

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 4758**

By Delegates Jennings, Ridenour, Kimble and C. Pritt

[Originating in the Committee on the Judiciary;

Reported on February 5, 2024]



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 relating to the Fusion  
3 Center; providing the creation of the Joint Oversight Committee on the Fusion Center and  
4 defining the composition and duties associated with the Committee; exempting the Joint  
5 Oversight Committee from the open meetings act; providing non-disclosure agreement  
6 requirements; defining terrorism; clarifying the Fusion Center's duties, functions, reporting  
7 requirements, prohibitions and restrictions when information or intelligence is gathered for  
8 prohibited purposes; providing reporting requirements for information or intelligence  
9 gathered regarding election fraud or tampering; requiring that an annual report be provided  
10 to the Committee and clarifying the information required in the report; and creating criminal  
11 penalties for violations of prohibitions and restrictions applicable to the West Virginia  
12 Fusion Center.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 12. WEST VIRGINIA FUSION CENTER.**

**§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 ~~select committee of the~~  
5 ~~Legislature~~ Joint Oversight Committee on the Fusion Center as set forth herein, and in  
6 collaboration among federal, state, and local agencies, as well as private sector persons,  
7 organizations, entities, or agencies, including, but not limited to, those with the primary purposes  
8 of homeland security, counter-terrorism, public safety, public protection, and identification of  
9 threats to critical infrastructure: *Provided*, That the Fusion Center shall not knowingly participate in  
10 activity, or knowingly cooperate, with any federal agency, or a contractor for any federal agency,  
11 when that participation or cooperation involves ~~illegal or improper actions~~ any action prohibited or

12 restricted under this article or by federal or state law prohibiting intelligence gathering activities  
13 upon persons lawfully in the United States. The Fusion Center will exercise due diligence to  
14 ensure the services and capabilities of the Fusion Center are only used for legitimate law  
15 enforcement purposes. Further, the Fusion Center shall not allow a federal agency or contractor  
16 for a federal agency to work inside the Fusion Center when it knows or has reason to know that  
17 such federal agency or federal contractor is presently engaged or intends to engage in unlawful  
18 intelligence-gathering activity against ~~a citizen of West Virginia~~ persons lawfully in the United  
19 States.

20 (b) The Fusion Center shall collect, integrate, analyze, disseminate, and maintain such  
21 information to support local, state, and federal law-enforcement agencies, other governmental  
22 agencies, and private persons, organizations, entities, or agencies in detecting, preventing,  
23 investigating, preparing for, responding to, mitigating and or recovering from any possible or actual  
24 criminal or terrorist activity, as well as any hazard or threat, including to the state's critical  
25 infrastructure, in compliance with applicable state and federal laws and regulations, including 28  
26 CFR 23 and 6 U.S.C. §485: Provided, That as used in this article, "terrorism" shall mean only  
27 foreign or international terrorist groups or individuals, or domestic groups or individuals involved in  
28 ~~transnational~~ international or domestic terrorism as defined in ~~6 U.S.C. §485~~ 18 U. S. Code  
29 §2331: Provided, however, That under no circumstance shall the Fusion Center or its officers,  
30 directors, agents, or employees engage in, or be ordered or directed to engage in prohibited ~~non-~~  
31 ~~law enforcement~~ intelligence gathering activities on ~~citizens of the United States~~ persons lawfully  
32 in the United States as set forth in any federal or state law or in contravention of the Constitution of  
33 the United States, nor shall the Fusion Center engage in or collaborate with any other entity on any  
34 information or intelligence gathering for any political purpose nor be solicited for, or cooperate in,  
35 any investigation of a public official or candidate for elected office, unless reasonable grounds  
36 exist to suspect the subject of the investigation is, or may be, involved in criminal conduct. Any  
37 prohibited intelligence gathering will be reported to the United States Attorney for the Southern

38 District of West Virginia, the Office of the Kanawha County Prosecuting Attorney, and the  
39 leadership of the Joint Oversight Committee on the Fusion Center within 72 hours of discovery by  
40 the Director. This provision shall not prohibit the Fusion Center from ~~participating~~ investigating in  
41 matters dealing with election fraud, election tampering, or other issues ~~designed to provide the~~  
42 ~~citizens of the state with~~ which impede or impair state citizens of the right to tamper-free elections  
43 and shall not restrict the Fusion Center from assisting in security matters involving political or  
44 dignitary visits to or within the State of West Virginia. Any information or intelligence gathered  
45 regarding election fraud, election tampering, or other issues designed to provide the citizens of the  
46 state with which impede or impair state citizens of the right to tamper-free elections will be reported  
47 to the West Virginia Secretary of State's Office within 72 hours of discovery by the Director.

