

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 2508**

**2015 Carryover**

(BY DELEGATES R. PHILLIPS, J. NELSON, SOBONYA, R.  
SMITH, ARVON, MILLER, GEARHEART, ELLINGTON, A.  
EVANS AND MOFFATT)

[Introduced January 13, 2016; 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 §5-11B-1, §5-11B-2, §5-11B-3, §5-11B-4, §5-11B-5 and §5-11B-6, all  
 3 relating to creating the West Virginia Freedom of Conscience Protection Act to ensure  
 4 that, in all cases where state action burdens the exercise of religion, strict scrutiny is  
 5 applied and to provide a claim or defense to a person or persons whose exercise of religion  
 6 is burdened by state action; short title; definitions; applicability; construction; remedies;  
 7 effective date; and severability.

*Be it enacted by the Legislature of West Virginia:*

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
 2 article, designated §5-11B-1, §5-11B-2, §5-11B-3, §5-11B-4, §5-11B-5 and §5-11B-6, all to read  
 3 as follows:

**ARTICLE 11B. WEST VIRGINIA FREEDOM OF CONSCIENCE PROTECTION ACT.**

**§5-11B-1. Short title.**

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

**§5-11B-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.

**§5-11B-3. Definitions.**

1 As used in the Freedom of Conscience Protection Act:

2 (1) "Burden" means any action that directly or indirectly constrains, inhibits, curtails or

3 denies the exercise of religion by any person or compels any action contrary to a person's  
4 exercise of religion, and includes, but is not limited to, withholding benefits, assessing criminal,  
5 civil or administrative penalties or exclusion from governmental programs or access to  
6 governmental facilities.

7 (2) "Compelling governmental interest" means a governmental interest of the highest  
8 magnitude that cannot otherwise be achieved without burdening the exercise of religion.

9 (3) "Exercise of religion" means the practice or observance of religion. It includes, but is  
10 not limited to, the ability to act or refuse to act in a manner substantially motivated by one's  
11 sincerely held religious beliefs, whether or not the exercise is compulsory or central to a larger  
12 system of religious belief.

13 (4) "Person" means any individual, association, partnership, corporation, church, religious  
14 institution, estate, trust, foundation or other legal entity.

15 (5) "State action" means the implementation or application of any law, including, but not  
16 limited to, state and local laws, ordinances, rules, regulations and policies, whether statutory or  
17 otherwise, or other action by the state or any political subdivision thereof and any local  
18 government, municipality, instrumentality or public official authorized by law in the state.

**§5-11B-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) A person whose exercise of religion has been burdened, or is likely to be burdened, in  
7 violation of this article may assert such violation or impending violation as a claim or defense in a

8 judicial proceeding, regardless of whether the state or one of its political subdivisions is a party to  
 9 the proceeding. The person asserting such a claim or defense may obtain appropriate relief,  
 10 including relief against the state or its political subdivisions. Appropriate relief includes, but is  
 11 not limited to, injunctive relief, declaratory relief, compensatory damages, and costs and attorney  
 12 fees.

13 (c) Any law adopted after July 1, 2015, is subject to this article unless the law explicitly  
 14 excludes such application by reference to this article.

**§5-11B-5. Effective date.**

1 This article becomes operative upon its enactment.

**§5-11B-6. Severability.**

1 If any subsection or portion of this article is declared invalid, that declaration shall not  
 2 affect 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.

This article is new; therefore, it has been completely underscored.