ENGROSSED
SENATE BILL No. 101

DIGEST OF SB 101 (Updated March 16, 2015 1:56 pm - DI 123)

Citations Affected: IC 34-13.

Synopsis: Religious freedom restoration. Prohibits a governmental entity from substantially burdening a person's exercise of religion, even if the burden results from a rule of general applicability, unless the governmental entity can demonstrate that the burden: (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering the compelling governmental interest. Provides a procedure for remedying a violation. Specifies that the religious freedom law applies to the implementation or application of a law regardless of whether the state or any other governmental entity or official is a party to a proceeding implementing or applying the law. Prohibits an applicant, employee, or former employee from pursuing certain causes of action against a private employer.

Effective: July 1, 2015.

Kruse, Schneider, Steele, Yoder, Buck, Banks A, Brown L, Smith J, Tomes, Walker, Waltz, Messmer, Leising

(HOUSE SPONSORS — WESCO, MCMILLIN, LEHE, SMITH M)

January 6, 2015, read first time and referred to Committee on Rules & Legislative Procedure.
January 20, 2015, amended, reported favorably — Do Pass; reassigned to Committee on Judiciary.
February 19, 2015, amended, reported favorably — Do Pass.
February 23, 2015, read second time, ordered engrossed. Engrossed.
February 24, 2015, read third time, passed. Yeas 40, nays 10.
HOUSE ACTION
March 5, 2015, read first time and referred to Committee on Judiciary.
March 16, 2015, amended, reported — Do Pass.

ES 101—LS 6177/DI 13

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.
 Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.
 Conflict reconciliation: Text in a statute in *this style type* or *~~this style type~~* reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

ENGROSSED
SENATE BILL No. 101

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

1   SECTION 1. IC 34-13-9 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2015]:
4   **Chapter 9. Religious Freedom Restoration**
5   **Sec. 1. This chapter applies to all governmental entity statutes,**
6 **ordinances, resolutions, executive or administrative orders,**
7 **regulations, customs, and usages, including the implementation or**
8 **application thereof, regardless of whether they were enacted,**
9 **adopted, or initiated before, on, or after July 1, 2015.**
10   **Sec. 2. A governmental entity statute, ordinance, resolution,**
11 **executive or administrative order, regulation, custom, or usage**
12 **may not be construed to be exempt from the application of this**
13 **chapter unless a state statute expressly exempts the statute,**
14 **ordinance, resolution, executive or administrative order,**
15 **regulation, custom, or usage from the application of this chapter by**
16 **citation to this chapter.**

1   **Sec. 3. (a) The following definitions apply throughout this**
2 **section:**
3   **(1) "Establishment Clause" refers to the part of the First**
4   **Amendment of the Constitution of the United States or the**
5   **Constitution of the State of Indiana prohibiting laws**
6   **respecting the establishment of religion.**
7   **(2) "Granting", used with respect to government funding,**
8   **benefits, or exemptions, does not include the denial of**
9   **government funding, benefits, or exemptions.**
10   **(b) This chapter may not be construed to affect, interpret, or in**
11 **any way address the Establishment Clause.**
12   **(c) Granting government funding, benefits, or exemptions, to the**
13 **extent permissible under the Establishment Clause, does not**
14 **constitute a violation of this chapter.**
15   **Sec. 4. As used in this chapter, "demonstrates" means meets the**
16 **burdens of going forward with the evidence and of persuasion.**
17   **Sec. 5. As used in this chapter, "exercise of religion" includes**
18 **any exercise of religion, whether or not compelled by, or central to,**
19 **a system of religious belief.**
20   **Sec. 6. As used in this chapter, "governmental entity" includes**
21 **the whole or any part of a branch, department, agency,**
22 **instrumentality, official, or other individual or entity acting under**
23 **color of law of any of the following:**
24   **(1) State government.**
25   **(2) A political subdivision (as defined in IC 36-1-2-13).**
26   **(3) An instrumentality of a governmental entity described in**
27   **subdivision (1) or (2), including a state educational institution,**
28   **a body politic, a body corporate and politic, or any other**
29   **similar entity established by law.**
30   **Sec. 7. As used in this chapter, "person" includes the following:**
31   **(1) An individual.**
32   **(2) An organization, a religious society, a church, a body of**
33   **communicants, or a group organized and operated primarily**
34   **for religious purposes.**
35   **(3) A partnership, a limited liability company, a corporation,**
36   **a company, a firm, a society, a joint-stock company, an**
37   **unincorporated association, or another entity that:**
38   **(A) may sue and be sued; and**
39   **(B) exercises practices that are compelled or limited by a**
40   **system of religious belief held by:**
41   **(i) an individual; or**
42   **(ii) the individuals;**

