

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **House Bill 3097**

BY DELEGATES BUTLER AND KESSINGER

[Introduced March 14, 2017; 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 section,  
 2 designated §55-7-31, relating to ensure that, in all cases where state action is alleged to  
 3 substantially burden the exercise of a First Amendment right, that a compelling interest  
 4 test is mandated, and, strict scrutiny is applied.

*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 section, designated §55-7-31, to read as follows:

**ARTICLE 7. ACTIONS FOR INJURIES.**

**§55-7-31. First Amendment violations; standard of review.**

1 (a) The purpose of this section is to reaffirm the rights of West Virginians as enumerated  
 2 in the First Amendment of the Constitution of the United States; to codify the application of the  
 3 compelling interest test and strict scrutiny standard set forth by the United States Supreme Court  
 4 in a long list of cases involving rights enumerated under the First Amendment to the United States  
 5 Constitution alleged to have been substantially burdened by state action.

1 (b) Action by a branch, department, agency, board, commission, instrumentality, official,  
 2 or other person acting under color of law, of the State of West Virginia or any political subdivision  
 3 thereof, may not substantially burden a person's right to the free exercise of any first amendment  
 4 right, even if the burden results from a rule of general applicability, unless it is demonstrated that  
 5 applying the burden to that person's exercise of that right in this particular instance:

1 (1) Is in furtherance of a compelling governmental interest; and

2 (2) Is the least restrictive means of furthering that compelling governmental interest.

3 (c) A person whose exercise of a First Amendment right has been substantially burdened,  
 4 or is likely to be substantially burdened, may assert such impediment as a claim for injunctive or  
 5 declaratory relief or as a defense in any judicial or administrative proceeding. The person  
 6 asserting such a claim or defense may obtain appropriate relief against the state or its political  
 7 subdivisions, including, but not limited to, injunctive relief, declaratory relief, compensatory

8 damages not in excess of a proven pecuniary loss, and costs and reasonable attorney fees.  
9 Nothing in this article shall be construed to create a cause of action by an employee against a  
10 nongovernmental employer; nor shall anything in this article be construed to constitute a defense  
11 to any claim based upon a refusal to provide emergency medical services.

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

16 (e) If a subsection or portion of this section is declared invalid, that declaration does not  
17 affect the validity of the remaining portions.

NOTE: The purpose of this bill is to ensure that, in all cases where state action is alleged to substantially burden the exercise of a First Amendment right, 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.