

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

House Bill 5473

FISCAL
NOTE

By Delegates Hornbuckle, Pushkin, Lewis, Hamilton,

Garcia, and Hansen

[Introduced February 12, 2026; referred to the

Committee on the Judiciary]

1 A BILL to amend and reenact the Code of West Virginia, 1931, as amended, by adding a new
 2 section, designated §55-2-23, relating to providing a civil remedy when a federal officer or
 3 employee violates a constitutional right; providing legislative findings; defining a right of
 4 action; and providing limitations.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. LIMITATION OF ACTIONS AND SUITS.

§55-2-23. Right of action against federal officers and employees.

1 (a) Legislature findings. – The Constitution of the United States is the supreme law of the
 2 land and binds all persons acting under color of federal, state, or local authority. Any action taken
 3 by any federal officer or employee that violates the Constitution of the United States exceeds the
 4 lawful authority of that officer or employee and constitutes ultra vires conduct. Congress, though
 5 enactment of 28 U.S.C. § 2679, has preserved personal liability for federal officers and employees
 6 who act outside the scope of their employment. Therefore, when a federal officer or employee is
 7 violating a person's constitutional right, the Supremacy Clause of the U.S. Constitution does not
 8 require the State of West Virginia to deny that person a remedy. As the State of West Virginia
 9 possesses a legitimate and compelling interest in protecting persons within its borders from
 10 unconstitutional conduct, the intent of this section is to provide a narrowly tailored civil cause of
 11 action against a federal officer or employee acting outside the scope of his or her employment
 12 when violating a person's constitutional right.

13 (b) Cause of action created. – Any person who, under color of federal authority, subjects or
 14 causes to be subjected any citizen of this state or other person within this state to the deprivation of
 15 rights, privileges, or immunities secured by the Constitution of the United States, while acting
 16 outside the scope of his or her federal employment, shall be liable to the party injured in a civil
 17 action for appropriate relief.

18 (b) Scope of employment. – For purposes of this section, a federal officer or employee acts
 19 outside the scope of employment when the conduct at issue violates the Constitution of the United

20 States or exceeds authority lawfully delegated under federal law.
21 (c) Applicability. – This section applies only in circumstances where substitution of the
22 United States as defendant is unavailable under 28 U.S.C. § 2679(d), or where a court of
23 competent jurisdiction determines that the federal officer or employee was not acting within the
24 scope of employment.

NOTE: The purpose of this bill is to create a civil cause of action under West Virginia law allowing a person to seek relief against a federal officer or employee when that individual acts outside the scope of federal employment and violates rights secured by the Constitution of the United States. This bill does not authorize suits against the United States, does not waive federal sovereign immunity, and is intended to operate within the framework established by federal law.

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