusion Center Oversight Committee ~~committee~~ shall subpoena the West Virginia Fusion
81 Center for unredacted copies of the accounting items to be presented for explanation and

82 justification of the necessity and legality of the concerns raised by the State Auditor. The ~~select~~
83 joint oversight committee may take whatever action it deems necessary, if any, after review and
84 analysis of the subpoenaed unredacted materials.

85 (h) The West Virginia Fusion Center shall report annually in writing by May 1st beginning in
86 2024 to the Joint Oversight Committee set forth in §15A-12-3 of this code regarding the
87 performance of the West Virginia Fusion Center. The report must include an unclassified general
88 narrative about the types of cases, crimes, incidents, and reports the West Virginia Fusion Center
89 has reviewed and evaluated in a manner that protects the personal privacy of U. S. persons West
90 Virginia citizens and the operational integrity of the West Virginia Fusion Center; (i) the
91 unclassified narrative must include both privacy audits performed in the prior year and de-
92 identified information from those audits regarding the cases, crimes, incidents and reports on
93 which the West Virginia Fusion Center worked during the prior year that were reviewed during the
94 audits: *Provided*, Nothing contained in herein shall prevent the Joint Fusion Center Oversight
95 Committee from requiring reporting of additional information which would be subject to the
96 protection of the non-disclosure agreement as set forth in §15A-12-3 of this code, (ii) the West
97 Virginia Fusion Center must also include a description of any and all funding sources or other
98 streams of income, received by or on behalf of the Fusion during the reporting period, and include
99 therein, the source, purpose, amount and current disposition of said funds, derived from any
100 source other than the annual Budget of the State of West Virginia.

§15A-12-4. Memoranda of understanding required.

1 (a) Each governmental and nongovernmental entity participating in the West Virginia
2 Fusion Center shall enter a memorandum of understanding between the West Virginia Fusion
3 Center and the participating entity. The memorandum of understanding shall at a minimum:

4 (1) Provide a framework and working mechanism for the organization of the West Virginia
5 Fusion Center to address issues that are common to city, county, state, and federal governments'
6 obligations to protect the safety and well-being of citizens and to enhance the success of the

7 Fusion Center in responding to criminal, terrorist, and other threats to public safety through the
8 achievement of coordination and cooperation;

9 (2) Clarify the working relationships between the governmental and nongovernmental
10 entities and use limitations of shared information; and

11 (3) Outline the intent of the parties regarding the information provided by the governmental
12 and non- governmental entities to the West Virginia Fusion Center.

13 (b) Nothing in any agreement shall obligate any nongovernmental entity to provide
14 information nor establish any duty for any nongovernmental entity to assume any police or law
15 enforcement responsibilities.

16 (c) Failure of any governmental or nongovernmental entity to abide by the restrictions and
17 use limitations set forth by the West Virginia Fusion Center may result in the suspension or
18 termination of use privileges, discipline sanctions imposed by the user's employing agency, or
19 criminal prosecution.

20 (d) Any and all interagency memoranda of understanding and participating public or
21 private persons, organizations, entities, or agencies described in this section shall be subject to all
22 restrictions and prohibitions described in this section and to unrestricted review, inspection and
23 auditing by the select oversight committee and its counsel and staff.

24 (e) No information may be gathered or collected for any purpose other than legitimate law
25 enforcement purposes. No information gathered or collected may be used for any non-law
26 enforcement intelligence operations against U.S. persons ~~citizens~~ as set forth in any federal or
27 state law or in contravention of the Constitution of the United States.

§15A-12-5. Confidentiality and immunity from service of process; penalties.

1 (a) Papers, records, documents, reports, materials, databases, or other evidence or
2 information relative to criminal intelligence, any terrorism investigation, threat assessment, or
3 information on infrastructure which if released would compromise the public safety in the
4 possession of the West Virginia Fusion Center shall be confidential and shall not be subject to the

5 West Virginia Freedom of Information Act (§29B-1-1 *et seq.* of this code): *Provided*, That this
6 exemption from the West Virginia Freedom of Information Act may be lifted in the event a court
7 determines in a state or federal whistleblower action that unlawful or unauthorized activity has
8 taken place, and shall in no way restrict the Legislature's ~~select~~ joint oversight committee from
9 access to all such information. Every five years, the West Virginia Fusion Center shall conduct a
10 review of information contained in any database maintained by the West Virginia Fusion Center.
11 Data that has been determined not to have a nexus to criminal or terrorist activity shall be removed
12 from such database. A reasonable suspicion standard shall be applied when determining whether
13 or not information has a nexus to terrorist activity for non-U.S. persons ~~citizens~~, but a probable
14 cause standard shall apply for U.S. persons ~~citizens~~: *Provided, however*, That all such
15 determinations shall be reported to the Legislature's ~~select~~ joint oversight committee at regularly
16 scheduled oversight audit and committee meetings.

