

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 2657**

4  
5 (By Delegates T. Campbell, Crosier, Canterbury,  
6 J. Miller and Moye)

7 (Originating in the Committee on the Judiciary)

8 [February 20, 2012]

9  
10 A BILL to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new article, designated §5-11B-1, §5-11B-2  
12 and §5-11B-3, all relating to establishing the West Virginia  
13 Religious Freedom Restoration Act; short title; definitions;  
14 applicability; construction; and remedies.

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

16 That the Code of West Virginia, 1931, as amended, be amended  
17 by adding thereto a new article, designated §5-11B-1, §5-11B-2 and  
18 §5-11B-3, all to read as follows:

19 **ARTICLE 11B. WEST VIRGINIA RELIGIOUS FREEDOM RESTORATION ACT.**

20 **§5-11B-1. Short title.**

21 This article may be cited as the "West Virginia Religious  
22 Freedom Restoration Act."

23 **§5-11B-2. Definitions.**

24 As used in this article:

25 (a) "Demonstrates" means meets the burdens of going forward  
26 with the evidence and of persuasion under the standard of clear and

1 convincing evidence.

2 (b) "Exercise of religion" means the exercise of religion  
3 under article three, section fifteen of the Constitution of West  
4 Virginia, and the First Amendment to the United States  
5 Constitution.

6 (c) "Government entity" means any branch, department, agency  
7 or instrumentality of state government, or any official or other  
8 person acting under color of state law, or any political  
9 subdivision of the state and does not include any local, regional  
10 or federal correctional facility or any facility that treats  
11 civilly committed sexually violent predators.

12 (d) "Prevails" means to obtain prevailing party status as  
13 defined by courts construing the federal Civil Rights Attorney Fees  
14 Awards Act of 1976, 42 U.S.C. §1988.

15 (e) "Substantially burden" means to inhibit or curtail  
16 religiously motivated practice.

17 **§5-11B-3. Applicability; construction; remedies.**

18 (a) A government entity may not substantially burden a  
19 person's free exercise of religion even if the burden results from  
20 a rule of general applicability unless it demonstrates that  
21 application of the burden to the person is: (1) Essential to  
22 further a compelling governmental interest; and (2) the least  
23 restrictive means of furthering that compelling governmental  
24 interest.

25 (b) Nothing in this section may be construed to: (1)  
26 Authorize any government entity to burden any religious belief; or

1 (2) affect, interpret or in any way address those portions of  
2 article three, section fifteen of the Constitution of West  
3 Virginia, and the First Amendment to the United States Constitution  
4 that prohibit laws respecting the establishment of religion.  
5 Granting government funds, benefits or exemptions, to the extent  
6 permissible under subdivision (2) of this subsection, does not  
7 constitute a violation of this section. As used in this  
8 subsection, "granting" used with respect to government funding,  
9 benefits or exemptions does not include the denial of government  
10 funding, benefits or exemptions.

11 (c) A person whose religious exercise has been burdened by  
12 government in violation of this section may assert that violation  
13 as a claim or defense in any judicial or administrative proceeding  
14 and may obtain declaratory and injunctive relief from a circuit  
15 court, but may not obtain monetary damages. A court or  
16 administrative law judge may award reasonable attorney fees and  
17 costs to a person who prevails in any proceeding to enforce this  
18 section against a government entity. The provisions of this  
19 subsection relating to section attorney fees does not apply to  
20 criminal prosecutions.

21 (d) Nothing in this section prevents any governmental  
22 institution or facility from maintaining health, safety, security  
23 or discipline.

24 (e) The decision of the circuit court to grant or deny  
25 declaratory and injunctive relief may be appealed by petition to  
the Supreme Court of Appeals.