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

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 both in furtherance of 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 shall 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, reasonable 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 75th 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.

Senate Floor Amendments to engrossed bill.

1. Requires that a compelling interest include legitimate penological interests needed for protection of incarcerated persons and correctional facilities.
2. Specifies that incarcerated individuals' use of religious materials is reasonable.