

SENATE BILL NO. 606

BY SENATORS MARTINY, ALARIO, AMEDEE, APPEL, BROOME, CHEEK, CROWE, DONAHUE, DUPLESSIS, ERDEY, N. GAUTREAUX, GUILLORY, HEBERT, KOSTELKA, LONG, MICHOT, MOUNT, QUINN, RISER, SHAW, SMITH, THOMPSON AND WALSWORTH AND REPRESENTATIVES BALDONE, BARROW, BURFORD, HENRY BURNS, TIM BURNS, CHAMPAGNE, CHANDLER, CROMER, GREENE, GUILLORY, GUINN, HARDY, HARRISON, HAZEL, HENRY, HILL, HINES, HOFFMANN, HONORE, HOWARD, LABRUZZO, LAMBERT, LIGI, LITTLE, LOPINTO, LORUSSO, MONICA, PEARSON, PERRY, PONTI, POPE, PUGH, RICHARD, RICHARDSON, SCHRODER, SIMON, SMILEY, JANE SMITH, TALBOT, THIERRY, WHITE, WILLIAMS, WILLMOTT AND WOOTON

1 AN ACT

2 To enact Part XIX of Chapter 32 of Title 13 of the Louisiana Revised Statutes of 1950, to
3 be comprised of R.S. 13:5230 through 5241, relative to religious freedoms; to create
4 a cause of action for the preservation of religious freedom; to provide for definitions;
5 to provide for applicability; to provide for remedies; to require notice; to provide for
6 remediation; to provide certain limitations and procedures; to provide relative to
7 fraudulent or frivolous claims; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Part XIX of Chapter 32 of Title 13 of the Louisiana Revised Statutes of
10 1950, comprised of R.S. 13:5230 through 5241, is hereby enacted to read as follows:

11 **PART XIX. PRESERVATION OF RELIGIOUS FREEDOM ACT**

12 **§5230. Short title**

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

15 **§5231. Legislative findings**

16 **The legislature finds and declares that:**

17 **A. Free exercise of religion is a fundamental right of the highest order**
18 **in this state.**

19 **B. In 1974, this legislature and the people of Louisiana chose to adopt**
20 **the exact language found in the First Amendment of the Constitution of the**

1 United States of America regarding religious free exercise as Article 1, Section
2 8 of the Constitution of Louisiana.

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

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

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

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

23 §5232. Free exercise of religion protected

24 Government shall not substantially burden a person's exercise of
25 religion, even if the burden results from a facially neutral rule or a rule of
26 general applicability, unless it demonstrates that application of the burden to
27 the person is both:

28 (1) In furtherance of a compelling governmental interest.

29 (2) The least restrictive means of furthering that compelling
30 governmental interest.

1 **§5233. Definitions**

2 **In this Part, unless the context otherwise requires:**

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

7 **(2) "Burden" means that the government, directly or indirectly, does**
8 **any of the following:**

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

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

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

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

17 **(3) "Compelling state interest" includes the interest of the state to**
18 **protect the best interest of a child and the health, safety, and welfare of a child.**

19 **(4) "Demonstrates" means meeting the burdens of going forward with**
20 **evidence and persuasion.**

21 **(5) "Exercise of religion" means the practice or observance of religion**
22 **under Article 1, Section 8, of the Constitution of Louisiana and the First**
23 **Amendment of the Constitution of the United States of America and includes**
24 **the ability to act or refuse to act in a manner substantially motivated by a**
25 **sincerely-held religious belief, whether or not the exercise is compulsory or a**
26 **central part or central requirement of the person's religious belief.**

27 **(6) "Government" or "governmental agency" means any of the**
28 **following:**

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

1 **(b) 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, or authority.**

4 **(c) Any other public or governmental body of any kind which is not a**
5 **state agency.**

6 **(d) Any official or other person acting under color of law.**

7 **§5234. Exceptions**

8 **A. Nothing in this Part shall be construed to allow any person to cause**
9 **physical injury to another person.**

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

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

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

21 **§5235. Applicability**

22 **A. This Part applies to all state laws and local ordinances and the**
23 **implementation of those laws and ordinances, whether statutory or otherwise**
24 **and whether enacted or adopted before, on or after the effective date of this**
25 **Part.**

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

29 **§5236. Remedies**

30 **Subject to the provisions of R.S. 13:5239(C), a person whose religious**

1 exercise is being, has been, or is likely to be burdened in violation of this Part
2 may assert that violation as a claim or defense in a judicial proceeding and
3 obtain appropriate relief, not to include punitive or exemplary damages,
4 without regard to whether the proceeding is brought in the name of the state or
5 by any other person, including but not limited to:

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

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

9 §5237. Notice

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

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

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

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

22 B. Notwithstanding the requirements of Subsection A of this Section, a
23 person may bring an action in court without providing the notice required by
24 Subsection A of this Section if any of the following occur:

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

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

30 (3) The provision of the notice would delay an action to the extent that

1 the action would be dismissed as untimely.

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

4 §5238. Remediation

5 Prior to the expiration of the thirty-day period referred to in R.S.
6 13:5237, an agency which receives notice in accordance with R.S. 13:5237 may
7 remedy the substantial burden on the person's free exercise of religion. A
8 person with respect to whom a substantial burden on the person's free exercise
9 of religion has been cured may not bring an action under this Section or shall
10 dismiss such action if it is already pending.

11 §5239. Limitations and procedures

12 A. Except as stated in Subsection B of this Section, and except as to
13 objections, protective orders or writs of mandamus or prohibition, the
14 provisions of the Louisiana Governmental Claims Act, R.S. 13:5101 through
15 5108, as applicable, shall apply to an action under this Act.

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

21 C. Notwithstanding any other provision of law to the contrary, including
22 R.S. 13:5237 and 5238, the provisions of the Corrections Administrative
23 Remedy Procedure, as provided in R.S. 15:1171 through 1179, and the Prison
24 Litigation Reform Act, as provided in R.S. 15:1181 through 1191, as applicable,
25 shall apply to any action under this Act.

26 §5240. 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
30 filing further claims under this Part without leave of the court.

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

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

7 **§5241. Construction of Part**

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

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

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

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____