

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

House Bill 3042

By Delegates Pinson, Crouse, Foster, C. Pritt, Fast,
Ridenour, Burkhammer, Kirby, Mallow, Worrell and
Martin

[Originating in the Committee on the Judiciary;

Reported February 22, 2023]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §35-1A-1, all relating to forbidding excessive government limitations on
3 exercise of religion; forbidding government from treating religious conduct more
4 restrictively than any conduct of reasonably comparable risk; forbidding government from
5 treating religious conduct more restrictively than comparable conduct because of alleged
6 economic need or benefit; ensuring that, in all cases where state action is alleged to
7 substantially burden the exercise of religion, that a compelling interest test is mandated,
8 and strict scrutiny is applied; providing remedies; and addressing applicability and
9 construction.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1A. EQUAL PROTECTION FOR RELIGION ACT.

§35-1A-1. Government limitations related to the exercise of religion.

1 (a) Notwithstanding any other provision of law, no state action may:

2 (1) Substantially burden a person's exercise of religion unless applying the burden to that
3 person's exercise of religion in a particular situation is essential to further a compelling
4 governmental interest; and is the least restrictive means of furthering that compelling
5 governmental interest; nor

6 (2) Treat religious conduct more restrictively than any conduct of reasonably comparable
7 risk; nor

8 (3) Treat religious conduct more restrictively than comparable conduct because of alleged
9 economic need or benefit.

10 (b) (1) A person whose exercise of religion has been substantially burdened, or is likely to
11 be substantially burdened, in violation of this article may assert such violation or impending
12 violation, including against the state or its political subdivisions, as a claim or as a defense in any
13 judicial or administrative proceeding: *Provided*, That relief is limited to injunctive or declaratory
14 relief and reimbursement of costs and reasonable attorney fees.

15 (2) Nothing in this article may be construed to create a cause of action by an employee
16 against a nongovernmental employer; nor may anything in this article be construed to constitute a
17 defense to any claim based upon a refusal to provide emergency medical services as required by
18 the Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd; nor may anything in
19 this article be construed to protect actions or decisions to end the life of any human being, born or
20 unborn, including, but limited to, any claim or defense arising out of a violation of §16-2F-1 et seq.,
21 §16-2I-1 et seq., §16-2M-1 et seq., §16-2O-1, §16-2P-1, §16-2Q-1, §16-2R-1 et seq., §16-5-22,
22 §30-1-26, §33-42-8, or §61-2-8 of this code.

NOTE: The purpose of this bill is to forbid excessive government limitations on exercise of religion and creates the Equal Protection for Religion Act.

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