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

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

64           (d) ~~(e)~~ The ~~West Virginia~~ Fusion Center shall do all acts necessary and proper to carry out  
65 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 committee of the Legislature~~ Joint Oversight Committee on the Fusion Center as set forth  
4 herein, and shall cooperate with the United States Department of Homeland Security, local,  
5 county, state, or federal government agencies, and private organizations: *Provided*, That the  
6 Fusion Center shall not knowingly participate in activity, or knowingly cooperate, with any federal  
7 agency, or a contractor for any federal agency, when that participation or cooperation involves  
8 illegal or improper actions. Further, the Fusion Center shall not allow a federal agency or  
9 contractor for a federal agency to work inside the Fusion Center when it knows or has reason to  
10 know that such federal agency or federal contractor is presently engaged or intends to engage in  
11 unlawful intelligence-gathering activity against ~~a citizen of West Virginia~~ persons lawfully in the  
12 United States: *Provided, however*, That all Fusion Center operations shall be subject to applicable  
13 state and federal laws and regulations, including, but not limited to, 28 CFR Part 23, and shall at all  
14 times strictly abide by all restrictions and prohibitions against conducting non-law enforcement  
15 intelligence operations against ~~U.S. citizens~~ persons lawfully in the United States as set forth in  
16 any federal or state law or in contravention of the Constitution of the United States, including, but  
17 not limited to, 50 U.S.C. §3036(d)(1).

18           (b) The ~~West Virginia~~ Fusion Center shall: (1) Be the primary clearinghouse for the State of  
19 West Virginia for the collection, analysis, and proper distribution of information and actionable  
20 intelligence as defined in this section; (2) generate intelligence analyses critical for homeland  
21 security policy and relevant threat warning in order to protect life, liberty, and property in West  
22 Virginia; (3) promote and improve intelligence sharing among public safety and public service  
23 agencies at the federal, state, and local levels, and with critical infrastructure and key resource

24 entities within the private sector subject to all restrictions and prohibitions recited in this article; (4)  
25 receive and integrate intelligence and information related to terrorism and other homeland security  
26 threats; (5) collect, analyze, produce, disseminate, and maintain such intelligence and  
27 information, as allowed by law, to support local, state, and federal law enforcement agencies,  
28 other governmental agencies, and private organizations in: preventing, preparing for, responding  
29 to, and recovering from any possible or actual terrorist attack or other homeland security threat;  
30 and (6) maximize intelligence and information sharing in strict accordance with all applicable state  
31 and federal laws, restrictions, and prohibitions: *Provided*, That the Fusion Center shall not  
32 knowingly participate in activity, or knowingly cooperate, with any federal agency, or a contractor  
33 for any federal agency, when that participation or cooperation involves ~~illegal or improper actions~~  
34 any action prohibited or restricted in §15A-12-1(a) of this code. Further, the Fusion Center shall not  
35 allow a federal agency or contractor for a federal agency to work inside the Fusion Center when it  
36 knows or has reason to know that such federal agency or federal contractor is presently engaged  
37 or intends to engage in unlawful intelligence-gathering activity against ~~a citizen of West Virginia~~  
38 persons lawfully in the United States.

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

42 (d) Private sector persons, organizations, entities, or agencies participating in the ~~West~~  
43 ~~Virginia~~ Fusion Center shall not be considered governmental entities, nor shall employees or  
44 agents of private sector persons, organizations, entities, or agencies assigned to the ~~West Virginia~~  
45 Fusion Center be considered state employees; however, private sector entities and their  
46 employees or agents are subject to the same confidentiality requirements and held to the same  
47 standards as an employee of the ~~West Virginia~~ Fusion Center, including, but not limited to, any and  
48 all restrictions and prohibitions against conducting non-law enforcement intelligence operations  
49 against ~~U.S. citizens~~ persons lawfully in the United States as set forth in federal or state law or in

50 contravention of the Constitution of the United States, including, but not limited to, 50 U.S.C.  
51 §3036(d)(1): *Provided*, That the Fusion Center shall not knowingly participate in any activity, or  
52 knowingly cooperate, with any federal agency, or a contractor for or any person or entity utilizing or  
53 collaborating with any federal agency, when that participation or cooperation involves illegal or  
54 improper actions: *Provided, however*, That the Fusion Center shall not allow a federal agency or  
55 contractor for a federal agency to work inside the Fusion Center when it knows or has reason to  
56 know that such federal agency or federal contractor is presently engaged or intends to engage in  
57 unlawful intelligence-gathering activity against ~~a citizen of West Virginia~~ persons lawfully in the  
58 United States.

