

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 93

BY SENATORS KARNES, RUCKER, AND MAYNARD

[Introduced January 10, 2018; Referred
to the Committee on Government Organization; and then
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 Freedom of Conscience Protection Act; ensuring that, in all
 4 cases where state action burdens the exercise of religion, strict scrutiny is applied;
 5 providing a claim or defense to a person or persons whose exercise of religion is burdened
 6 by state action; providing a short title; providing definitions; and addressing applicability,
 7 construction, remedies and severability.

Be it enacted by the Legislature of West Virginia:

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

§5-11C-1. Short title.

1 This article may be known and cited as the "West Virginia Freedom of Conscience
 2 Protection Act."

§5-11C-2. Purposes.

1 The purpose of this article is to:

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

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

§5-11C-3. Definitions.

1 As used in this article:

2 "Burden" means any action by the state or any political subdivision of the state, or any
 3 local government, municipality, instrumentality or public official authorized by law in the state that
 4 directly or indirectly constrains, inhibits, curtails or denies the exercise of religion by any person
 5 or compels any action contrary to a person's exercise of religion. "Burden" includes, but is not
 6 limited to, any action by the state or one of its political subdivisions with respect to withholding
 7 benefits, assessing criminal, civil or administrative penalties or damages, or enforcing a statute,

8 regulation or ordinance, or exclusion from governmental programs or access to governmental
9 facilities.

10 "Compelling governmental interest" means a governmental interest of the highest
11 magnitude that cannot otherwise be achieved without burdening the exercise of religion.

12 "Exercise of religion" means the sincere practice or observance of religion or religious
13 conscience. It includes, but is not limited to, the ability to act or refuse to act in a manner
14 substantially motivated by one's sincerely held religious beliefs or religious conscience, whether
15 or not the exercise is compulsory or central to a larger system of religious belief.

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

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

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

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

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

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

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

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

13 fees.

14 (d) All laws and state action in existence at the time of the enactment of this article are
15 subject to this article. Any law or state action adopted after the time of enactment of this article is
16 also subject to this article, unless the Legislature explicitly excludes the application of this article
17 to a law by reference to this 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 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.

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