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SENATE BILL NO. 272—SENATOR HARDY

MARCH 13, 2015

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JOINT SPONSOR: ASSEMBLYMAN NELSON

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Referred to Committee on Judiciary

SUMMARY—Prohibits state action from substantially burdening a person’s exercise of religion under certain circumstances. (BDR 3-735)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

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AN ACT relating to religious freedom; enacting the Nevada Protection of Religious Freedom Act; prohibiting state action from substantially burdening a person’s exercise of religion under certain circumstances; requiring strict scrutiny to be applied in all cases where state action substantially burdens a person’s exercise of religion; providing a claim or defense in judicial and administrative proceedings to protect a person’s exercise of religion; providing certain exceptions; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 The Free Exercise Clause of the First Amendment to the United States  
2 Constitution protects the free exercise of religion. In its interpretations of the Free  
3 Exercise Clause, the United States Supreme Court has determined that laws of  
4 general applicability which are neutral on their face but which impose incidental  
5 burdens on the free exercise of religion may constitutionally burden a person’s  
6 exercise of religion without being supported by a compelling governmental interest.  
7 (*Employment Div. v. Smith*, 494 U.S. 872, 878-82 (1990); *Burwell v. Hobby Lobby*  
8 *Stores*, 134 S. Ct. 2751, 2760-61 (2014))  
9 To provide broader protections to a person’s exercise of religion than are  
10 available under the Supreme Court’s interpretations of the Free Exercise Clause,  
11 Congress enacted federal laws creating statutory rights that extend broader  
12 protections to a person’s exercise of religion under the Religious Freedom  
13 Restoration Act of 1993 and the Religious Land Use and Institutionalized Persons



14 Act of 2000. (42 U.S.C. §§ 2000bb et seq. and §§ 2000cc et seq.; *Holt v. Hobbs*,  
15 135 S. Ct. 853, 859-60 (2015)) However, the Supreme Court has determined that  
16 the Religious Freedom Restoration Act cannot be applied constitutionally to state  
17 and local governments because the federal law exceeds Congress's enforcement  
18 power under the Fourteenth Amendment to the United States Constitution. (*City of*  
19 *Boerne v. Flores*, 521 U.S. 507, 532-36 (1997))

20 By contrast, the Supreme Court and lower federal courts have determined that  
21 the more limited provisions of the Religious Land Use and Institutionalized Persons  
22 Act may be applied constitutionally to state and local governments in the two areas  
23 of governmental regulation targeted by the federal law: (1) land-use regulation; and  
24 (2) restrictions on the exercise of religion by institutionalized persons. (*Cutter v.*  
25 *Wilkinson*, 544 U.S. 709, 713-25 (2005); *Sossamon v. Texas*, 131 S. Ct. 1651, 1656  
26 (2011); *Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 353-55 (2d  
27 Cir. 2007)) In those two areas, state and local governments may not substantially  
28 burden a person's exercise of religion, even if the burden results from a law of  
29 general applicability, unless the government demonstrates that imposition of the  
30 burden on that person is: (1) in furtherance of a compelling governmental interest;  
31 and (2) the least restrictive means of furthering that compelling governmental  
32 interest. (42 U.S.C. §§ 2000cc et seq.)

33 Like the United States Constitution, the Nevada Constitution contains a Free  
34 Exercise Clause that protects the free exercise of religion. (Nev. Const. Art. 1, § 4)  
35 The Nevada Supreme Court has not interpreted Nevada's Free Exercise Clause to  
36 provide Nevada's citizens with any broader protections than are available under the  
37 United States Supreme Court's interpretations of the federal Free Exercise Clause.  
38 (*Blandino v. State*, 112 Nev. 352, 355 (1996); *Flynn v. Flynn*, 120 Nev. 436, 444  
39 (2004)) To provide broader protections to Nevada's citizens, this bill enacts the  
40 Nevada Protection of Religious Freedom Act which grants statutory rights that  
41 extend broader protections to a person's exercise of religion than are available  
42 under court interpretations of the federal and state Free Exercise Clauses.

43 **Section 15** of this bill provides that a person's exercise of religion shall not be  
44 substantially burdened by state action, whether or not the burden is the result of a  
45 rule of general applicability, unless the party seeking to apply the burden  
46 demonstrates that application of the burden to the person's exercise of religion in  
47 that particular instance is: (1) essential to further a compelling governmental  
48 interest; and (2) the least restrictive means of furthering that compelling  
49 governmental interest.

