

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5036

By Delegate Heckert

[Introduced January 23, 2024; Referred to the
Committee on Senior, Children, and Family Issues
then the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §49-11-1, §49-11-2, and §49-11-3, all relating to codifying the Parents' Bill of
 3 Rights.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. PARENTS' BILL OF RIGHTS.

§49-11-1. Short title.

1 This article shall be known and may be cited as the "Parents' Bill of Rights".

§49-11-2. Fundamental rights of parents.

1 Parents and legal guardians of minor children in the State of West Virginia shall have
 2 complete and final decision-making authority over all matters regarding general health and welfare
 3 of children. These rights include but are not limited to the following:

4 (a) Parents and legal guardians shall have the right to make any and all decisions relating
 5 to the medical, psychological, religious, moral, and/or ethical training and well-being of their
 6 children.

7 (b) Parents and legal guardians shall have the right to make any and all decisions relating
 8 to the type and extent of medical treatment of their children. Such decisions include but are not
 9 limited to: dispensing of medicines and vaccines, invasive procedures, medical testing and
 10 diagnostics, physical therapy, and all matters concerning mental health.

11 (c) The parental right to direct education includes, but is not limited to, the right to choose,
 12 as an alternative to public education, private, religious, or home schools, and the right to make
 13 reasonable choices within public schools for one's child.

14 (d) Parents and legal guardians shall have primary legal standing as the chief advocate for
 15 their minor children in any court proceeding or any administrative procedure before any
 16 government authority and may appear in any legal proceeding on behalf of their children without
 17 representation by an attorney.

18 (e) No institution, agency, representative, or employee of a government, whether local or

19 state, federal or international, has the right to question, alter, or invalidate a parental decision
20 regarding any right enumerated herein. The decisions of a parent or legal guardian regarding their
21 minor child or children are recognized as final, unalterable, and irrevocable at any level of
22 government unless statutorily authorized and only to the extent such decision is shown by clear
23 and convincing evidence to pose serious and imminent harm to the child.

24 (f) (1) No institution, agency, representative, or employee of any unit of the government
25 may curtail any right of a parent regarding the child of a parent unless by order of a Court and then
26 limited only to the extent necessary to protect a child from imminent harm or danger.

27 (2) No institution, agency, representative, or employee of any unit or instrumentality of
28 government, whether local, state or federal, may expose or make available to a minor child any
29 obscene, indecent, or profane literature, graphic materials, audio/video recordings, internet
30 materials, or sexually explicit demonstrations or performances in accordance with Federal Laws
31 set forth in 18 U.S. Code Chapter 71.

32 (g) No institution, agency, representative, or employee of any unit or instrumentality of
33 government, whether local, state or federal, may permit or allow the exposure of a member of the
34 opposite biological sex's nudity, including any sexual organ, to a minor in a public place, including
35 but not limited to any place on the premises of a public education institution, a bathroom, a shower
36 room, a locker room or a changing room.

37 (h) A parent may bring suit against the state, any agency or locality thereof, any
38 government official, or any person acting under color of law based on any violation of this article
39 and seek appropriate relief, including, but not limited to, injunctive relief, monetary damages,
40 reasonable attorneys' fees, and court costs. A parent may also raise this article as a defense
41 before any court or administrative tribunal.

42 (i) If a child has no affirmative right of access to a particular medical procedure or service,
43 then nothing in this article may be construed to grant the child's parent an affirmative right of
44 access to the procedure or service on the child's behalf.

45 (j) The rights granted or affirmed to Parents and legal guardians of minor children in the
46 State of West Virginia in this section specifically exclude any right to:

47 (1) Take any action that contributes to the delinquency of a child and

48 (2) Administer or facilitate the administration to a minor within the state of West Virginia of
49 any drug or substance causing or leading to (i) the purposeful termination of a pregnancy; or (ii)
50 interference with the natural and normal development of hormones associated with puberty
51 development.

§49-11-3. **Applicability.**

1 (a) In general. -- This article shall apply to any state or local law, rule, or ordinance and the
2 implementation of that law, rule, or ordinance, whether statutory or otherwise, and whether
3 adopted or effective prior to or after the effective date of this article

4 (b) Rule of construction. -- Statutory law adopted after the date of the
5 enactment of this article is subject to this article unless such law explicitly excludes such
6 application by reference to this article.

NOTE: The purpose of this bill is to codify a Parents' Bill of Rights.

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