

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 5242, 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 certain limitations and procedures; to provide relative to 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 5242, 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:**

**A. Free exercise of religion is a fundamental right of the highest order**

1 in this state.

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

6 C. At the time of adoption of Article 1, Section 8, the United States  
7 Supreme Court interpreted the First Amendment to provide the same level of  
8 protection for an action of the government that explicitly burdened religious  
9 exercise as for an action that indirectly burdened religious exercise through its  
10 effect. In both instances, the government had to show that it had a compelling  
11 interest in taking a particular action and that it was taking the action in a way  
12 that was least restrictive of a person's right to freely exercise their religious  
13 beliefs. This rule was set forth in the case of *Sherbert v. Verner*, 374 U.S. 398  
14 (1963), among other cases.

15 D. It was the intent of the legislature and the people of Louisiana in 1974  
16 to provide that level of protection to its citizens.

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

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

25 §5232. Free exercise of religion protected

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

29 is:

1           A. Essential to further a compelling governmental interest, and

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

4 §5233. Definitions

5           In this Part, unless the context otherwise requires;

6           A. "Burden" means that the government, directly or indirectly, does any  
7 of the following:

8           (1) Constrains or inhibits conduct or expression mandated by a person's  
9 sincerely held religious tenet or belief.

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

12          (3) Denies a person a reasonable opportunity to engage in activities  
13 which are fundamental to the person's religion.

14          (4) Compels conduct or expression which violates a tenet or belief of a  
15 person's religious faith.

16          B. "Exercise of religion" means the practice or observance of religion  
17 under Article 1, Section 8, of the Louisiana Constitution and the First  
18 Amendment of the United States Constitution and includes the ability to act or  
19 refuse to act in a manner substantially motivated by a sincerely held religious  
20 belief, whether or not the exercise is compulsory or a central part or central  
21 requirement of the person's religious belief.

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

26          D. "Government" or "governmental agency" includes any of the  
27 following:

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

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

5           (3) Any other public or governmental body of any kind which is not a  
6           state agency.

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

8           E. "Demonstrates" means meets the burdens of going forward with  
9           evidence and persuasion.

10          §5234. Exceptions

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

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

19           C. Nothing in this Part shall be construed to authorize any relationship,  
20           marital or otherwise, that would violate Article XII, Section 15, of the Louisiana  
21           Constitution.

22           D. Nothing in this Part shall be construed to authorize the enforcement  
23           of any law, rule, or legal code or system established and used or applied in a  
24           jurisdiction outside of the states or territories of the United States.

25          §5235. Applicability

26           A. This Part applies to all state laws and local ordinances and the  
27           implementation of those laws and ordinances, whether statutory or otherwise  
28           and whether enacted or adopted before, on or after the effective date of this  
29           Part.

1            **B. Nothing in this Part shall create or preclude a right of any religious**  
2            **organization to receive funding or other assistance from a government, or of**  
3            **any person to receive government funding for a religious activity.**

4            **§5236. Remedies**

5            **A person whose religious exercise is being, has been, or is likely to be**  
6            **burdened in violation of this Part may assert that violation as a claim or defense**  
7            **in a judicial proceeding and obtain appropriate relief, without regard to**  
8            **whether the proceeding is brought in the name of the state or by any other**  
9            **person, including but not limited to:**

10           **(1) Injunctive relief, protective order, writ of mandamus or prohibition,**  
11           **or declaratory relief to prevent any violation of these provisions.**

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

13           **§5237. Notice**

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

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

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

24           **(3) The manner in which the exercise of the governmental authority**  
25           **burdens the person's free exercise of religion.**

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

29           **(1) The exercise of governmental authority which threatens to**

1 substantially burden the person's free exercise of religion is imminent.

2 (2) The person was not informed and did not otherwise have knowledge  
3 of the exercise of the governmental authority in time to reasonably provide  
4 notice.

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

7 (4) The claim is asserted as a counterclaim, objection, or defense in a  
8 pending proceeding.

9 §5238. Remediation

10 Prior to the expiration of the thirty-day period referred to in R.S.  
11 13:5237, an agency which receives notice in accordance with R.S. 13:5237 may  
12 remedy the substantial burden on the person's free exercise of religion. A  
13 person with respect to whom a substantial burden on the person's free exercise  
14 of religion has been cured may not bring an action under this Section or must  
15 dismiss such action if it is already pending.