59 (e) The operations of the ~~West Virginia~~ Fusion Center shall be overseen by the cabinet  
60 secretary and deputy cabinet secretary of the West Virginia Department of Homeland Security,  
61 with oversight auditing and accountability to the ~~select committee of the Legislature~~ Joint  
62 Oversight Committee on the Fusion Center as set forth herein.

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

67 (g) The cabinet secretary and deputy cabinet secretary may adopt policies and  
68 procedures for the operation of the ~~West Virginia~~ Fusion Center. All such policies and procedures  
69 shall be subject to the full and unlimited inspection and review of the Joint Oversight Committee on  
70 the Fusion Center as set forth in §15A-12-3 of this code. The cabinet secretary and deputy cabinet  
71 secretary may adopt rules and regulations as may be necessary to carry out the provisions of this  
72 act, including rules and regulations concerning the operations of the ~~West Virginia~~ Fusion Center:  
73 *Provided*, That all policies, procedures, rules, ~~and regulations,~~ and use of the Fusion Center by  
74 any party shall be subject to any and all restrictions and prohibitions against conducting non-law  
75 enforcement intelligence operations against ~~U.S. citizens~~ persons lawfully in the United States as



76 set forth in federal or state law or in contravention of the Constitution of the United States,  
77 including but not limited to, 50 U.S.C. §3036(d)(1).

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

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

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

86 (B) Be responsible for:

87 (i) Facilitating and implementing applicable federal standards and programs by the ~~West~~  
88 ~~Virginia~~ Fusion Center;

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

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

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

96 and

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

99 (5) A deputy director, who shall be appointed by and serve at the pleasure of the director.

100 The deputy director shall either have a current, valid federal security clearance at the appropriate  
101 level, and training and certifications commensurate with the position, or be eligible for that

102 clearance, and be in the process of obtaining the appropriate clearance, and shall be responsible  
103 for assisting the director in: (A) facilitating and implementing applicable federal standards and  
104 programs by the ~~West Virginia~~ Fusion Center; (B) ensuring compliance with all applicable laws  
105 and federal requirements; (C) maintaining proper separation between military and civilian  
106 capacities; (D) providing support, as needed, to the cabinet secretary and deputy cabinet  
107 secretary; and (E) other duties and responsibilities as may be assigned by the Fusion Center  
108 director.

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

1 (a) The Speaker of the House of Delegates and President of the Senate shall establish a  
2 ~~select committee~~ Joint Oversight Committee on the Fusion Center which shall have oversight of  
3 the 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 or state law. The ~~committee~~ Joint Oversight Committee on the Fusion Center  
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 ~~(3) counsel and staff to the Speaker and the Senate President;~~ the president of the West  
12 Virginia Chiefs of Police Association or designee; the president of the West Virginia Sheriffs  
13 Association or designee; and one senior status judge to be selected by agreement between the  
14 Speaker of the House of Delegates and the President of the Senate *Provided*, That in the event  
15 the membership of a political party is less than 15 percent in the House of Delegates or Senate,  
16 then the membership of that political party from the legislative house with less than 15 percent  
17 membership may be one from that house. The ~~committee~~ Joint Oversight Committee on the  
18 Fusion Center shall be chaired by the President of the Senate and the Speaker of the House of

