

Regular Session, 2010

SENATE BILL NO. 606

BY SENATOR MARTINY

RELIGIOUS FREEDOMS/LIBERTIES. Provides relative to religious freedom. (8/15/10)

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AN ACT

To enact Part XIX of Chapter 32 of Title 13 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 13:5230 through 5244, relative to religious freedoms; to create a cause of action for the preservation of religious freedom; to provide for definitions; to provide for applicability; to provide for remedies; to require notice; to provide for remediation; to provide for limitations and procedures; to waive government immunity; to provide for fraudulent or frivolous claims; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Part XIX of Chapter 32 of Title 13 of the Louisiana Revised Statutes of 1950, comprised of R.S. 13:5230 through 13:5243, is hereby enacted to read as follows:

PART XIX. PRESERVATION OF RELIGIOUS FREEDOM ACT

§5230. Short title

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

§5231. Legislative Findings

The legislature finds and declares that:

1 A. Free exercise of religion is a fundamental right of the highest order
2 in this state.

3 B. In 1974, this legislature and the people of Louisiana chose to adopt
4 the exact language found in the First Amendment of the United States
5 Constitution regarding religious free exercise as Article 1, Section 8 of the
6 Louisiana Constitution.

7 C. At the time of adoption of that constitutional amendment, the United
8 States Supreme Court interpreted that provision to provide equal protection
9 from action of the government that explicitly burdened religious exercise and
10 those that indirectly burdened religious exercise through their effect. In both
11 instances, the government had to show that it had a compelling interest in
12 taking a particular action and that it was taking the action in a way that was
13 least restrictive to person's right to freely exercise their religious beliefs. This
14 rule was set forth in the case of *Sherbert v. Verner*, 374 U.S. 398 (1963), among
15 other cases.

16 D. It was the intent of the legislature and the people of Louisiana to
17 provide that level of protection to its citizens.

18 E. In 1990, the United States Supreme Court, in *Employment Division*
19 *v. Smith*, 494 U.S. 872 (1990), reduced the protection available to persons in the
20 exercise of their religious beliefs where a law was facially neutral or generally
21 applicable. In such case, the government need only give a rational basis for the
22 action and need not supply the least restrictive means to achieve their goal.

23 F. The courts of Louisiana have not adopted the standard set forth in
24 *Employment Division v. Smith*. It was and continues to be the intent of this state
25 that the protections afforded by the *Sherbert* case apply in Louisiana.

26 §5232. Free Exercise of Religion Protected

27 Government may not substantially burden a person's exercise of religion,
28 even if the burden results from a facially neutral rule or a rule of general
29 applicability, unless it demonstrates that application of the burden to the person

1 **is:**

2 **A. Essential to further a compelling governmental interest, and**

3 **B. The least restrictive means of furthering that compelling**
4 **governmental interest.**

5 **§5233. Definitions**

6 **In this Part, unless the context otherwise requires;**

7 **A. "Substantially burden" means that the government, directly or**
8 **indirectly, does any of the following:**

9 **(1) Significantly constrains or inhibits conduct or expression mandated**
10 **by a person's sincerely held religious belief.**

11 **(2) Significantly curtails a person's ability to express adherence to the**
12 **person's religious faith.**

13 **(3) Denies a person a reasonable opportunity to engage in activities**
14 **which are fundamental to the persons religion.**

15 **(4) Compels conduct or expression which violates a specific tenet of a**
16 **person's religious faith.**

17 **B. "Exercise of religion" means the ability to act or refuse to act in a**
18 **manner substantially motivated by a sincerely held religious belief, whether or**
19 **not the exercise is compulsory or a central part or central requirement of the**
20 **person's religious belief.**

21 **C. "Religion" means the practice or observance of religion under Article**
22 **1 Section 8 of the Louisiana Constitution and the First Amendment of the**
23 **United States Constitution.**

24 **D. "Person" includes an individual or a church, association of churches**
25 **or other religious order, body or institution which qualifies for exemption from**
26 **taxation under Section 501(3) or (d) of the Internal Revenue Code of 1986**
27 **(Public law 99-514, 26 U.S.C. Section 501).**

28 **E. "Government" or "governmental agency" includes any of the**
29 **following:**

1 (1) Any board, commission, department, agency, special district,
2 authority, or other entity of the state.

