

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1421 Session of
2002

INTRODUCED BY JUBELIRER, MELLOW, CORMAN, MUSTO, LEMMOND,
TARTAGLIONE, D. WHITE, MOWERY, GREENLEAF, BOSCOLA, HELFRICK,
DENT, THOMPSON, M. WHITE, TOMLINSON, ROBBINS, LAVALLE, BELL,
KITCHEN, SCARNATI, GERLACH, KASUNIC, WENGER, C. WILLIAMS,
BODACK, CONTI, A. WILLIAMS, WAUGH AND SCHWARTZ,
APRIL 30, 2002

SENATOR GREENLEAF, JUDICIARY, AS AMENDED, OCTOBER 1, 2002

AN ACT

1 Protecting the free exercise of religion; and prescribing the
2 conditions under which government may substantially burden a
3 person's free exercise of religion.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Religious
8 Freedom Protection Act.

9 Section 2. Legislative findings.

10 The General Assembly finds and declares as follows:

11 ~~(1) The Constitution of Pennsylvania recognizes that all~~ <—
12 ~~citizens of this Commonwealth have a natural and infeasible~~
13 ~~right to the free exercise and enjoyment of religion. It is~~
14 ~~in the province of all branches of government to foster and~~
15 ~~protect the free exercise of religion and to avoid violations~~
16 ~~of religious liberties.~~

~~(2) Laws and government actions that are facially~~

(1) LAWS AND GOVERNMENT ACTIONS THAT ARE FACIALLY
neutral toward religion, as well as laws and governmental
actions intended to interfere with religious exercise, may
have the effect of burdening religious exercise.

~~(3) Neither~~ EXERCISE; HOWEVER, NEITHER State nor local
government should substantially burden religious exercise
without compelling justification.

~~(4) The compelling interest test set forth in precedent~~
~~decisions of the United States Supreme Court prior to~~
~~Employment Division, Department of Human Resources of Oregon~~
~~v. Smith, 494 U.S. 872 (1990), is a workable test for~~
~~striking sensible balances between religious liberty and~~
~~compelling government interests.~~

~~(5) The General Assembly intends to guarantee that a~~
~~test of a compelling interest should be imposed on all State~~
~~and local laws, ordinances and governmental actions in all~~
~~cases in which free exercise of religion is substantially~~
~~burdened by governmental action or threatened governmental~~
~~action.~~

~~(6) The General Assembly intends to provide a claim or~~
~~defense to persons whose exercise of religious freedom is or~~
~~will be substantially burdened by State or local government.~~

~~(7)~~ (2) The General Assembly intends that all laws
which it has heretofore enacted or will hereafter enact or
which have been or will be adopted by political subdivisions
and executive agencies acting pursuant to authority asserted
to be conferred by statutes enacted by the General Assembly
shall be construed so as to avoid the imposition of
substantial burdens upon the free exercise of religion

without compelling justification.

Section 3. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Correctional employee." Any public official, employee, agent, contractor or volunteer working for or providing services relating to, a correctional facility or its inmates.

"Demonstrates." Meets the burdens of going forward with the evidence and the burden of persuasion.

"Exercise of religion." The practice or observance of religion under Section 3 of Article I of the Constitution of Pennsylvania.

"Government." The Commonwealth, including its administrative departments, boards and commissions; independent administrative departments, boards and commissions; and any local government, political subdivision, municipality, instrumentality or public official authorized by law in this Commonwealth.

"Person." Includes a corporation, partnership, other association, church, religious institution, estate, trust, foundation or natural person.

"Substantially burdens." A governmental action which:

(1) Significantly constrains or inhibits conduct or expression mandated by a person's sincerely held religious beliefs.

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

(3) Denies a person a reasonable opportunity to engage in those activities that are fundamental to that person's religion.

(4) Compels conduct or expression that violates a mandatory tenet of a person's religious faith.

Section 4. Free exercise of religion protected.

(a) General rule.--Government shall not substantially burden a person's exercise of religion, including any burden that results from a rule of general applicability, except as provided in subsection (b).

(b) Exceptions.--Government may substantially burden a person's exercise of religion only if the government demonstrates that application of the burden to the person:

(1) is in furtherance of a compelling interest of the government; and

(2) is the least restrictive means of furthering that compelling interest.

(c) Claim or defense.--A person whose exercise of religion has been burdened or ~~is about to~~ WILL be burdened in violation of this section may assert that violation as a claim or defense in any judicial or administrative proceeding against the government and may obtain appropriate relief from a court.

Section 5. Applicability.

This act shall apply to any State or local law or ordinance and the implementation of that law or ordinance, whether statutory or otherwise, and whether adopted or effective prior to or after the effective date of this act. Any law enacted by the General Assembly after the effective date of this act shall be subject to this act unless the General Assembly expressly excludes that law from this act by specific reference to this act.

Section 6. Construction.

Nothing in this act shall be construed to authorize any

1 government to prohibit or penalize the holding of any religious
2 belief, or to take any action contrary to the Constitution of
3 Pennsylvania.

4 Section 7. Free exercise of religion by inmates of correctional
5 facilities.

6 With respect to claims or defenses asserted under this act by
7 inmates of State, county or municipal correctional facilities, a
8 government shall not be deemed to have violated the provisions
9 of this act if a rule, policy, action, omission or regulation of
10 such correctional facility or its correctional employees is
11 ~~reasonably~~ SUBSTANTIALLY related to legitimate penological <—
12 interests, including, but not limited to, deterrence of crime,
13 the prudent use of institutional resources, the rehabilitation
14 of prisoners or institutional security.

15 Section 8. Effective date.

16 This act shall take effect immediately.