

**Senate Bill No. 487**

(By Senators D. Hall, Blair, Boley, Boso, Carmichael, Gaunch, M. Hall, Karnes, Kirkendoll,  
Leonhardt, Mullins, Nohe, Prezioso, Sypolt, Takubo and Trump)

[Introduced February 13, 2015; referred to the Committee on the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5-11C-1, §5-11C-2, §5-11C-3, §5-11C-4, §5-11C-5, §5-11C-6 and §5-11C-7, all relating to establishing the West Virginia Freedom of Conscience Protection Act ensuring that, in all cases where state action burdens the exercise of religion, strict scrutiny is applied; providing a claim or defense to a person or persons whose exercise of religion is burdened by state action; short title; definitions; applicability; construction; remedies; effective date; and severability.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §5-11C-1, §5-11C-2, §5-11C-3, §5-11C-4, §5-11C-5, §5-11C-6 and §5-11C-7, all to read as follows:

**ARTICLE 11C. WEST VIRGINIA FREEDOM OF CONSCIENCE PROTECTION ACT.**

**§5-11C-1. Short title.**

This article shall be known and may be cited as the "West Virginia Freedom of Conscience

1 Protection Act."

2 **§5-11C-2. Findings.**

3 The Legislature finds that:

4 (a) The free exercise of conscience is an unalienable right held by the people.

5 (b) No state action should burden or is intended to burden sincere religious exercise unless  
6 both the burden is necessary to further a compelling governmental interest and no less restrictive  
7 means exist to achieve that compelling governmental interest.

8 (c) This a workable test for striking sensible balances between the freedom of conscience and  
9 competing governmental interests.

10 **§5-11C-3. Purposes.**

11 The purpose of this article is to:

12 (1) Ensure that in all cases where state action burdens the exercise of religion strict scrutiny  
13 is applied; and

14 (2) Provide a claim or defense to a person or persons whose exercise of religion is burdened  
15 by state action.

16 **§5-11C-4. Definitions.**

17 As used in the Freedom of Conscience Protection Act:

18 (1) "Burden" means any action that directly or indirectly constrains, inhibits, curtails or  
19 denies the exercise of religion by any person or compels any action contrary to a person's exercise  
20 of religion. "Burden" includes, but is not limited to, any state action withholding benefits, assessing  
21 criminal, civil or administrative penalties or damages or exclusion from governmental programs or

1 access to governmental facilities.

2 (2) "Compelling governmental interest" means a governmental interest of the highest  
3 magnitude that cannot otherwise be achieved without burdening the exercise of religion.

4 (3) "Exercise of religion" means the sincere practice or observance of religion or religious  
5 conscience. It includes, but is not limited to, the ability to act or refuse to act in a manner  
6 substantially motivated by one's sincerely held religious beliefs or religious conscience, whether or  
7 not the exercise is compulsory or central to a larger system of religious belief.

8 (4) "Person" means any individual, association, partnership, corporation, church, religious  
9 institution, estate, trust, foundation or other legal entity.

10 (5) "State action" means the implementation or application of any law, including, but not  
11 limited to, state and local laws, ordinances, rules, regulations and policies, whether statutory or  
12 otherwise, or other action by the state or any political subdivision of the state, or any local  
13 government, municipality, instrumentality or public official authorized by law in the state.

14 **§5-11C-5. Applicability; construction; remedies.**

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

18 (1) Is essential to further a compelling governmental interest; and

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

20 (b) This article shall be construed in favor of a broad protection of religious exercise to the  
21 maximum extent permitted by the term of this article and the state and federal Constitutions.

1 (c) A person whose exercise of religion has been burdened, or is likely to be burdened, in  
2 violation of this article may assert such violation or impending violation as a claim or defense in a  
3 judicial or administrative proceeding. The right to religious exercise secured under this article may  
4 be asserted between private parties whether or not a state or local governmental actor is a party to  
5 the proceeding.

6 (d) Consistent with the state Constitution's reservation of sovereign immunity, under this  
7 article, neither the State of West Virginia nor a state agency may be named as defendants nor may  
8 any relief enter against them. This section does not waive or abrogate immunity for the Legislature,  
9 the executive branch or waive judicial immunity for state judges acting in a judicial capacity.

10 . (e) A person whose exercise of religion has been burdened, or is likely to be burdened, in  
11 violation of this article may obtain appropriate relief against persons named as parties to a judicial  
12 proceeding. Appropriate relief is defined as injunctive, declaratory, mandamus and prohibitory  
13 relief, as well as costs and reasonable attorney's fees. In a suit under this article against a state  
14 official acting in an official capacity, any award of fees and costs may not exceed the official's  
15 liability insurance limits payable by the official's insurance carrier. Appropriate relief may not  
16 include compensatory damages, consequential damages, punitive damages or any other form of  
17 monetary relief.

18 (f) All laws and state action in existence at the time of the enactment of this article are  
19 subject to this article. Any law or state action adopted after the time of enactment of this article is  
20 also subject to this article, unless the Legislature explicitly excludes the application of this article  
21 to a law by reference to this article.

1 **§5-11C-6. Effective date.**

2           This article becomes operative upon its enactment.

3 **§5-11C-7. Severability.**

4           If any subsection or portion of this article is declared invalid, that declaration shall not affect

5 the validity of the remaining portions.

NOTE: The purpose of this bill is to create the West Virginia Freedom of Conscience Protection Act to ensure that, in all cases where state action 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 burdened by state action.

This article is new; therefore, strike-throughs and underscoring have been omitted.