3 (2) Any political subdivision of this state including any parish,
4 municipality, special district, school board, sheriff, public board, institution,
5 department, commission, district, corporation, agency, authority, or any agency
6 or subdivision of any of these.

7 (3) Any other public or governmental body of any kind which is not a
8 state agency

9 (4) Any official or other person acting under color of law.

10 F. "Demonstrates" means meets the burdens of going forward with
11 evidence and persuasion under the standard of clear and convincing evidence.

12 §5234. Exceptions

13 A. Nothing in this Part shall be construed to allow any person to cause
14 physical injury to another person.

15 B. A compelling interest may include legitimate penological interests
16 needed to protect the safety and security of incarcerated persons and
17 correctional facilities, but shall not outweigh reasonable requests by
18 incarcerated individuals for the opportunity to pray, reasonable access to
19 clergy, use of religious materials that are not violent or profane, and reasonable
20 dietary requests.

21 C. Nothing in this Part shall be construed to authorize same sex
22 marriages, unions, or the equivalent thereof.

23 §5235. Applicability

24 This Part applies to all state laws and local ordinances and the
25 implementation of those laws and ordinances, whether statutory or otherwise
26 and whether enacted or adopted before, on or after the effective date of this
27 Chapter. Nothing in this Act shall create or preclude a right of any religious
28 organization to receive funding or other assistance from a government, or of
29 any person to receive government funding for a religious activity.

1 **§5236. Remedies**

2 A person whose religious exercise is being, has been, or is likely to be
3 burdened in violation of this Part may assert that violation as a claim or defense
4 in a judicial proceeding and obtain appropriate relief, without regard to
5 whether the proceeding is brought in the name of the state or by any other
6 person, including:

7 (1) Injunctive or declaratory relief against a government agency or
8 person acting under color of law that violates or proposes to violate these
9 provisions.

10 (2) The actual damages, reasonable attorney fees and costs.

11 **§5237. Notice**

12 A. A person may not bring an action in court to assert a claim under this
13 Part unless, at least thirty days prior to bringing the action, the person gives
14 written notice to the person burdening their free exercise, and any
15 governmental agency authorizing said act, by certified mail, return receipt
16 requested, informing the person and the agency of all of the following:

17 (1) The person's free exercise of religion is being, has been, or is about
18 to be substantially burdened by an exercise of the agency's governmental
19 authority.

20 (2) A description of the act or refusal to act which is burdening, has
21 burdened or is about to burden the person's free exercise of religion.

22 (3) The manner in which the exercise of the governmental authority
23 burdens the person's free exercise of religion.

24 B. Provided however, a person may bring an action in court without
25 providing the notice required by Subsection (A) of this Section if any of the
26 following occur:

27 (1) The exercise of governmental authority which threatens to
28 substantially burden the person's free exercise of religion is imminent.

29 (2) The person was not informed and did not otherwise have knowledge

1 of the exercise of the governmental authority in time to reasonably provide
2 notice.

3 (3) The provision of the notice would delay an action to the extent that
4 the action would be dismissed as untimely.

5 (4) The claim or defense is asserted as a counterclaim in a pending
6 proceeding.

7 §5238. Remediation

8 Prior to the expiration of the thirty-day period referred to in R.S.
9 13:5238, an agency which receives notice in accordance with R.S. 13:5238 may
10 remedy the substantial burden on the person's free exercise of religion. A
11 person with respect to whom a substantial burden on the person's free exercise
12 of religion has been cured may not bring an action under this Section or must
13 dismiss such action if it is already pending.

