

COMMITTEE SUBSTITUTE

FOR

**H. B. 2657**

---

(BY DELEGATES T. CAMPBELL, CROSIER, CANTERBURY,  
J. MILLER AND MOYE)

---

(Originating in the Committee on the Judiciary)  
[February 20, 2012]

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

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

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

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

**§5-11B-1. Short title.**

1        This article may be cited as the "West Virginia Religious  
2        Freedom Restoration Act."

**§5-11B-2. Definitions.**

1        As used in this article:

2        (a) "Demonstrates" means meets the burdens of going  
3        forward with the evidence and of persuasion under the  
4        standard of clear and convincing evidence.

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

9        (c) "Government entity" means any branch, department,  
10       agency or instrumentality of state government, or any official  
11       or other person acting under color of state law, or any  
12       political subdivision of the state and does not include any

13 local, regional or federal correctional facility or any facility  
14 that treats civilly committed sexually violent predators.

15 (d) “Prevails” means to obtain prevailing party status as  
16 defined by courts construing the federal Civil Rights  
17 Attorney Fees Awards Act of 1976, 42 U.S.C. §1988.

18 (e) “Substantially burden” means to inhibit or curtail  
19 religiously motivated practice.

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

1 (a) A government entity may not substantially burden a  
2 person’s free exercise of religion even if the burden results  
3 from a rule of general applicability unless it demonstrates  
4 that application of the burden to the person is: (1) Essential  
5 to further a compelling governmental interest; and (2) the  
6 least restrictive means of furthering that compelling  
7 governmental interest.

8 (b) Nothing in this section may be construed to: (1)  
9 Authorize any government entity to burden any religious  
10 belief; or (2) affect, interpret or in any way address those

11 portions of article three, section fifteen of the Constitution of  
12 West Virginia, and the First Amendment to the United States  
13 Constitution that prohibit laws respecting the establishment  
14 of religion. Granting government funds, benefits or  
15 exemptions, to the extent permissible under subdivision (2)  
16 of this subsection, does not constitute a violation of this  
17 section. As used in this subsection, “granting” used with  
18 respect to government funding, benefits or exemptions does  
19 not include the denial of government funding, benefits or  
20 exemptions.

21 (c) A person whose religious exercise has been burdened  
22 by government in violation of this section may assert that  
23 violation as a claim or defense in any judicial or  
24 administrative proceeding and may obtain declaratory and  
25 injunctive relief from a circuit court, but may not obtain  
26 monetary damages. A court or administrative law judge may  
27 award reasonable attorney fees and costs to a person who  
28 prevails in any proceeding to enforce this section against a

29 government entity. The provisions of this subsection relating  
30 to section attorney fees does not apply to criminal  
31 prosecutions.

32 (d) Nothing in this section prevents any governmental  
33 institution or facility from maintaining health, safety, security  
34 or discipline.

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