1   who have control and substantial ownership of the entity,
2   regardless of whether the entity is organized and operated for
3   profit or nonprofit purposes.
4   Sec. 8. (a) Except as provided in subsection (b), a governmental
5 entity may not substantially burden a person's exercise of religion,
6 even if the burden results from a rule of general applicability.
7   (b) A governmental entity may substantially burden a person's
8 exercise of religion only if the governmental entity demonstrates
9 that application of the burden to the person:
10   (1) is in furtherance of a compelling governmental interest;
11   and
12   (2) is the least restrictive means of furthering that compelling
13   governmental interest.
14   Sec. 9. A person whose exercise of religion has been
15 substantially burdened, or is likely to be substantially burdened, by
16 a violation of this chapter may assert the violation or impending
17 violation as a claim or defense in a judicial or administrative
18 proceeding, regardless of whether the state or any other
19 governmental entity is a party to the proceeding. If the relevant
20 governmental entity is not a party to the proceeding, the
21 governmental entity has an unconditional right to intervene in
22 order to respond to the person's invocation of this chapter.
23   Sec. 10. (a) If a court or other tribunal in which a violation of
24 this chapter is asserted in conformity with section 9 of this chapter
25 determines that:
26   (1) the person's exercise of religion has been substantially
27   burdened, or is likely to be substantially burdened; and
28   (2) the governmental entity imposing the burden has not
29   demonstrated that application of the burden to the person:
30   (A) is in furtherance of a compelling governmental
31   interest; and
32   (B) is the least restrictive means of furthering that
33   compelling governmental interest;
34 the court or other tribunal shall allow a defense against any party
35 and shall grant appropriate relief against the governmental entity.
36   (b) Relief against the governmental entity may include any of
37 the following:
38   (1) Declaratory relief or an injunction or mandate that
39   prevents, restrains, corrects, or abates the violation of this
40   chapter.
41   (2) Compensatory damages.
42   (c) In the appropriate case, the court or other tribunal also may

1 **award all or part of the costs of litigation, including reasonable**
2 **attorney's fees, to a person that prevails against the governmental**
3 **entity under this chapter.**
4   **Sec. 11. This chapter is not intended to, and shall not be**
5 **construed or interpreted to, create a claim or private cause of**
6 **action against any private employer by any applicant, employee, or**
7 **former employee.**

COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 101, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be reassigned to the Senate Committee on Judiciary.

(Reference is to SB 101 as introduced.)

LONG, Chairperson

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 101, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 7, after "usages" insert "**, including the implementation or application thereof,**".

Page 2, line 19, after "includes" insert "**the whole or any part of**".

Page 2, line 26, delete "(2)." and insert "**(2), including a state educational institution, a body politic, a body corporate and politic, or any other similar entity established by law.**".

Page 3, line 11, delete "is" and insert "**has been**".

Page 3, line 12, delete "burdened" and insert "**burdened, or is likely to be substantially burdened,**".

Page 3, line 12, delete "enforce this chapter" and insert "**assert the violation or impending violation as a claim or defense in a judicial or administrative proceeding, regardless of whether the state or any other governmental entity is a party to the proceeding. If the relevant governmental entity is not a party to the proceeding, the**"

governmental entity has an unconditional right to intervene in order to respond to the person's invocation of this chapter.".

Page 3, delete lines 13 through 19.

Page 3, line 20, after "10." insert "**(a)**".

Page 3, line 24, delete "violated;" and insert "**burdened, or is likely to be substantially burdened;**".

Page 3, line 26, after "that" insert "**application of**".

Page 3, line 31, after "tribunal" insert "**shall allow a defense against any party and**".

Page 3, line 32, after "." begin a new paragraph and insert:
"**(b)**".

Page 3, line 32, after "Relief" insert "**against the governmental entity**".

Page 3, line 32, after "include" insert "**any of the following:
(1) Declaratory relief or**".

Page 3, after line 34, begin a new line block indented and insert:
"**(2) Compensatory damages.
(c) In the appropriate case, the court or other tribunal also may award all or part of the costs of litigation, including reasonable attorney's fees, to a person that prevails against the governmental entity under this chapter.**".

and when so amended that said bill do pass.

(Reference is to SB 101 as printed January 21, 2015.)

STEELE, Chairperson

Committee Vote: Yeas 7, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 101, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, after line 3, begin a new paragraph and insert:

"**Sec. 11. This chapter is not intended to, and shall not be construed or interpreted to, create a claim or private cause of action against any private employer by any applicant, employee, or former employee.**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 101 as printed February 20, 2015.)

STEUERWALD

Committee Vote: yeas 9, nays 4.