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**BILL REQUEST - CODE REVISER'S OFFICE**

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BILL REQ. #: S-3090.2/13 2nd draft

ATTY/TYPIST: AI:lel

BRIEF DESCRIPTION: Addressing religious freedom.

1 AN ACT Relating to the first freedom preservation act; and adding  
2 a new chapter to Title 1 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** This act may be known and cited as the first  
5 freedom preservation act.

6 NEW SECTION. **Sec. 2.** (1) The nation's founders protected the free  
7 exercise of religion by setting it in the bill of rights to the United  
8 States Constitution as the first freedom and recognizing it as an  
9 unalienable right.

10 (2) The framers of the Washington state Constitution affirmed our  
11 nation's interest in guarding our first freedom, and conferred even  
12 greater protection than the United States Constitution, as it protects  
13 both conduct and belief, "freedom of conscience in all matters of  
14 religious sentiment, belief, and worship," and bars government action  
15 that "disturbs" another on the basis of religion, *City of Woodinville*  
16 *v. Northshore United Church of Christ*, 166 Wn.2d 633, 643 (2009) *First*  
17 *Covenant Church v. Seattle*, 120 Wn.2d 203, 225-226, 840 P.2d 174  
18 (1992).

1 (3) Washington courts have consistently held that our state  
2 constitutional protection of religious freedom in Article I, section 11  
3 is "one of the most important duties of our courts to ever guard. . .  
4 and to see to it that these guarantees are not narrowed or restricted  
5 because of some supposed emergent situation . . ." *Bolling v. Superior*  
6 *Court of Clallam Co.*, 16 Wn.2d 373, 385 (1943).

7 (4) The Washington supreme court has also expressly ruled that,  
8 unlike the first amendment to the United States Constitution, a  
9 facially neutral, evenhandedly enforced statute that does not directly  
10 burden free exercise may, nonetheless, violate Article I, section 11 of  
11 the Washington state Constitution, if it indirectly burdens the  
12 exercise of religion, *First Covenant Church v. Seattle*, 120 Wn.2d 203,  
13 227, 840 P.2d 174 (1992).

14 (5) State action, including private claims under state law, should  
15 not burden exercise of religion without compelling governmental  
16 justification.

17 (6) The means chosen to achieve the state's compelling interest  
18 must be necessary and the least restrictive available, *First Covenant*  
19 *Church v. Seattle*, 120 Wn.2d 203, 227, 840 P.2d 174 (1992).

20 NEW SECTION. **Sec. 3.** (1) The purposes of this chapter are to:

21 (a) Preserve in statute the broad protection of free exercise of  
22 religion secured by Article I, section 11 of the Washington state  
23 Constitution and the courts; and

24 (b) Provide for an award of attorneys' fees and costs to any person  
25 whose free exercise right has been violated or who successfully asserts  
26 such right as a defense.

27 (2) This chapter shall not be construed to allow discrimination  
28 against or otherwise infringe upon any statutory or constitutional  
29 rights of any person or protected class currently recognized under law.

30 NEW SECTION. **Sec. 4.** The definitions in this section apply  
31 throughout this chapter unless the context clearly requires otherwise.

32 (1) "Burden" means any action that, directly or indirectly,  
33 constrains, penalizes, inhibits, curtails, or denies the exercise of  
34 religion by any person, or has the effect of coercing any action  
35 contrary to a person's exercise of religion, and includes, but is not

1 limited to, withholding benefits, assessing criminal, civil, or  
2 administrative penalties, or exclusion from governmental programs or  
3 access to governmental facilities.

4 (2) "Compelling governmental interest" means a governmental  
5 interest of the highest order that prevents a clear and present, grave  
6 and immediate danger to public health, peace, and welfare and that  
7 cannot otherwise be achieved without burdening the exercise of  
8 religion.

9 (3) "Exercise of religion" means the practice or observance of  
10 religion consistent with Article I, section 11 of the Washington state  
11 Constitution. It includes, but is not limited to, the ability to act  
12 or refuse to act in a manner motivated by one's sincerely held  
13 religious belief, whether or not the exercise is compulsory or central  
14 to a larger system of religious belief.

15 (4) "Person" means any individual, association, partnership,  
16 corporation, church, religious institution, estate, trust, foundation,  
17 or other legal entity.

18 (5) "State action" means the implementation or application by any  
19 public official or private person of any law including, but not limited  
20 to, state and local laws, ordinances, rules, regulations, and policies,  
21 whether statutory or otherwise, or other action by the state or any  
22 political subdivision thereof and any local government, municipality,  
23 instrumentality, or public official authorized by law in the state.

24 NEW SECTION. **Sec. 5.** (1) State action shall not substantially  
25 burden a person's right to exercise of religion, even if the burden  
26 results from a facially neutral rule of general applicability, unless  
27 it is demonstrated that applying the burden to that person's exercise  
28 of religion in this particular instance is:

29 (a) Essential to the furtherance of a compelling governmental  
30 interest; and

31 (b) The least restrictive means of furthering that compelling  
32 governmental interest.

33 (2) A person whose exercise of religion has been substantially  
34 burdened, or is likely to be burdened, in violation of this chapter may  
35 assert that violation or impending violation as a claim or defense in  
36 a judicial proceeding, regardless of whether the state or one of its  
37 political subdivisions is a party to the proceeding. The person

1 asserting such a claim or defense may obtain appropriate relief,  
2 including relief against the state or its political subdivisions.  
3 Appropriate relief includes, but is not limited to, injunctive relief,  
4 declaratory relief, compensatory damages, and costs and attorneys'  
5 fees.

6 NEW SECTION. **Sec. 6.** If any provision of this act or its  
7 application to any person or circumstance is held invalid, the  
8 remainder of the act or the application of the provision to other  
9 persons or circumstances is not affected.

10 NEW SECTION. **Sec. 7.** Sections 1 through 5 of this act constitute  
11 a new chapter in Title 1 RCW.

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