

SENATE, No. 2295

STATE OF NEW JERSEY

INTRODUCED DECEMBER 1, 1997

By Senators SINGER and KYRILLOS

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 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; and, Art. I, par. 3 of the
14 Constitution of the State of New Jersey also recognizes the right of
15 religious freedom and affirms "the inestimable privilege of worshipping
16 Almighty God" in accord with the dictates of one's conscience and
17 provides that "no person shall be deprived" of that right;

18 (2) Actions of any governmental entity which are facially neutral
19 towards religion may nonetheless burden religious exercise; and

20 (3) Government should not substantially burden religious exercise
21 without compelling justification.

22 b. It is the intent of the Legislature:

23 (1) To guarantee that a test of compelling governmental interest
24 will be imposed on any action of any "governmental entity," as defined
25 in section 3 of this act in all cases in which free exercise of religion is
26 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;

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

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

5 d. "Actions of any governmental entity" means any governmental
6 directive including, but not limited to: laws, statutes, regulations,
7 ordinances or rulings adopted or issued by any governmental entity.

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

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

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

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

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

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27 6. a. This act shall apply to all actions of any governmental entity
28 and the implementation of same, whether adopted or issued before or
29 after the effective date of 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
36 correctional facility of any governmental entity to provide for an
37 incarcerated person's exercise of religion in a manner in which there is
38 a reasonable likelihood that it will be disruptive to the safety of other
39 persons or the operation of the facility.

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41 7. This act shall take effect immediately.

STATEMENT

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3 This bill creates the "New Jersey Religious Freedom Restoration
4 Act." It is the purpose of this bill to require that a test of compelling
5 governmental interest be imposed on all governmental actions,
6 including laws, in all cases in which free exercise of religion is
7 substantially burdened and to provide a claim or defense to persons
8 whose religious exercise is substantially burdened by government. The
9 compelling interest test is a standard set forth in a number of U.S.
10 Supreme Court decisions such as Wisconsin v. Yoder, 406 U.S. 205
11 (1972), and Sherbert v. Verner, 374 U.S. 398 (1963).

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

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

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27 Creates the "New Jersey Religious Freedom Act."