

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4012

BY DELEGATES O'NEAL, MR. SPEAKER, (MR. ARMSTEAD,
HANSHAW, MOYE, FAST, A. EVANS, AZINGER, WAXMAN,
ROMINE, ROWAN AND R. PHILLIPS

[Introduced January 26, 2016; 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 §5-11C-1, §5-11C-2, §5-11C-3, §5-11C-4 and §5-11C-5, all relating to
 3 establishing the West Virginia Religious Freedom Restoration Act to ensure that, in all
 4 cases where state action substantially burdens the exercise of religion, strict scrutiny is
 5 applied; to provide a claim or defense to a person or persons whose exercise of religion
 6 is substantially burdened by state action; including a short title; providing definitions; and
 7 addressing applicability construction, remedies and severability.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 article, designated §5-11C-1, §5-11C-2, §5-11C-3, §5-11C-4 and §5-11C-5, all to read as follows:

ARTICLE 11C. WEST VIRGINIA RELIGIOUS FREEDOM RESTORATION ACT.

§5-11C-1. Short title.

1 This article may be known and cited as the "West Virginia Religious Freedom Restoration
 2 Act."

§5-11C-2. Purposes.

1 The purpose of this article is to:

2 (1) To restore the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398
 3 (1963), and *Wisconsin v. Yoder*, 406 U.S. 205 (1972) and to guarantee its application in all cases
 4 in which free exercise of religion is substantially burdened; and

5 (2) To provide a claim or defense to persons whose religious exercise is substantially
 6 burdened by state action.

§5-11C-3. Definitions.

1 As used in this article:

2 "Substantial burden" means any action that directly or indirectly constrains, inhibits,
 3 curtails or denies the exercise of religion by any person or directly or indirectly compels any action
 4 contrary to a person's exercise of religion. "Substantial burden" includes, but is not limited to,

5 withholding benefits, assessing criminal, civil or administrative penalties or damages, or exclusion
6 from governmental programs or access to governmental facilities.

7 "Exercise of religion" means the sincere practice or observance of religion, or any action
8 that is motivated by a sincerely held religious belief, whether or not the exercise is compulsory or
9 central to a larger system of religious belief.

10 "Person" means any individual, association, partnership, corporation, church, religious
11 institution, estate, trust, foundation or other legal entity.

12 "State action" means the implementation or application of any law, including, but not
13 limited to, state and local laws, ordinances, rules, regulations and policies, whether statutory or
14 otherwise.

§5-11C-4. Applicability; construction; remedies.

1 (a) State action may not substantially burden a person's right to exercise of religion, even
2 if the burden results from a rule of general applicability, unless it is demonstrated that applying
3 the burden to that person's exercise of religion in this particular instance:

4 (1) Is in furtherance of a compelling governmental interest; and

5 (2) Is the least restrictive means of furthering that compelling governmental interest.

6 (b) A person whose exercise of religion has been burdened, or is likely to be burdened, in
7 violation of this article may assert such violation or impending violation as a claim or defense in
8 any judicial or administrative proceeding. The person asserting such a claim or defense may
9 obtain appropriate relief, including relief against the state or its political subdivisions, including,
10 but not limited to, injunctive relief, declaratory relief, compensatory damages, and costs and
11 attorney fees.

12 (c) This article applies to all state and local laws, and the implementation of those laws,
13 whether statutory or otherwise, and whether adopted before or after the effective date of this
14 article.

§5-11C-5. Severability.

- 1 If a subsection or portion of this article is declared invalid, that declaration does not affect
2 the validity of the remaining portions.

NOTE: The purpose of this bill is to create the West Virginia Religious Freedom Restoration Act to ensure that, in all cases where state action substantially burdens the exercise of religion, strict scrutiny is applied and to provide a claim or defense to a person or persons whose exercise of religion is substantially burdened by state action.

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