

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 1428

S.P. 514

In Senate, April 23, 2013

An Act To Protect Religious Freedom

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.

1 **3. Applicability.** This chapter applies to all state laws, rules and local ordinances
 2 and the implementation of those laws, rules and ordinances, whether statutory or
 3 otherwise and whether enacted or adopted before, on or after the effective date of this
 4 chapter.

5 **§2706. Construction**

6 The protections of this chapter are in addition to the protections granted by federal
 7 law, the United States Constitution and the Constitution of Maine. This chapter does not
 8 affect the grant of benefits or tax exemptions to a religious organization. This chapter
 9 does not affect, interpret or in any way address those portions of the United States
 10 Constitution, Amendment I or the Constitution of Maine that prohibit laws respecting the
 11 establishment of religion. This chapter does not create or preclude a right of a religious
 12 organization to receive funding or other assistance from a government or of a person to
 13 receive government funding for a religious activity.

14 **SUMMARY**

15 This bill creates the Preservation of Religious Freedom Act, which allows a person
 16 whose right to exercise the person's religion is burdened by a government law or exercise
 17 of authority to bring an action in court seeking equitable or monetary damages unless the
 18 government remedies the burden or shows that the law or exercise of authority is the least
 19 restrictive means of furthering a compelling governmental interest.