14 §5239. Limitations and Procedures

15 A. Except as stated in Subsection (B) of this Section, the provisions of
16 the Louisiana Governmental Claims Act, R.S. 13:5101 through 13:5108, shall
17 apply to an action under this Act.

18 B. A person must bring an action to assert a claim for damages under
19 this Part not later than one year after the date the person knew or should have
20 known of the substantial burden on the person's free exercise of religion.
21 Mailing notice under R.S. 13:5238 shall toll the one-year period until the
22 seventy fifth day after the date on which the notice is mailed.

23 §5240. Immunity Waived

24 Immunity from liability of the government agency and its employees is
25 waived for an action brought under this Part.

26 §5241. Fraudulent or Frivolous Claims

27 A. Any person found by a court of competent jurisdiction to have
28 abused the protection of this Part by filing a frivolous or fraudulent claim may
29 be assessed the court costs of the governmental entity and may be enjoined from

1 filing further claims under this Part without leave of the court.

2 B. A "fraudulent claim" means a claim that is dishonest in fact or that
3 is made principally for a patently improper purpose, such as to harass the
4 opposing party.

5 C. A "frivolous claim" means a claim which lacks merit under existing
6 law and which cannot be supported by a good faith argument for the extension,
7 modification, or reversal of existing law or the establishment of new law.

8 **§5242. Construction of Part**

9 A. The protections of this Part are in addition to the protections granted
10 by federal law and the state and federal constitutions.

11 B. This Part shall not affect the grant of benefits or tax exemptions to
12 religious organizations.

13 C. This Part shall not affect, interpret, or in any way address that
14 portion of the First Amendment to the Constitution of the United States and of
15 Article 1, Section 8 or the Louisiana Constitution that prohibits laws respecting
16 the establishment of religion.

17 **§5243. Severability**

18 If any provision of this Part or its application to any person or
19 circumstance is held invalid, the invalidity does not affect other provisions or
20 applications of this Part that can be given effect without the invalid provision
21 or application and to this end the provisions of the Part are severable.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Heyward Jeffers.

DIGEST

Proposed law creates the Preservation of Religious Freedom Act.

Proposed law provides that government may not substantially burden a person's exercise of religion, even if the burden results from a facially neutral rule or a rule of general applicability, unless it demonstrates that application of the burden to the person is essential to further a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.

Proposed law provides the following definitions:

- (1) "Substantially burden" means that the government, directly or indirectly, does any of the following:
 - (a) Significantly constrains or inhibits conduct or expression mandated by a person's sincerely held religious belief.
 - (b) Significantly curtails a person's ability to express adherence to the person's religious faith.
 - (c) Denies a person a reasonable opportunity to engage in activities which are fundamental to the persons religion.
 - (d) Compels conduct or expression which violates a specific tenet of a person's religious faith.
- (2) "Exercise of religion" means the ability to act or refuse to act in a manner substantially motivated by a sincerely held religious belief, whether or not the exercise is compulsory or a central part or central requirement of the person's religious belief.
- (3) "Religion" means the practice or observance of religion under the Louisiana Constitution and the First Amendment of the United States Constitution.
- (4) "Person" includes an individual or a church, association of churches or other religious order, body or institution which qualifies for exemption from taxation under the Internal Revenue Code.
- (5) "Government" or "governmental agency" includes any of the following:
 - (a) Any board, commission, department, agency, special district, authority, or other entity of the state.
 - (b) Any political subdivision of this state including any parish, municipality, special district, school board, sheriff, public board, institution, department, commission, district, corporation, agency, authority, or any agency or subdivision of any of these.
 - (c) Any other public or governmental body of any kind which is not a state agency.
 - (d) Any official or other person acting under color of law.
- (6) "Demonstrates" means meets the burdens of going forward with evidence and persuasion under the standard of clear and convincing evidence.

Proposed law provides that nothing in proposed law shall be construed to allow any person to cause physical injury to another person.