19 Delegates or their respective designees. The senior status judge shall be appointed to serve a  
20 term of four years, subject to reappointment. All other members appointed to the select committee  
21 Joint Oversight Committee on the Fusion Center by the select committee Joint Oversight  
22 Committee on the Fusion Center chairs shall serve until their successors are appointed as  
23 provided in this section either they vacate the office through which they gained membership, are  
24 removed by the agreement of the Speaker of the House of Delegates and the President of the  
25 Senate, or the conclusion of the Legislature within which they were appointed. Additionally, the  
26 Secretary of the Department of Homeland Security shall appoint a liaison who shall serve as a  
27 member of the Joint Oversight Committee on the Fusion Center. The liaison appointee may be  
28 permitted to attend meetings held upon executive session, or parts thereof, only on permission of  
29 the Joint Oversight Committee on the Fusion Center's chair but shall not be permitted to vote on  
30 matters as they appear before the Joint Oversight Committee on the Fusion Center. The select  
31 Joint Oversight Committee on the Fusion Center's committee members, and staff counsel, and  
32 staff for the Speaker of the House of Delegates or President of the Senate must have the  
33 appropriate security clearance execute an appropriate non-disclosure agreement in a form  
34 satisfactory to the West Virginia Department of Homeland Security in order to obtain information  
35 that is classified review cases, crimes, incidents, and reports in which all Personally Identifiable  
36 Information (PII) has been redacted or deidentified or intelligence and shall be subject to the same  
37 rules, regulations, and laws as the employees of the West Virginia Fusion Center for safeguarding  
38 both classified and law enforcement sensitive information or intelligence. These select Joint  
39 Oversight Committee on the Fusion Center's committee members, and counsel, and staff shall be  
40 advised of the restrictions and protocol for handling such information or intelligence and shall sign  
41 a statement of understanding as well as a confidentiality non-disclosure agreement.

42 (b) Members of the ~~select committee~~ Joint Oversight Committee on the Fusion Center may  
43 enter and inspect the ~~West Virginia~~ Fusion Center at any time staff is present with ~~select joint~~

44 oversight committee members and counsel and staff for the Speaker of the House of Delegates or  
45 President of the Senate, with or without notice to the ~~West Virginia~~ Fusion Center.

46 (c) Meetings of the ~~select committee~~ Joint Oversight Committee on the Fusion Center shall  
47 be at the call of the Speaker of the House of Delegates or President of the Senate and shall be  
48 confidential, and the information and materials, in any medium, including hard copy and electronic,  
49 coming to the attention of or placed in the custody of the ~~Select Committee~~ Joint Oversight  
50 Committee on the Fusion Center shall not be subject to the West Virginia Freedom of Information  
51 Act as set forth in §29B-1-1 *et seq.* of this code.

52 (d) The ~~select committee~~ Meetings of the Joint Oversight Committee on the Fusion Center  
53 ~~may conduct proceedings in a confidential executive session for the purpose of conducting~~  
54 ~~business, establishing policy, reviewing investigations, and interrogating a witness or witnesses~~  
55 are exempt from §6-9A-1 et seq. of this code.

56 (e) All witnesses appearing before the ~~select committee~~ Joint Oversight Committee on the  
57 Fusion Center shall testify under oath or affirmation, and any member of the ~~select committee~~  
58 Joint Oversight Committee on the Fusion Center or its counsel may administer oaths or  
59 affirmations to such witnesses. To compel witnesses to attend a hearing or produce any books,  
60 records, documents, or papers, or any other tangible thing except where the records, documents,  
61 data, or items are protected from disclosure by privilege recognized by state or federal courts, the  
62 ~~select committee~~ Joint Oversight Committee on the Fusion Center may issue subpoenas, signed  
63 by one of the co-chairs: *Provided*, That the ~~select committee~~ Joint Oversight Committee on the  
64 Fusion Center may specifically authorize or delegate the power to any member of the ~~select~~  
65 ~~committee~~ Joint Oversight Committee on the Fusion Center to sign subpoenas on its behalf. The  
66 subpoenas shall be served by any person authorized by law to serve and execute legal process,  
67 and service shall be made without charge. Witnesses subpoenaed to attend hearings shall be  
68 allowed the same mileage and per diem as is allowed witnesses before any petit jury in this state.

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

81 (g) The ~~select committee~~ Joint Oversight Committee on the Fusion Center may direct the  
82 ~~West Virginia~~ Fusion Center to send its budgetary accounting to the State Auditor: *Provided*, That  
83 if budgetary expenditures are classified, or security or law enforcement sensitive such that  
84 disclosure would compromise an investigation, those entry descriptions, but not the expenditure  
85 amounts, may be redacted from the ~~West Virginia~~ Fusion Center accounting provided to the State  
86 Auditor: *Provided, however*, That the State Auditor shall bring any accounting issues of concern to  
87 the attention of the ~~select committee~~ Joint Oversight Committee on the Fusion Center, upon which  
88 the ~~select committee~~ Joint Oversight Committee on the Fusion Center shall subpoena the ~~West~~  
89 ~~Virginia~~ Fusion Center for unredacted copies of the accounting items to be presented for  
90 explanation and justification of the necessity and legality of the concerns raised by the State  
91 Auditor. The ~~select committee~~ Joint Oversight Committee on the Fusion Center may take  
92 whatever action it deems necessary, if any, after review and analysis of the subpoenaed  
93 unredacted materials.

