

# MAINE STATE LEGISLATURE

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# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 1428

S.P. 514

In Senate, April 23, 2013

### An Act To Protect Religious Freedom

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Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator BURNS of Washington.  
Cosponsored by Representative TIMBERLAKE of Turner and  
Senators: CUSHING of Penobscot, MASON of Androscoggin, SHERMAN of Aroostook,  
Representatives: CRAFTS of Lisbon, DAVIS of Sangerville, HARLOW of Portland,  
McCLELLAN of Raymond, TURNER of Burlington.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 1 MRSA c. 33** is enacted to read:

3 **CHAPTER 33**

4 **PRESERVATION OF RELIGIOUS FREEDOM ACT**

5 **§2701. Short title**

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

8 **§2702. Definitions**

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

11 **1. Burden.** "Burden," with respect to an exercise of governmental authority, means  
12 to directly or indirectly do any of the following:

13 A. Constrain or inhibit conduct or expression mandated by a person's sincerely held  
14 religious tenet or belief;

15 B. Significantly curtail a person's ability to express adherence to the person's  
16 religious faith;

17 C. Deny a person a reasonable opportunity to engage in activities that are  
18 fundamental to the person's religion;

19 D. Compel conduct or expression that violates a tenet or belief of a person's religious  
20 faith; or

21 E. Withhold benefits from or assess penalties against a person or exclude a person  
22 from programs or access to facilities because of the person's religion or religious  
23 belief.

24 **2. Compelling governmental interest.** "Compelling governmental interest" means  
25 the interest of a government to protect the best interests of a child or the health, safety or  
26 welfare of a child.

27 **3. Demonstrates.** "Demonstrates" means supports a position with evidence and  
28 persuasion.

29 **4. Exercise of religion.** "Exercise of religion" means the practice or observance of  
30 religion under the United States Constitution, Amendment I and the Constitution of  
31 Maine and includes acting or refusing to act in a manner substantially motivated by a  
32 sincerely held religious belief, whether or not the practice or observance is compulsory or  
33 a central part or central requirement of the person's religious belief.

1           **5. Fraudulent claim.** "Fraudulent claim" means a claim that is dishonest in fact or  
2 that is made principally for a patently improper purpose, such as to harass an opposing  
3 party in a court action.

4           **6. Frivolous claim.** "Frivolous claim" means a claim that lacks merit under existing  
5 law and cannot be supported by a good faith argument for the extension, modification or  
6 reversal of existing law.

7           **7. Government.** "Government" means any of the following:

8           A. A board, commission, court, department, agency, special district, authority or  
9 other entity of the State;

10           B. A political subdivision of the State, including a county, municipality, school  
11 board, sheriff, public board, institution, district or corporation;

12           C. Any other public or governmental body of any kind that is not a state agency,  
13 municipality or political subdivision; and

14           D. An official or other person acting under color of law.

15           **8. Person.** "Person" means an individual, corporate body or religious organization.

16           **9. Religious organization.** "Religious organization" means a church, association of  
17 churches or other religious order, body or institution that qualifies for exemption from  
18 taxation under Section 501(c)(3) or 501(d) of the United States Internal Revenue Code of  
19 1986.

20           **§2703. Exercise of religion protected**

21           A government may not burden a person's exercise of religion, even if the burden  
22 results from a facially neutral law or rule or a law or rule of general applicability, unless  
23 the government demonstrates that application of the burden to the person is in furtherance  
24 of a compelling governmental interest and is the least restrictive means of furthering the  
25 compelling governmental interest.

26           **§2704. Action in court**

27           **1. Action in court.** A person whose exercise of religion is being, has been or is  
28 likely to be burdened in violation of this chapter may assert that violation as a claim or  
29 defense in a judicial proceeding and obtain appropriate relief under subsection 5.

30           **2. Notice.** Except as provided in subsection 3, at least 30 days prior to bringing an  
31 action under this section, a person must give written notice to the government burdening  
32 the person by certified mail, return receipt requested, informing the government of the  
33 following:

34           A. That the person's exercise of religion is being, has been or is likely to be burdened  
35 by an exercise of the authority of the government;

36           B. A description of the act or refusal to act by the government that is burdening, has  
37 burdened or is likely to burden the person's exercise of religion; and

1           C. The manner in which the exercise of governmental authority burdens the person's  
2           exercise of religion.

3           **3. Action without notice.** A person who is burdened by a government may bring an  
4           action in court under this section to seek relief under subsection 5 without providing  
5           notice under subsection 2 if:

6           A. The threat of the exercise of governmental authority to burden the person's  
7           exercise of religion is imminent;

8           B. The person was not informed and did not otherwise have knowledge of the  
9           exercise of governmental authority that is the subject of the action in time to  
10           reasonably provide notice under subsection 2;

11           C. Giving notice under subsection 2 would delay an action to the extent that the  
12           action would be dismissed as untimely; or

13           D. The claim underlying the action is asserted as a counterclaim, objection or  
14           defense in a pending judicial proceeding.

15           **4. Remediation.** If a government remedies a burden prior to the expiration of the  
16           30-day notice period under subsection 2, the person for whom the burden was remedied  
17           may not bring an action under this section for that burden or shall dismiss an action on  
18           that burden if the action is pending.

19           **5. Remedies.** A court may grant appropriate relief to a prevailing party bringing a  
20           claim or defense under subsection 1, not including punitive or exemplary damages,  
21           without regard to whether the action is brought in the name of the State or by any other  
22           person. Relief under this section may include but need not be limited to:

23           A. Injunctive relief, including a protective order, a writ of mandamus or a prohibition  
24           or declaratory relief; or

25           B. Actual damages, reasonable attorney's fees and costs.

26           **6. Fraudulent or frivolous claims.** A court that finds that a person has filed a  
27           fraudulent claim or frivolous claim under subsection 1 may assess against the person the  
28           court costs of the government that is party to the action and may enjoin the person from  
29           filing further claims under this section without leave of the court.

30           **§2705. Exceptions; authorizations; application**

31           **1. Exceptions.** A rule adopted by a correctional facility to protect the safety and  
32           security of staff, visitors or incarcerated persons of the correctional facility or to maintain  
33           order or discipline in the correctional facility is exempt from this chapter.

34           **2. Authorizations.** This chapter does not authorize:

35           A. A person to cause physical injury to another person;

36           B. A marital or other relationship that would violate the Constitution of Maine; or

37           C. The enforcement of any law, rule or legal code or system established and used or  
38           applied in a jurisdiction outside of the states or territories of the United States.