50 **Section 16** of this bill allows a person whose exercise of religion is  
51 substantially burdened by state action to bring or assert a claim or defense in any  
52 judicial or administrative proceeding to protect the person's exercise of religion  
53 from the burden and to seek redress for any harm or injuries to the person, whether  
54 or not a governmental entity is a party to the proceeding. Because some state laws  
55 protecting religious freedom are applicable only when a governmental entity is a  
56 party, those religious freedom laws do not apply to a proceeding between private  
57 parties. (*Elane Photography, LLC v. Willock*, 309 P.3d 53, 76-77 (N.M. 2013)) By  
58 contrast, because this bill does not require a governmental entity to be a party, this  
59 bill applies to a proceeding between private parties in which one of the parties is  
60 seeking to enforce a state or local law, regulation or rule that substantially burdens  
61 another party's exercise of religion.

62 If any party prevails on a claim or defense under this bill, **section 16** permits  
63 the court or agency to award the prevailing party appropriate relief against any  
64 other party, including a governmental entity if it is a party to the proceeding.  
65 **Section 5** of this bill states that appropriate relief may include declaratory and  
66 injunctive relief, compensatory damages and costs and attorney's fees. However,  
67 **sections 5 and 16** also state that an award of appropriate relief is subject to any  
68 specific statutes prescribing requirements, restrictions or limitations on the subject



69 matter jurisdiction of the proceeding or on the award of legal or equitable remedies  
70 or relief in such a proceeding. In addition, **section 14** of this bill states that the  
71 provisions of this bill do not waive or affect the State's immunity from suit  
72 conferred by the Eleventh Amendment to the United States Constitution or any  
73 other immunity recognized by federal or state law for any state or local entity.

74 **Section 17** of this bill provides that if the court or agency determines that a  
75 party's claim or defense under this bill is frivolous or vexatious, the court or agency  
76 may: (1) declare the party to be a frivolous or vexatious litigant and deny standing  
77 to the party to bring or assert further claims or defenses under this bill; and (2)  
78 impose any other penalties, sanctions or restrictions authorized by law for bringing  
79 or asserting a frivolous or vexatious claim or defense.

80 **Section 18** of this bill provides that no prisoner in any state or local detention  
81 or correctional facility may bring or assert a claim or defense under this bill that  
82 relates to the conditions of confinement of the prisoner. However, this bill does not  
83 affect any right of a prisoner to bring or assert a claim or defense under the federal  
84 Religious Land Use and Institutionalized Persons Act or any other federal law.

85 Finally, **section 19** of this bill states that the provisions of this bill apply  
86 prospectively only to a claim or defense arising on or after July 1, 2015, which is  
87 the effective date of this bill.

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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Title 3 of NRS is hereby amended by adding  
2 thereto a new chapter to consist of the provisions set forth as  
3 sections 2 to 18, inclusive, of this act.

4 **Sec. 2.** *This chapter may be cited as the Nevada Protection of*  
5 *Religious Freedom Act.*

6 **Sec. 3.** *The Legislature hereby finds and declares that:*

7 *1. The purpose of this chapter is to protect a person's exercise*  
8 *of religion by granting statutory rights which extend broader*  
9 *protections to a person's exercise of religion that are intended to*  
10 *be more expansive than the constitutional rights protecting the*  
11 *free exercise of religion under the Free Exercise Clauses of the*  
12 *First Amendment to the United States Constitution and Section 4*  
13 *of Article 1 of the Nevada Constitution.*

14 *2. To effectuate the protective purpose of this chapter, the*  
15 *provisions of this chapter must be interpreted liberally in favor of*  
16 *broader protections to a person's exercise of religion, including,*  
17 *without limitation:*

18 *(a) Ensuring that the standard of strict scrutiny required by*  
19 *this chapter is applied in all cases where state action substantially*  
20 *burdens a person's exercise of religion; and*

21 *(b) Providing a person with a claim or defense pursuant to this*  
22 *chapter in all cases where state action substantially burdens a*  
23 *person's exercise of religion.*

24 **Sec. 4.** *As used in this chapter, unless the context otherwise*  
25 *requires, the words and terms defined in sections 5 to 13,*



1 *inclusive, of this act have the meanings ascribed to them in those*  
2 *sections.*

3 **Sec. 5. 1.** *“Appropriate relief” means any appropriate legal*  
4 *or equitable remedies or relief that a court or agency is authorized*  
5 *to award in a judicial or administrative proceeding subject to any*  
6 *specific statute prescribing requirements, restrictions or*  
7 *limitations on the subject matter jurisdiction of the proceeding or*  
8 *on the award of legal or equitable remedies or relief in such a*  
9 *proceeding.*

