

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 416

BY SENATORS GRADY, ROBERTS, KARNES, SYPOLT,

PHILLIPS, AND WOODRUM

[Introduced January 18, 2022; 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 on religion; providing definitions; forbidding
 4 government to treat religious conduct more restrictively than any conduct of reasonably
 5 comparable risk; forbidding government to treat religious conduct more restrictively than
 6 comparable conduct because of alleged economic need or benefit; ensuring that, in all
 7 cases where state action is alleged to substantially burden the exercise of religion, that a
 8 compelling interest test is mandated, and strict scrutiny is applied; providing remedies;
 9 and addressing applicability, construction, and severability.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1A. GOVERNMENT LIMITATIONS ON EXERCISE OF RELIGION.

§35-1A-1. Definitions.

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 of article III of the Constitution of the State of West Virginia; and the 1st
 4 Amendment to the Constitution of the United States of America.

5 “State action” means action by a branch, department, agency, board, commission,
 6 instrumentality, official, or any other person acting under color of law, of the State of West Virginia,
 7 or any political subdivision thereof.

§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 agency, political subdivision, or
2 any elected or appointed official or employee of this state or its political subdivisions may:

3 (1) Substantially burden a person’s exercise of religion unless applying the burden to that
4 person’s exercise of religion in a particular situation is:

5 (A) Essential to further a compelling governmental interest;

6 (B) Is the least restrictive means of furthering that compelling government interest; nor

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

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

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

16 (2) Nothing in this article shall be construed to create a cause of action by an employee
17 against a nongovernmental employer; nor shall anything in this article be construed to constitute
18 a defense to any claim based upon a refusal to provide emergency medical services.

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

5 (b) If any subsection or portion of this article is declared invalid, that declaration does not
6 affect the validity of the remaining portions.

NOTE: The purpose of this bill is to create a new article on government limitations on exercise of religion to ensure that, in all cases where state action is alleged to substantially burden the exercise of religion, 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.