17 (b) No person having access to information maintained by the West Virginia Fusion Center
18 shall be subject to subpoena in a civil action in any court of the state to testify concerning a matter
19 of which he has knowledge pursuant to his access to criminal intelligence information maintained
20 by the West Virginia Fusion Center.

21 (c) No person or agency receiving information from the West Virginia Fusion Center shall
22 release or disseminate that information without prior authorization from the West Virginia Fusion
23 Center.

24 (d) Intelligence data in the possession of a criminal or juvenile justice agency, state or
25 federal regulatory agency, or peace officer, or disseminated by such agency or peace officer, are
26 confidential records under §29B-1-1 *et seq.* of this code.

27 (e) Any person who: ~~knowingly~~

28 (1) Knowingly disseminates information in violation of this section is guilty of a
29 misdemeanor and, upon conviction thereof, shall be fined not less than \$200 nor more than
30 \$1,000, or be confined in jail for not more than 20 days, or both fined and confined. If such

31 unauthorized dissemination results in death or serious bodily injury to another person, such
32 person is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional
33 facility not less than one nor more than five years: *Provided*, That all state and federal
34 Whistleblower Protection Act protections shall apply to any person whose disclosures are found to
35 have been made to report or protect against violation or attempted violation of any and all
36 restrictions and prohibitions against conducting non-law enforcement intelligence operations
37 against U.S. persons ~~citizens~~ as set forth in federal or state law or in contravention of the
38 Constitution of the United States, including, but not limited to, 50 U.S.C. §3036(d)(1).

39 (2) Intentionally, willfully, or knowingly violates any of the restrictions and prohibitions
40 governing the operation of the Fusion Center or takes any action prohibited or restricted as set
41 forth in §15A-12-1 et seq. of this code, is guilty of a felony and, upon conviction thereof, shall be
42 fined not less than \$1,000 nor more than \$10,000, or be confined in shall be imprisoned in a state
43 correctional facility not less than one nor more than five years, or both fined and imprisoned; and
44 shall additionally be subject to separate criminal prosecution and penalties and civil liability for
45 violations of civil rights.

46 (f) Any person, being an officer or employee of the United States, the State of West Virginia
47 or of any department, agency, or political subdivision thereof, or any person from the private sector
48 or industry assigned to or working with the West Virginia Fusion Center in any capacity, who
49 knowingly publishes, divulges, discloses, or makes known in any manner, or to any extent not
50 authorized by law, any critical infrastructure or national intelligence information protected from
51 disclosure by this section coming to him or her in the course of his or her employment, affiliation, or
52 official duties with the West Virginia Fusion Center, or by reason of any examination or
53 investigation made by, return, report, or record made to or filed with, such department or agency,
54 officer or employee thereof, shall be guilty of a felony and, upon conviction, be imprisoned in a
55 state correctional facility for not less than one year, and shall be removed from office or
56 employment and affiliation with the West Virginia Fusion Center: *Provided*, That all state and

57 federal Whistleblower Protection Act protections shall apply to any person whose disclosures are
58 found to have been made to report or protect against violation or attempted violation of any and all
59 restrictions and prohibitions against conducting non-law enforcement intelligence operations
60 against U.S. persons ~~citizens~~ as set forth in federal or state law or in contravention of the
61 Constitution of the United States, including, but not limited to, 50 U.S.C. §3036(d)(1).

62 (g) The West Virginia Department of Homeland Security shall provide legal counsel to the
63 West Virginia Fusion Center to serve as privacy and civil liberties counsel to the West Virginia
64 Fusion Center. Such attorney shall advise the West Virginia Fusion Center director and its deputy
65 director on all matters necessary to ensure compliance with all applicable federal and state privacy
66 or civil liberties laws, obligations, restrictions, and prohibitions as set forth herein.

67 (h) For purposes of this article:

68 (1) "Criminal intelligence information" means data or information that has been evaluated
69 and determined to be relevant to the identification and criminal activity of individuals or
70 organizations that are reasonably suspected of involvement in criminal activity.

71 (2) "Critical Infrastructure" means systems and assets as defined in 42 U.S.C. § 5195c(e).

72 (3) "National Intelligence" means data or information determined to meet the definition
73 stated in 50 U.S.C. §3003 (5): *Provided*, That Fusion Center activities and operations relating to
74 National Intelligence shall at all times strictly abide by all restrictions and prohibitions against
75 conducting non-law enforcement intelligence operations against U.S. persons ~~citizens~~ as set forth
76 in federal or state law or in contravention of the Constitution of the United States, including, but not
77 limited to, 50 U.S.C. §3036(d)(1).

