

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 3146

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MCGEEHAN, PHILLIPS, D. JEFFRIES AND J. KELLY

[Introduced March 15, 2021; 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 §1-8-1, relating to the review of executive orders issued by the President of
 3 the United States, federal agency rules or federal congressional action; providing for
 4 legislative review of executive orders, federal agency rules, or federal congressional action
 5 for the legality and constitutionality; providing for a vote on constitutionality of such
 6 measures if the attorney general declines to take action.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. REVIEW OF PRESIDENTIAL EXECUTIVE ORDERS.

§1-8-1. Review of Presidential Executive Orders, Federal agency rule, or Federal Congressional Action.

1 (a) The Legislature may review any executive order issued by the President of the United
 2 States, federal agency rule or federal congressional action to determine the constitutionality of
 3 such action. Upon recommendation from the Legislature, the Attorney General shall review such
 4 action by the federal government to determine the constitutionality of the action and whether the
 5 state should seek an exemption from the application of the action or seek to have the action
 6 declared unconstitutional.

7 (b) Should the Attorney General decline to pursue action based upon the determination of
 8 the Legislature, the Legislature may declare the action unconstitutional by a majority vote.

9 (c) Notwithstanding any other provision of law, the state, county, political subdivision or
 10 any other publicly funded organization shall not implement any action that restricts a person's
 11 rights or that the Office of the Attorney General or the Legislature by a majority vote determines
 12 to be unconstitutional under subsection (a) of this section and which relates to:

13 (1) Pandemics or other health emergencies;

14 (2) The regulation of natural resources, including coal, oil, and natural gas;

15 (3) The regulation of the agriculture industry;

16 (4) The use of land;

17 (5) The regulation of the financial sector as it relates to environmental, social or
18 governance standards;

19 (6) The regulation of the constitutional right to keep and bear arms;

20 (7) The regulation of education;

21 (8) The regulation of interscholastic, intramural or other extracurricular sports sponsored
22 by an institution of higher education, a school district or a charter school; or

23 (9) Any other powers reserved by the State of West Virginia or the people of West Virginia.

NOTE: The purpose of this bill is to provide for legislative review of executive order issued by the President of the United States, federal agency rule or federal congressional action regarding their constitutionality.

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