

Senate Bill No. 396

(By Senators Barnes and Nohe)

[Introduced February 28, 2013; referred to the Committee on the
Judiciary.]

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.

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

1 **§5-11B-2. Definitions.**

2 As used in this article:

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

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

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

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

19 (e) "Substantially burden" means to inhibit or curtail
20 religiously motivated practice.

21 **§5-11B-3. Applicability; construction; remedies.**

22 (a) No government entity may substantially burden a person's
23 free exercise of religion even if the burden results from a rule of

1 general applicability unless it demonstrates that application of
2 the burden to the person is: (1) Essential to further a compelling
3 governmental interest; and (2) the least restrictive means of
4 furthering that compelling governmental interest.

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

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

1 The provisions of this subsection relating to attorney fees does
2 not apply to criminal prosecutions.

3 (d) Nothing in this section shall prevent any governmental
4 institution or facility from maintaining health, safety, security
5 or discipline.

6 (e) The decision of the circuit court to grant or deny
7 declaratory and injunctive relief may be appealed by petition to
8 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, strike-throughs and
underscoring have been omitted.