94           (h) The Fusion Center shall report annually in writing by May 1st beginning in 2024 to the  
95 Joint Oversight Committee on the Fusion Center as set forth in §15A-12-3 of this code regarding  
96 the performance of the Fusion Center. The report must include (1) an unclassified general  
97 narrative about the types of cases, crimes, incidents, and reports the Fusion Center has reviewed  
98 and evaluated in a manner that protects the personal privacy of persons lawfully in the United  
99 States and the operational integrity of the Fusion Center; (2) a description of any and all funding  
100 sources or other streams of income, received by or on behalf of the Fusion Center during the  
101 reporting period, and include therein, the source, purpose, amount and current disposition of said  
102 funds, derived from any source other than the annual Budget of the State of West Virginia; and (3)  
103 the unclassified narrative must include both privacy audits performed in the prior year and de-  
104 identified information from those audits regarding the cases, crimes, incidents and reports on  
105 which the Fusion Center worked during the prior year that were reviewed during the audits.

**§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.

23 (e) No information may be gathered or collected for any purpose other than legitimate law  
24 enforcement purposes. No information gathered or collected may be used for any non-law  
25 enforcement intelligence operations against persons lawfully in the United States as set forth in  
26 any federal or 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 oversight committee~~ Joint  
9 Oversight Committee on the Fusion Center from access to all such information. Every five years,  
10 the ~~West Virginia~~ Fusion Center shall conduct a review of information contained in any database  
11 maintained by the ~~West Virginia~~ Fusion Center. Data that has been determined not to have a

12 nexus to criminal or terrorist activity shall be removed from such database. A reasonable suspicion  
13 standard shall be applied when determining whether or not information has a nexus to terrorist  
14 activity for non-U.S. citizens, but a probable cause standard shall apply for ~~U.S. citizens~~ persons  
15 lawfully in the United States: *Provided, however*, That all such determinations shall be reported to  
16 the ~~Legislature's select oversight committee~~ Joint Oversight Committee on the Fusion Center at  
17 regularly scheduled oversight audit and committee meetings.

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

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

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

28 (e) Any person who;

29 (1) ~~knowingly~~ Knowingly disseminates information in violation of this section is guilty of a  
30 misdemeanor and, upon conviction thereof, shall be fined not less than \$200 nor more than  
31 \$1,000, or be confined in jail for not more than 20 days, or both fined and confined. If such  
32 unauthorized dissemination results in death or serious bodily injury to another person, such  
33 person is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional  
34 facility not less than one nor more than five years: *Provided*, That all state and federal  
35 Whistleblower Protection Act protections shall apply to any person whose disclosures are found to  
36 have been made to report or protect against violation or attempted violation of any and all  
37 restrictions and prohibitions against conducting non-law enforcement intelligence operations



38 against U.S. citizens as set forth in federal or state law or in contravention of the Constitution of the  
39 United States, including, but not limited to, 50 U.S.C. §3036(d)(1).

40 (2) Intentionally, willfully, or knowingly violates any of the restrictions or prohibitions  
41 governing the operation of the Fusion Center or takes any action prohibited or restricted as set  
42 forth in this article is guilty of a felony and, upon conviction thereof, shall be fined not less than  
43 \$1,000 nor more than \$10,000, or be confined in a state correctional facility not less than one nor  
44 more than five years, or both fined and imprisoned; and shall additionally be subject to separate  
45 criminal prosecution and penalties and civil liability for 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. citizens as set forth in federal or state law or in contravention of the Constitution of the  
61 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. citizens~~ persons lawfully in  
76 the United States as set forth in federal or state law or in contravention of the Constitution of the  
77 United States, including, but not limited to, 50 U.S.C. §3036(d)(1).

**§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 oversight committee~~ Joint Oversight  
20 Committee on the Fusion Center.

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

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

NOTE: The purpose of this bill is to create a legislative select committee, require annual reports, create criminal penalties, and clarify the duties and functions of the Fusion Center.

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