10 2. *The term includes, without limitation:*

11 (a) *Declaratory and injunctive relief.*

12 (b) *Compensatory damages.*

13 (c) *Costs and attorney’s fees.*

14 **Sec. 6. 1.** *“Burden” means any state action that directly or*  
15 *indirectly constrains, inhibits, curtails or denies the exercise of*  
16 *religion by a person or compels a person to act contrary to the*  
17 *person’s exercise of religion.*

18 2. *The term includes, without limitation, any state action:*

19 (a) *Withholding benefits from a person.*

20 (b) *Assessing criminal, civil or administrative penalties against*  
21 *a person.*

22 (c) *Excluding a person from participation in governmental*  
23 *programs or having access to governmental facilities.*

24 **Sec. 7.** *“Compelling governmental interest” means a*  
25 *governmental interest of the highest magnitude that cannot*  
26 *otherwise be achieved without substantially burdening a person’s*  
27 *exercise of religion.*

28 **Sec. 8. 1.** *“Exercise of religion” means the sincere practice*  
29 *or observance of religion.*

30 2. *The term includes, without limitation, the ability to act or*  
31 *to refuse to act in a manner substantially motivated by a person’s*  
32 *sincerely held religious belief, whether or not the exercise is*  
33 *compulsory or central to a larger system of religious belief.*

34 **Sec. 9.** *“Party” means any person or any state or local entity.*

35 **Sec. 10. 1.** *“Person” means:*

36 (a) *A natural person; or*

37 (b) *Any form of business or social organization or other*  
38 *nongovernmental legal entity, whether or not the organization or*  
39 *legal entity is created, organized or operated for profit.*

40 2. *The term includes, without limitation, any corporation,*  
41 *unincorporated organization, partnership, association, trust,*  
42 *estate, foundation, church or religious society, denomination or*  
43 *institution.*

44 3. *The term does not include any state or local entity.*

45 **Sec. 11.** *“State action” means:*



1       1. *The execution, administration, implementation or*  
2 *application of any state or local law, regulation or rule or any*  
3 *state or local policy, whether or not the policy is codified in any*  
4 *state or local law, regulation or rule; or*

5       2. *Any other legislative, executive or administrative action*  
6 *taken by a state or local entity.*

7       **Sec. 12.** 1. *“State or local entity” means any state, regional,*  
8 *municipal or local governmental officer, body, agency or other*  
9 *entity exercising any legislative, executive or administrative duties,*  
10 *powers or functions.*

11       2. *The term includes, without limitation:*

12       (a) *The Legislative Department and the Executive Department*  
13 *of the State Government.*

14       (b) *Any county, city, town or other regional, municipal or local*  
15 *government or political subdivision.*

16       (c) *Any governmental officer, body, agency, office,*  
17 *department, division, bureau, unit, board, commission, authority,*  
18 *institution, committee, subcommittee or other similar entity,*  
19 *including, without limitation, any entity created by an interstate,*  
20 *cooperative, joint or interlocal agreement or compact.*

21       **Sec. 13.** *“State or local law, regulation or rule” means:*

22       1. *Any statutory law, code, charter, ordinance, resolution,*  
23 *initiative, referendum or other legislative measure or action made,*  
24 *taken, enacted, adopted or approved by a state or local entity or by*  
25 *the voters in a manner authorized by the Nevada Constitution or*  
26 *statutory law of this State; or*

27       2. *Any regulation, rule, standard, directive, interpretation,*  
28 *guideline, order, decision, opinion, ruling or other executive or*  
29 *administrative measure or action made, taken, enacted, adopted or*  
30 *approved by a state or local entity.*

31       **Sec. 14.** *The provisions of this chapter do not waive, alter,*  
32 *abrogate or affect:*

33       1. *The State of Nevada’s immunity from suit conferred by the*  
34 *Eleventh Amendment to the United States Constitution; or*

35       2. *Any other immunity recognized by federal or state law for*  
36 *any state or local entity.*

37       **Sec. 15.** 1. *A person’s exercise of religion shall not be*  
38 *substantially burdened by state action, whether or not the burden*  
39 *is the result of a rule of general applicability, unless the party who*  
40 *is seeking to apply the burden demonstrates that application of the*  
41 *burden to the person’s exercise of religion in that particular*  
42 *instance is:*

43       (a) *Essential to further a compelling governmental interest;*  
44 *and*



1       **(b) The least restrictive means of furthering that compelling**  
2 **governmental interest.**