§15A-12-6. Receipt of information; immunity from liability.

1 (a) No cause of action for defamation, invasion of privacy, or negligence shall arise against
2 any person by reason of that person's furnishing information concerning any suspected,
3 anticipated, or completed criminal violation or terrorist activity when the information is provided to
4 or received from the West Virginia Fusion Center or any federal, state, or local governmental or

5 private sector entity established for the purpose of detecting and preventing acts of criminal
6 activity or terrorism: *Provided*, That with regard to any Fusion Center intelligence or information
7 gathering activity or operation against a U.S. person ~~Citizen~~ related to alleged terrorism or
8 violation of a law, such allegation must be vetted and confirmed by procedures substantially in
9 compliance with those set forth in laws, rules, and regulations developed in accordance with 50
10 U.S.C. §3036(d)(1).

11 (b) No person shall be subject to such cause of action for cooperating with or furnishing
12 evidence or information regarding any suspected criminal violation to the West Virginia Fusion
13 Center.

14 (c) This section shall not provide immunity for those disclosing or furnishing false
15 information with malice or willful intent to injure any person, nor for any person who does not
16 comply with the procedures set forth in §15A-9-6(a) of this code.

17 (d) This section does not in any way abrogate or modify common law or statutory privilege
18 or immunity heretofore enjoyed by any person or entity.

§15A-12-7. Costs.

1 (a) The director, with approval of the cabinet secretary or deputy cabinet secretary, may
2 enter into agreements with participating agencies or organizations, whether public or private, for
3 their participation in the West Virginia Fusion Center. Such agreements: (1) Shall define the duties
4 and responsibilities of each participating agency or organization; (2) may provide for payment by
5 the participating agency or organization of a reasonable share of the cost to establish, maintain,
6 and operate the West Virginia Fusion Center; and (3) shall require compliance with all
7 requirements, restrictions, and prohibitions set forth in this article.

8 (b)(1) The West Virginia Fusion Center, with approval of the cabinet secretary or deputy
9 cabinet secretary, may accept any gift, grant, payment, moneys, or assets seized by forfeiture as a
10 result of collaborative efforts or contribution from any source, public or private, for the purpose of
11 paying the costs to establish, maintain, or operate the West Virginia Fusion Center. Such gift,

12 grant, payment, moneys, or assets seized by forfeiture as a result of collaborative works or
13 contribution may be in the form of services, equipment, supplies, materials, or funds. All amounts
14 received under this section shall be remitted to the State Treasurer in accordance with chapter 12
15 of this code, and the amendments thereto. Upon receipt of each such remittance, the State
16 Treasurer shall deposit the entire amount in the State Treasury to the credit of the West Virginia
17 Fusion Center Fund, that is hereby created in the State Treasury and shall be administered by the
18 West Virginia Department of Homeland Security in accordance with this article and subject to
19 regular auditing and oversight by the Legislature's ~~select~~ joint oversight committee.

20 (2) Moneys in the West Virginia Fusion Center Fund may be used by the director to pay any
21 costs associated with establishing, maintaining, or operating the West Virginia Fusion Center. The
22 director of the West Virginia Fusion Center Fund shall develop policy and procedures for
23 purchasing, and expenditures shall be made in accordance with vouchers approved by the
24 director or the director's designee. Any gift, grant, payment, moneys, or any assets seized by
25 forfeiture as a result of collaborative efforts, or contribution in any form other than funds may be
26 accepted by the director, with approval of the cabinet secretary, and utilized and expended in any
27 manner authorized by law to establish, maintain, or operate the West Virginia Fusion Center:
28 *Provided*, That all moneys used by the director shall be subject to all restrictions and prohibitions
29 set forth in this article, and also to regular auditing and oversight by the Legislature's ~~select~~ joint
30 oversight committee.

31 (3) The moneys credited to the fund created in subsection (b) of this section shall be used
32 for the purposes set forth in this section and for no other governmental purposes. It is the intent of
33 the Legislature that the moneys deposited in this fund shall remain intact and inviolate for the
34 purposes set forth in this act.

§15A-12-8. Registration plates to official vehicles used in agency activities.

1 Notwithstanding any provision of this code to the contrary, the Commissioner of the
2 Division of Motor Vehicles is authorized to issue Class A license plates to authorized state-owned

- 3 vehicles operated by the West Virginia Fusion Center when the director signs a written affidavit
- 4 stating that the vehicle or vehicles for which the plates are being requested will be used by the
- 5 West Virginia Fusion Center in fulfilling its mission.

NOTE: The purpose of this bill is to change the makeup of the Fusion Center Oversight Committee and to provide reporting requirements pertaining to Fusion Center operations as well as any violations of the safeguards provided in this bill.

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