

ASSEMBLY, No. 6

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 6, 1997

By Assemblymen WEINGARTEN, COLLINS, Carroll, Lance,
Assemblywoman Crecco, Assemblymen Garrett, O'Toole,
Kramer, Zecker, Talarico, DiGaetano, Gregg and
Assemblywoman Farragher

1 AN ACT concerning the free exercise of religion and supplementing
2 Title 10 of the New Jersey Statutes.

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4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. This act shall be known and may be cited as the "New Jersey
8 Religious Freedom Restoration Act."

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10 2. a. The Legislature finds and declares that:

11 (1) The Constitution of the United States, recognizing the free
12 exercise of religion as an unalienable right, secured its protection in
13 the First Amendment to the Constitution;

14 (2) The Constitution of the State of New Jersey also recognizes the
15 right of religious freedom;

16 (3) Laws which are facially neutral towards religion may
17 nonetheless burden religious exercise;

18 (4) Government should not substantially burden religious exercise
19 without compelling justification;

20 (5) The compelling interest test is a workable test for striking
21 sensible balances between religious liberty and competing
22 governmental interests.

23 b. It is the intent of the Legislature:

24 (1) To guarantee that a test of compelling governmental interest
25 will be imposed on all state laws and local ordinances in all cases in
26 which free exercise of religion is substantially burdened; and

27 (2) To provide a claim or defense to persons whose religious
28 exercise is substantially burdened by government.

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30 3. Definitions. As used in this act:

31 a. "Governmental entity" includes the State, and any county,
32 municipality, district, public authority, public agency, and any other
33 political subdivision or public body in the State as well as any official
34 or other person acting under color of law;

1 b. "Demonstrates" means meets the burdens of going forward with
2 the evidence and of persuasion; and

3 c. "Exercise of religion" means an act or refusal to act that is
4 substantially motivated by a sincerely held religious belief, whether or
5 not the burdened religious exercise is compulsory or central to the
6 larger system of religious belief.

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8 4. a. No governmental entity shall substantially burden a person's
9 exercise of religion even if the burden results from a rule or law of
10 general applicability, except as provided in subsection b. of this
11 section.

12 b. A governmental entity may substantially burden a person's
13 exercise of religion if it demonstrates that application of the burden to
14 the person:

15 (1) Is in furtherance of a compelling governmental interest; and

16 (2) Is the least restrictive means of furthering that compelling
17 governmental interest.

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19 5. A person whose religious exercise has been burdened in
20 violation of section 4 of this act may assert that violation as a claim or
21 defense in a judicial proceeding and obtain appropriate relief against
22 the governmental entity. A party who prevails in any action to enforce
23 the provisions of this act against a governmental entity shall recover
24 attorney's fee and costs.

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26 6. a. This act shall apply to all State laws and local ordinances and
27 the implementation of such laws and ordinances, whether statutory or
28 otherwise, and whether adopted before or after the effective date of
29 this act.

30 b. State law adopted after the effective date of this act shall be
31 subject to the provisions of this act unless such law explicitly excludes
32 such application by reference to this act.

33 c. Nothing in this act shall be construed to authorize a
34 governmental entity to burden any religious belief.

35 d. Nothing in this act shall be construed as authorizing any State,
36 county or local correctional facility to provide for an incarcerated
37 person's exercise of religion in a manner in which there is a substantial
38 likelihood that it will be disruptive to the safety of other persons or the
39 operation of the facility.

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41 7. This act shall take effect immediately.

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STATEMENT

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46 This bill creates the " New Jersey Religious Freedom Restoration

1 Act." It is the purpose of this bill to require that a test of compelling
2 governmental interest be imposed on all State laws and local
3 ordinances in all cases in which free exercise of religion is substantially
4 burdened and to provide a claim or defense to persons whose religious
5 exercise is substantially burdened by government. The compelling
6 interest test is a standard set forth in a number of U.S. Supreme Court
7 decisions such as Wisconsin v. Yoder, 406 U.S. 205 (1972), and
8 Sherbert v. Verner, 374 U.S. 398 (1963).

9 The bill further provides that a person whose religious exercise has
10 been burdened in violation of the act may assert that violation as a
11 claim or defense in a judicial proceeding and obtain appropriate relief
12 against a government. Under the bill, a party which prevails against
13 a governmental entity shall recover attorney's fee and costs. The bill
14 is applicable to all State laws and local ordinances whether enacted
15 before or after the effective date of this act.

16 This bill is based upon the federal Religious Freedom Restoration
17 Act of 1993 (RFRA). The United States Supreme Court recently ruled
18 that the enactment of RFRA exceeds Congress' enforcement power
19 under the Fourteenth Amendment, and was therefore unconstitutional.

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Creates the "New Jersey Religious Freedom Restoration Act."