3       **2. In any judicial or administrative proceeding, the party who**  
4 **is seeking to apply the burden to a person's exercise of religion**  
5 **bears the burden of production of the evidence and the burden of**  
6 **persuasion to satisfy the standard of strict scrutiny required by**  
7 **subsection 1.**

8       **Sec. 16. 1. Subject to any specific statute prescribing**  
9 **requirements, restrictions or limitations on the subject matter**  
10 **jurisdiction of a judicial or administrative proceeding or on the**  
11 **award of legal or equitable remedies or relief in such a**  
12 **proceeding:**

13       **(a) If a person's exercise of religion is substantially burdened**  
14 **by state action or if the application of such a burden to the**  
15 **person's exercise of religion is reasonably probable and imminent,**  
16 **the person may bring a claim in a court of competent jurisdiction**  
17 **or may assert a claim or defense in a judicial or administrative**  
18 **proceeding to protect the person's exercise of religion from the**  
19 **burden and to seek redress for any harm or injuries to the person,**  
20 **whether or not any state or local entity is a party to the**  
21 **proceeding; and**

22       **(b) If any party to the proceeding prevails on such a claim or**  
23 **defense, the court or agency may award the prevailing party**  
24 **appropriate relief against any other party, including, without**  
25 **limitation, any state or local entity.**

26       **2. If, at the time that a party brings or asserts a claim or**  
27 **defense pursuant to this chapter in a judicial or administrative**  
28 **proceeding, no party to the proceeding is a state or local entity, the**  
29 **party bringing or asserting the claim or defense shall serve a copy**  
30 **of all pleadings and other documents on the Office of the Attorney**  
31 **General in Carson City, and the Attorney General is entitled to be**  
32 **heard or to intervene in the proceeding when, in the opinion of the**  
33 **Attorney General, it is necessary to protect and secure the interest**  
34 **of the State.**

35       **Sec. 17. 1. If a party who brings or asserts a claim or**  
36 **defense pursuant to this chapter in a judicial or administrative**  
37 **proceeding does not prevail on the claim or defense, the court or**  
38 **agency may, upon its own initiative or upon the request of any**  
39 **other party, determine whether the claim or defense was frivolous**  
40 **or vexatious.**

41       **2. If the court or agency determines that the claim or defense**  
42 **was frivolous or vexatious, the court or agency may:**

43       **(a) Declare the party to be a frivolous or vexatious litigant and**  
44 **deny standing to the party to bring or assert further claims or**



1 *defenses pursuant to this chapter in any proceeding within the*  
2 *subject matter jurisdiction of the court or agency; and*

3 *(b) Impose against the party any other penalties, sanctions or*  
4 *restrictions authorized by law for bringing or asserting a frivolous*  
5 *or vexatious claim or defense.*

6 *3. For the purposes of this section, a frivolous or vexatious*  
7 *claim or defense includes, without limitation, any claim or defense*  
8 *that:*

9 *(a) Is without reasonable ground in law or fact to support it;*

10 *(b) Is intended to improperly harass or annoy another party;*

11 *(c) Is intended to improperly delay, hinder or obstruct the*  
12 *proceeding; or*

13 *(d) Is intended to needlessly increase the costs of the*  
14 *proceeding or another party.*

15 **Sec. 18.** *1. The provisions of this chapter do not apply to*  
16 *any state action that relates to the conditions of confinement of a*  
17 *prisoner in any state or local detention or correctional facility, and*  
18 *no prisoner may bring or assert a claim or defense pursuant to the*  
19 *provisions of this chapter that relates to the conditions of*  
20 *confinement of a prisoner.*

21 *2. The provisions of this section must not be interpreted to*  
22 *limit, impair or affect any right of a prisoner to bring or assert a*  
23 *claim or defense as a matter of federal law pursuant to the*  
24 *provisions of the Religious Land Use and Institutionalized Persons*  
25 *Act of 2000, 42 U.S.C. §§ 2000cc et seq., as amended, or any other*  
26 *federal law.*

27 *3. As used in this section, “conditions of confinement”*  
28 *includes, without limitation, the restrictions imposed on a*  
29 *prisoner, the access of a prisoner to the resources of a facility, the*  
30 *privileges of a prisoner, the type of meals provided to a prisoner,*  
31 *the place of confinement of a prisoner or the provision of medical*  
32 *care to a prisoner.*

33 **Sec. 19.** *The provisions of this act apply prospectively only to*  
34 *a claim or defense arising on or after July 1, 2015.*

35 **Sec. 20.** *This act becomes effective on July 1, 2015.*



