

1 with the evidence and of persuasion under the standard of clear and
2 convincing evidence.

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

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

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

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

18 **§5-11B-3. Applicability; construction; remedies.**

19 (a) No government entity may substantially burden a person's
20 free exercise of religion even if the burden results from a rule of
21 general applicability unless it demonstrates that application of
22 the burden to the person is: (1) Essential to further a compelling
23 governmental interest; and (2) the least restrictive means of
24 furthering that compelling governmental interest.

1 (b) Nothing in this section may be construed to: (1)
2 Authorize any government entity to burden any religious belief; or
3 (2) affect, interpret or in any way address those portions of
4 article three, section fifteen of the Constitution of West
5 Virginia, and the first amendment to the United States Constitution
6 that prohibit laws respecting the establishment of religion.
7 Granting government funds, benefits or exemptions, to the extent
8 permissible under clause (2) of this subsection, does not
9 constitute a violation of this section. As used in this
10 subsection, "granting" used with respect to government funding,
11 benefits or exemptions does not include the denial of government
12 funding, benefits or exemptions.

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

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

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

NOTE: The purpose of this bill is to establish the West Virginia Religious Freedom Restoration Act.

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