

1 **H. B. 2873**

2
3 (By Delegates Miley, T. Campbell, Hamilton and
4 Ellem)

5 [Introduced January 26, 2011; referred to the
6 Committee on the Judiciary then Finance.]

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10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §1-7-1, §1-7-2,
12 §1-7-3, §1-7-4, §1-7-5, §1-7-6 and §1-7-7, all relating to the
13 freedom of religion of West Virginia; creating the "West
14 Virginia Religious Freedom Restoration Act"; short title;
15 legislative findings and purpose; providing definitions;
16 providing for protection of religion from the government;
17 providing for award of attorney fees and costs to prevailing
18 plaintiff in action to enforce religious rights; application
19 of article to West Virginia law; and providing for appeal.

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

21 That the Code of West Virginia, 1931, as amended, be amended
22 by adding thereto a new article, designated §1-7-1, §1-7-2, §1-7-3,
23 §1-7-4, §1-7-5, §1-7-6 and §1-7-7, all to read as follows:

24 **ARTICLE 7. WEST VIRGINIA RELIGIOUS RESTORATION FREEDOM ACT.**

1 **§1-7-1. Short title.**

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

4 **§1-7-2. Legislative findings and purpose.**

5 (a) The Legislature finds that:

6 (1) The free exercise of religion is an unalienable right,
7 protected by the First Amendment of the Constitution of the United
8 States and Sections three through fifteen, Article III of the
9 Constitution of the State of West Virginia;

10 (2) Laws that appear neutral toward religion may burden
11 religious exercise as surely as laws intended to interfere with
12 religious exercise;

13 (3) Government should not substantially burden religious
14 exercise unless it is essential to further a compelling interest;
15 and

16 (4) The compelling interest test set forth in prior state and
17 federal court rulings is a workable test for striking sensible
18 balances between religious liberty and competing prior governmental
19 interests.

20 (b) Purposes:

21 (1) To require that the compelling interest test be applied as
22 a guarantee in all cases where free exercise of religion is
23 substantially burdened; and

24 (2) To provide a claim or defense to persons whose religious

1 exercise is substantially burdened by government.

2 **§1-7-3. Definitions.**

3 As used in this article:

4 (a) "Demonstrates" means to meet the burden of clear and
5 convincing evidence.

6 (b) "Exercise of religion" means:

7 (1) An act or refusal to act that is substantially motivated
8 by a religious belief, whether or not the religious exercise is
9 compulsory or central to a larger system of religious belief; or

10 (2) Exercise of religion under Article three, Section fifteen
11 of the Constitution of West Virginia, and the First Amendment to
12 the United States Constitution.

13 (c) "Government" or "state" includes any branch, department,
14 agency, instrumentality or subdivision of the state, county,
15 special district or municipality, or any official or other person
16 acting under color of law for the foregoing, but does not include
17 any correctional facility or facility that treats civilly committed
18 persons.

19 (d) "Prevails" means what is meant by 'prevailing party'
20 status as defined by courts construing the federal Civil Rights
21 Attorney Fees Awards Act of 1977, 42 U.S.C. §1988.

22 (e) "Substantially burden" means to inhibit or curtail
23 religiously motivated practice.

24 **§1-7-4. Freedom of religion protected.**

1 (a) The government may not substantially burden a person's
2 exercise of religion, even if the burden results from a rule of
3 general applicability, unless it demonstrates that application of
4 the burden to the person:

5 (1) Is essential to further a compelling governmental
6 interest; and

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

9 (b) A person whose religious exercise has been burdened in
10 violation of this section may assert that violation as a claim or
11 defense in a judicial or administrative proceeding and obtain
12 appropriate declaratory, injunctive and other nonmonetary relief.

13 **§1-7-5. Attorney's fees and costs.**

14 The prevailing plaintiff in any action or proceeding to
15 enforce a provision of this article is entitled to reasonable
16 attorney's fees and costs to be paid by the government.

17 **§1-7-6. Applicability.**

18 (a) This article applies to all state law, and the
19 implementation of that law, whether statutory, regulatory, or
20 otherwise, and whether adopted before or after the enactment of
21 this article.

22 (b) Acts of the West Virginia Legislature enacted after the
23 date of the enactment of this article are subject to this article
24 unless explicitly excluded by reference to this article.

1 (c) Nothing in this article shall be construed to authorize
2 the government to burden any religious belief.

3 (d) Nothing in this article shall be construed to affect,
4 interpret, or in any way address that portion of Sections three
5 through fifteen, Article III of the Constitution of the State of
6 West Virginia prohibiting laws respecting the establishment of
7 religion.

8 (e) Nothing in this article shall create any rights by an
9 employee against an employer if the employer is not a governmental
10 agency.

11 (f) Nothing in this article shall be construed to affect,
12 interpret, or in any way address that portion of Sections three
13 through fifteen, Article III of the Constitution of the State of
14 West Virginia and the First Amendment to the Constitution of the
15 United States respecting the establishment of religion. This
16 article may not be construed to permit any practice prohibited by
17 those provisions.

18 (g) Nothing in this article shall prevent any governmental
19 institution or facility from maintaining health, safety, security
20 or discipline.

21 (h) The denial of government funds, benefits or exemptions may
22 be construed as a substantial burden subject to the terms of this
23 article.

24 (i) The granting of government funds, benefits or exemptions

1 may not be construed as a substantial burden under this article.

2 **§1-7-7. Appeal.**

3 The decision of the circuit court to grant or deny declaratory
4 or injunctive relief may be appealed by petition to the Supreme
5 Court of Appeals.

NOTE: The purpose of this bill is to prevent government sponsored interference with a West Virginian's guaranteed freedom of religion.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.