Proposed law provides that a compelling interest may include legitimate penological interests needed to protect the safety and security of incarcerated persons and correctional facilities, but that such shall not outweigh reasonable requests by incarcerated individuals for the opportunity to pray, reasonable access to clergy, use of religious materials that are not violent or profane, and reasonable dietary requests.

Proposed law provides that nothing in proposed law shall be construed to authorize same sex marriages, unions, or the equivalent thereof.

Proposed law provides that it shall be applicable to all state laws and local ordinances and the implementation of those laws and ordinances, whether statutory or otherwise and whether enacted or adopted before, on or after the effective date of proposed law. Provides

that nothing in proposed law shall create or preclude a right of any religious organization to receive funding or other assistance from a government, or of any person to receive government funding for a religious activity.

Proposed law provides that a person whose religious exercise is being, has been, or is likely to be burdened in violation of proposed law may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief, without regard to whether the proceeding is brought in the name of the state or by any other person, including:

- (1) Injunctive or declaratory relief against a government agency or person acting under color of law that violates or proposes to violate these provisions.
- (2) The actual damages, reasonable attorney fees and costs.

Proposed law provides that a person may not bring an action in court to assert a claim unless, at least 30 days prior to bringing the action, the person gives written notice to the person burdening their free exercise, and any governmental agency authorizing such, by certified mail, return receipt requested, informing the person and the agency of all of the following:

- (1) The person's free exercise of religion is being, has been, or is about to be substantially burdened by an exercise of the agency's governmental authority.
- (2) A description of the act or refusal to act which is burdening, has burdened or is about to burden the person's free exercise of religion.
- (3) The manner in which the exercise of the governmental authority burdens the person's free exercise of religion.

Proposed law provides a exception to the 30-day notice if any of the following occur:

- (1) The exercise of governmental authority which threatens to substantially burden the person's free exercise of religion is imminent.
- (2) The person was not informed and did not otherwise have knowledge of the exercise of the governmental authority in time to reasonably provide notice.
- (3) The provision of the notice would delay an action to the extent that the action would be dismissed as untimely.
- (4) The claim or defense is asserted as a counterclaim in a pending proceeding.

Proposed law provides that prior to the expiration of the 30-day period, an agency which receives notice may remedy the substantial burden on the person's free exercise of religion. A person with respect to whom a substantial burden on the person's free exercise of religion has been cured may not bring an action or must dismiss such action if it is already pending.

Proposed law provides that the provisions of the Louisiana Governmental Claims Act shall apply to an action under proposed law.

Proposed law provides that a person must bring an action to assert a claim for damages not later than one year after the date the person knew or should have known of the substantial burden on the person's free exercise of religion. Provides that mailing the 30-day notice shall toll the one-year period until the 75th day after the date on which the notice is mailed.

Proposed law provides that immunity from liability of the government agency and its employees is waived for an action brought under proposed law.

Proposed law provides that any person found by a court of competent jurisdiction to have

abused the protection of proposed law by filing a frivolous or fraudulent claim may be assessed the court costs of the governmental entity and may be enjoined from filing further claims without leave of the court.

Proposed law provides that a "fraudulent claim" means a claim that is dishonest in fact or that is made principally for a patently improper purpose, such as to harass the opposing party.

Proposed law provides that a "frivolous claim" means a claim which lacks merit under existing law and which cannot be supported by a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law.

Proposed law provides that the protections of proposed law are in addition to the protections granted by federal law and the state and federal constitutions.

Proposed law provides that it shall not affect the grant of benefits or tax exemptions to religious organizations.

Proposed law provides that it shall not affect, interpret, or in any way address that portion of the First Amendment to the Constitution of the United States and of Article 1, Section 8 or the Louisiana Constitution that prohibits laws respecting the establishment of religion.

Proposed law provides that the provisions of proposed law are severable.

Effective August 15, 2010.

(Adds R.S. 13:5230-5244)