16 §5239. Limitations and procedures

17 A. Except as stated in Subsection (B) of this Section, and except as to  
18 objections, protective orders or writs of mandamus or prohibition, the  
19 provisions of the Louisiana Governmental Claims Act, R.S. 13:5101 through  
20 5108, the Corrections Administrative Remedy Procedure, R.S. 15:1171 through  
21 1179, and the Prison Litigation Reform Act, R.S. 15:1181 through 1191, as  
22 applicable, shall apply to an action under this Act.

23 B. A person must bring an action to assert a claim for damages under  
24 this Part not later than one year after the date the person knew or should have  
25 known of the substantial burden on the person's free exercise of religion.  
26 Mailing notice under R.S. 13:5237 shall toll the one-year period until the  
27 seventy-fifth day after the date on which the notice is mailed.

28 §5240. Fraudulent or frivolous claims

29 A. Any person found by a court of competent jurisdiction to have

1 abused the protection of this Part by filing a frivolous or fraudulent claim may  
2 be assessed the court costs of the governmental entity and may be enjoined from  
3 filing further claims under this Part without leave of the court.

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

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

10 §5241. Construction of Part

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

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

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

19 §5242. Severability

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

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The original instrument was prepared by Heyward Jeffers. The following digest, which does not constitute a part of the legislative instrument, was prepared by Jerry G. Jones.

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DIGEST

Martiny (SB 606)

Proposed law creates the Preservation of Religious Freedom Act.

Proposed law provides findings, including the intent of the legislature and people of Louisiana in 1974 when adopting Article I, Section 8, of the Louisiana Constitution.

[Note: Art. I, Sec. 8:

"§8. Freedom of Religion

Section 8. No law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof."]

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) "Burden" means that the government, directly or indirectly, does any of the following:
  - (a) Constrains or inhibits conduct or expression mandated by a person's sincerely held religious tenet or 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 person's religion.
  - (d) Compels conduct or expression which violates a tenet or belief of a person's religious faith.
- (2) "Exercise of religion" means the practice or observance of religion under Art. I, Sec. 8, of the Louisiana Constitution and the First Amendment of the U.S. Constitution and includes 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) "A person" includes an individual and also includes a church, association of churches or other religious order, body or institution which qualifies for exemption from taxation under the Internal Revenue Code.
- (4) "Government" or "governmental agency" includes any of the following:
  - (a) Any board, commission, court, 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, court, 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.
- (5) "Demonstrates" means meets the burdens of going forward with evidence and persuasion.

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 any relationship, marital or otherwise, that would violate Art. XII, Section 15, of the Louisiana Constitution, prohibiting same-sex marriages and providing that marriage in the state of Louisiana shall consist only of the union of one man and one woman.

Proposed law further provides that nothing in the proposed law shall be construed to authorize the enforcement of any law, rule, or legal code or system established and used or applied in a jurisdiction outside of the states or territories of the U.S.

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 but not limited to:

- (1) Injunctive relief, protective order, writ of mandamus or prohibition, or declaratory relief against a government agency or person acting under color of law to prevent a violation of the proposed law.
- (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 an 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, objection, or defense 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, subject to certain exceptions, the provisions of the Louisiana Governmental Claims Act, Corrections Administrative Remedy Procedure, and Prison Litigation Reform 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 75<sup>th</sup> day after the date on which the notice is mailed.

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 of 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. 13:5230-5242)

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill.

1. Deleted language waiving governmental immunity for an action under proposed law.
2. In definition of "burden", changed "significantly constrains" to "constrains"; "religious belief" to "religious tenet or belief"; and "specific tenet" to "tenet or belief";

3. Added "court" under definition of government.
4. In definition of "demonstrates", deleted standard of clear and convincing evidence.
5. Added that nothing in proposed law shall be construed to authorize enforcement of law or legal code established and used outside of U.S.
6. Added writ of mandamus or prohibition as potential relief.
7. Added assertion of claim as potential objection or defense in a pending proceeding.
8. Added application of Corrections Administrative Remedy Procedure and Prison Litigation Reform Act.