

DIGEST

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Martiny

SB No. 606

Proposed law creates the Preservation of Religious Freedom Act.

Present constitution (Art. I, Sec. 8) provides that no law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof.

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

Proposed law provides that government shall 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 for definitions of "burden", "compelling state interest", "demonstrates", "person", and "government or governmental agency".

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 the standards of a compelling governmental interest, as set forth in R.S. 13:5232, shall be satisfied by any penological regulation or rule which is established by a jail or correctional facility to protect the safety and security of incarcerated persons, or staff of, or visitors to the jail or correctional facility, or to maintain order or discipline in the jail or correctional facility.

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 Constitution of Louisiana, 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.

Provides that proposed law 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, not including punitive or exemplary damages, 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 shall 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 his 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 shall 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 shall 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 or of Article 1, Section 8 of the Constitution of Louisiana that prohibits laws respecting the establishment of religion.

(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.

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the reengrossed bill.

1. Added definition specifying that "compelling state interest" includes the interest of the state to protect the best interest of a child and the health, safety, and welfare of a child.
2. Added provision specifying that standards of a compelling governmental interest shall be satisfied by certain penological regulations or rules.
3. Specified that punitive or exemplary damages are not recoverable.
4. Deleted severability provision.
5. Added numerous technical changes.