

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

AMS
R Q S

Minority

L.D. 1428

Date: 2/14/14

(Filing No. S-390)

JUDICIARY

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE

SENATE

126TH LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 514, L.D. 1428, Bill, "An Act To Protect Religious Freedom"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

Sec. 1. 5 MRSA c. 337-D is enacted to read:

CHAPTER 337-D

PRESERVATION OF RELIGIOUS FREEDOM

§4801. Short title

This chapter may be known and cited as "the Preservation of Religious Freedom Act."

§4802. Findings

The Legislature makes the following findings:

1. Federal Constitution. The framers of the United States Constitution, recognizing free exercise of religion as a fundamental and unalienable right, secured its protection in the First Amendment of the United States Constitution;

2. State Constitution. The framers of the Constitution of Maine, also recognizing free exercise of religion as a fundamental and unalienable right, secured its protection in the Constitution of Maine;

3. Exercise of religion burdened. Laws and other government actions neutral toward religion may burden exercise of religion as surely as laws intended to interfere with religious exercise;

4. Compelling government interest. Government action should not burden exercise of religion without a compelling interest;

COMMITTEE AMENDMENT

ROFS

1 **5. Effect of 1990 decision.** Prior to 1990, laws and other government actions
2 burdening exercise of religion had to be justified by a compelling interest. In
3 Employment Division v. Smith, 494 U.S. 872 (1990), the United States Supreme Court
4 significantly curtailed the requirement that laws and other government actions burdening
5 the exercise of religion be justified by a compelling interest;

6 **6. Reassertion of compelling interest test.** The compelling interest test set forth in
7 this chapter and in federal court rulings prior to Employment Division v. Smith, including
8 Wisconsin v. Yoder, 406 U.S. 205 (1972), and Sherbert v. Verner, 374 U.S. 398 (1963),
9 is a workable test for striking sensible balances between religious liberty and competing
10 governmental interests; and

11 **7. Role of legislative bodies to protect free exercise of religion.** Gonzales v. O
12 Centro Espirita Beneficente Uniao do Vegetal, 546 U.S. 418 (2006), indicates that
13 legislative bodies may enact statutory law for their jurisdictions requiring that laws and
14 other government actions burdening the free exercise of religion be justified by a
15 compelling state interest. Many states have done so, passing laws similar to this Act.

16 **§4803. Purposes**

17 The purposes of this Act are:

18 **1. Application of compelling interest test.** To restore the compelling interest test
19 as set forth in Wisconsin v. Yoder, 406 U.S. 205 (1972), and Sherbert v. Verner, 374 U.S.
20 398 (1963), and to guarantee its application in all cases in which the government
21 substantially burdens the exercise of religion; and

22 **2. Provide claim or defense.** To provide a claim or defense to a person whose
23 exercise of religion is burdened by the government.

24 **§4804. Definitions**

25 As used in this chapter, unless the context otherwise indicates, the following terms
26 have the following meanings.

27 **1. Burden.** "Burden" means a government action that directly or indirectly
28 constrains, inhibits, curtails or denies the exercise of religion by a person or compels an
29 action contrary to a person's free exercise of religion. "Burden" also includes, but is not
30 limited to, a government action that withholds benefits from a person, assesses criminal,
31 civil or administrative penalties on a person or excludes a person from government
32 programs or access to government facilities.

33 **2. Exercise of religion.** "Exercise of religion" means the practice or observance of
34 religion. "Exercise of religion" includes, but is not limited to, the ability to act or refuse
35 to act in a manner substantially motivated by a person's sincerely held religious belief,
36 whether or not the exercise of religion is compulsory or central to a larger system of
37 religious belief.

38 **3. Government.** "Government" means the State and a political subdivision of the
39 State.

40 **4. Person.** "Person" means an individual, association, partnership, corporation,
41 church, religious institution, estate, trust, foundation or other legal entity.

ROFS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39

§4805. Free exercise of religion protected

1. Substantial burden prohibited; exceptions. The government may not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, unless the government demonstrates that applying the burden to the person's exercise of religion in this particular instance:

A. Is in furtherance of a compelling governmental interest; and

B. Is the least restrictive means of furthering that compelling governmental interest.

2. Claim or defense; relief. A person whose exercise of religion has been burdened, or is substantially likely to be burdened, in violation of this chapter may assert the violation as a claim or defense in a judicial proceeding. The person asserting such a claim or defense may obtain appropriate relief, including relief against the government. Appropriate relief includes, but is not limited to, injunctive relief, declaratory relief, compensatory damages and costs and attorney's fees.'

SUMMARY

This amendment, which is the minority report, replaces the bill. It codifies legislative findings that summarize the enshrinement of the right to the free exercise of religion in the United States Constitution and the Constitution of Maine and case law of the United States Supreme Court interpreting the fundamental and unalienable right to the free exercise of religion, as well as the extent to which a legislative body can legislate in this area.

Specifically, the amendment enacts the Preservation of Religious Freedom Act, which has as its purpose the restoration of the compelling interest test as set forth in Wisconsin v. Yoder, 406 U.S. 205 (1972), and Sherbert v. Verner, 374 U.S. 398 (1963). The amendment guarantees the application of the compelling interest test in all cases in which the government substantially burdens the exercise of religion and provides a claim or defense to a person whose exercise of religion is burdened by the government.

This amendment provides that the government may not directly or indirectly burden a person's exercise of religion unless the application of the burden to the person is in furtherance of a compelling governmental interest and is accomplished through the least restrictive means.

This amendment allows a person whose exercise of religion has been or is substantially likely to be burdened in violation of this legislation to assert the violation as a claim or defense in a court action.

This amendment's requirement that the government's infringement upon the free exercise of religion be justified by a compelling interest is similar to the requirement placed on the Federal Government through the Religious Freedom Restoration Act of 1993 and that of 18 other states that have passed similar protections.

FISCAL NOTE REQUIRED

(See attached)



126th MAINE LEGISLATURE

LD 1428

LR 1803(02)

An Act To Protect Religious Freedom

Fiscal Note for Bill as Amended by Committee Amendment "A" (S-390)

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Current biennium cost increase - General Fund

Minor revenue increase - General Fund

Correctional and Judicial Impact Statements

Increases the number of civil cases.

The collection of additional filing fees may also increase General Fund revenue by minor amounts.

Fiscal Detail and Notes

This bill may result in additional litigation costs, including compensatory damages and costs and attorney fees. The Department of the Attorney General and the effected state agencies will require additional General Fund appropriations to support these costs. The amount required will depend on the number of actions and the specifics of each individual case and cannot be estimated at this time.