

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3042

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

[Introduced January 25, 2023; 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 §35-1A-1, §35-1A-2, and §35-1A-3, all relating to forbidding excessive
 3 government limitations on exercise of religion; providing definitions; forbidding government
 4 from treating religious conduct more restrictively than any conduct of reasonably
 5 comparable risk; forbidding government from treating religious conduct more restrictively
 6 than comparable conduct because of alleged economic need or benefit; ensuring that, in
 7 all cases where state action is alleged to substantially burden the exercise of religion, that
 8 a compelling interest test is mandated, and strict scrutiny is applied; providing remedies;
 9 addressing applicability, construction, and severability.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1A. EQUAL PROTECTION FOR RELIGION ACT.

<u>§35-1A-1.</u>	<u>Definitions.</u>
-------------------------	----------------------------

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, article III of the Constitution of the State of West Virginia and the First
 4 Amendment to the Constitution of the United States of America and includes the right to act or
 5 refuse to act in a manner substantially motivated by a sincerely-held religious tenet or belief,
 6 whether or not the exercise is compulsory or a central part or requirement of the person's religious
 7 tenets or beliefs.

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

10 "State action" means action by a branch, department, agency, board, commission,
 11 instrumentality, official, or any other person acting under color of law, of the State of West Virginia,
 12 or any political subdivision thereof.

13 "Substantially burden" means any action that directly or indirectly constrains, inhibits,
 14 curtails, or denies the exercise of religion by any person or compels any action contrary to a

15 person's exercise of religion and includes, but is not limited to, withholding of benefits, assessment
 16 of criminal, civil, or administrative penalties, or exclusion from governmental programs or access
 17 to governmental facilities.

§35-1A-2. Remedy for excessive government limitations related to the exercise of religion;

judicial _____ **standard.**

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:
 4 (A) Essential to further a compelling governmental interest; and
 5 (B) Is the least restrictive means of furthering that compelling 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.

§35-1A-3. Applicability; severability.

1 (a) This article applies to all state and local laws, and the implementation of those laws,
2 whether statutory or otherwise, and whether adopted before or after the effective date of this
3 article.

4 (b) This article does not apply to any local or regional jail, or any state or federal
5 correctional facility, nor any facility that treats civilly committed sexually violent offenders.

6 (c) If any subsection or portion of this article is declared invalid, that declaration does affect
7 the validity of the remaining portions.

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.