

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2545

BY DELEGATES FAST, BURKHAMMER, FOSTER,
KESSINGER, CONLEY, MARTIN, PINSON, D. KELLY, PRITT,
MAZZOCCHI AND BROWN

[Introduced February 16, 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 §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 is alleged to substantially burden the exercise of religion, that a
 5 compelling interest test is mandated, and, strict scrutiny is applied; including a short title;
 6 providing definitions; and addressing applicability, construction, remedies, and
 7 severability.

Be it enacted by the Legislature of West Virginia:

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 reaffirm the rights of West Virginians as enumerated in
 2 section 15 of Article III of the Constitution of the State of West Virginia; to codify the application
 3 of the compelling interest test and strict scrutiny standard set forth in *Sherbert v. Verner*, 374 U.S.
 4 398 (1963), and *Wisconsin v. Yoder*, 406 U.S. 205 (1972), and affirmed by *State v. Everly*, 150
 5 W.Va. 423 (1966); and to guarantee its application in all cases in which free exercise of religion
 6 is alleged to have been substantially burdened by state action.

§5-11C-3. Definitions.

1 As used in this article:

2 “Exercise of religion” means the sincere practice or observance of religion under the rights
 3 enumerated in section 15 of Article III of the Constitution of the State of West Virginia; and the 1st
 4 Amendment to the Constitution of the United States of America.

5 “State action” means action by a branch, department, agency, board, commission,
 6 instrumentality, official, or other person acting under color of law, of the State of West Virginia or

7 any political subdivision thereof.

§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 substantially burdened, or is likely to be
7 substantially burdened, in violation of this article may assert such violation or impending violation
8 as a claim for injunctive or declaratory relief or as a defense in any judicial or administrative
9 proceeding. The person asserting such a claim or defense may obtain relief against the state or
10 its political subdivisions: *Provided*, That such relief is limited to injunctive or declaratory relief and
11 reimbursement of costs and reasonable attorney fees. Nothing in this article shall be construed
12 to create a cause of action by an employee against a nongovernmental employer; nor shall
13 anything in this article be construed to constitute a defense to any claim based upon a refusal to
14 provide emergency medical services.

15 (c) This article applies to all state and local laws, and the implementation of those laws,
16 whether statutory or otherwise, and whether adopted before or after the effective date of this
17 article. This article does not apply to any local or regional jail, or any state or Federal correctional
18 facility, nor any facility that treats civilly committed sexually violent offenders.

§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 is alleged to substantially burden the exercise of religion, a compelling interest test is mandated, and, strict scrutiny is applied.

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