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# A BILL FOR AN ACT

RELATING TO RELIGIOUS FREEDOM.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The Hawaii Revised Statutes is amended by  
2 adding a new chapter to be appropriately designated and to read  
3 as follows:

4   **"CHAPTER**

5   **RELIGIOUS FREEDOM**

6           **§ -1 Definitions.** As used in this chapter:

7           "Demonstrates" means to meet the burden of going forward  
8 with the evidence and of persuasion.

9           "Exercise of religion" means an act or refusal to act that  
10 is substantially motivated by a religious belief, whether or not  
11 the religious exercise is compulsory or central to a larger  
12 system of religious belief.

13           "Government" or "State" means any branch, department,  
14 agency, instrumentality, official, or other person acting under  
15 color of law of the State, a county, municipality, or any other  
16 subdivision of the State.

17           **§ -2 Free exercise of religion protected.** (a) The  
18 government shall not burden a person's exercise of religion,



1 even if the burden results from a rule of general applicability;  
2 provided that the government may burden a person's exercise of  
3 religion if it demonstrates that the application of the burden  
4 to the person:

5 (1) Is in furtherance of 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 chapter may assert that violation as a claim  
11 or defense in a judicial proceeding and obtain appropriate  
12 relief.

13 **§ -3 Remedies.** (a) Any person, other than a government  
14 agency, who successfully asserts a claim or defense under this  
15 chapter is entitled to recover:

16 (1) Declaratory relief;

17 (2) Injunctive relief to prevent the threatened violation  
18 or continued violation;

19 (3) Compensatory damages for pecuniary and nonpecuniary  
20 losses; and

21 (4) Reasonable attorney's fees, court costs, and other  
22 reasonable expenses incurred in bringing the action.



1 (b) Compensatory damages awarded under subsection (a)(3)  
2 shall not exceed \$10,000 for each entire, distinct controversy,  
3 without regard to the number of members or other persons within  
4 a religious group who claim injury as a result of the government  
5 agency's exercise of governmental authority. A claimant is not  
6 entitled to recover exemplary damages under this chapter.

7 (c) An action under this section shall be brought in  
8 circuit court.

9 (d) A person shall not bring an action for damages or  
10 declaratory or injunctive relief against an individual, other  
11 than an action brought against an individual acting in the  
12 individual's official capacity as an officer of a government  
13 agency.

14 **§ -4 Waiver of sovereign immunity.** Immunity from  
15 liability of the government agency and its employees shall be  
16 waived for an action brought pursuant to this chapter.

17 **§ -5 Applicability; construction.** (a) This chapter  
18 applies to all state law, and the implementation of the law,  
19 whether statutory or otherwise, and whether adopted before or  
20 after the enactment of this chapter.

21 (b) State law adopted after the date of the enactment of  
22 this chapter is subject to this chapter unless such law



1 explicitly excludes such application by reference to this  
2 chapter.

3 (c) Nothing in this chapter shall be construed to  
4 authorize the government to burden any religious belief.

5 (d) Nothing in this chapter shall create any rights by an  
6 employee against an employer if the employer is not a government  
7 agency.

8 (e) Nothing in this chapter shall be construed to affect,  
9 interpret, or in any way address that portion of article I,  
10 section 4 of the Hawaii State Constitution, or the First  
11 Amendment to the United States Constitution, which prohibits  
12 laws respecting the establishment of religion. This chapter  
13 shall not be construed to permit any practice prohibited by such  
14 provisions.

15 (f) The granting of government funding, benefits, or  
16 exemptions, to the extent permissible under the Hawaii State  
17 Constitution shall not constitute a violation of this chapter.

18 As used in this subsection, "granting" does not include the  
19 denial of government funding, benefits, or exemptions.

20 (g) The protection of the free exercise of religion  
21 granted under this chapter is in addition to the protections



1 granted by federal law, the United States Constitution, and the  
2 Hawaii State Constitution."

3 SECTION 2. This Act shall take effect upon its approval.

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INTRODUCED BY: *Ms. B. R.*  
JAN 26 2011



**Report Title:**

Religious Freedom

**Description:**

Establishes provisions protecting an individual's right to exercise of religion. Provides civil remedies.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

