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Legislative Document

No. 1340

S.P. 485

In Senate, April 14, 2015

An Act To Enact the Preservation of Religious Freedom Act

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator BURNS of Washington.
Cosponsored by Representative CRAFTS of Lisbon and
Senators: CUSHING of Penobscot, DAVIS of Piscataquis, MASON of Androscoggin,
President THIBODEAU of Waldo, Representatives: BEAR of the Houlton Band of Maliseet
Indians, HANINGTON of Lincoln, LONG of Sherman, PICKETT of Dixfield.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 5 MRSA c. 337-D** is enacted to read:

3 **CHAPTER 337-D**

4 **PRESERVATION OF RELIGIOUS FREEDOM ACT**

5 **§4801. Short title**

6 This chapter may be known and cited as "the Preservation of Religious Freedom
7 Act."

8 **§4802. Findings**

9 The Legislature makes the following findings:

10 **1. Federal Constitution.** The framers of the United States Constitution, recognizing
11 free exercise of religion as a fundamental and unalienable right, secured its protection in
12 the First Amendment of the United States Constitution;

13 **2. State Constitution.** The framers of the Constitution of Maine, recognizing free
14 exercise of religion as a fundamental and unalienable right, secured its protection in the
15 Constitution of Maine;

16 **3. Exercise of religion burdened.** Laws neutral toward religion may burden
17 exercise of religion as surely as laws intended to interfere with religious exercise;

18 **4. Compelling government interest.** Government should not burden the free
19 exercise of religion without a compelling governmental interest;

20 **5. Effect of Supreme Court precedent.** Prior to 1990, the United States Supreme
21 Court recognized that laws burdening the free exercise of religion had to be justified by a
22 compelling governmental interest. In Employment Division v. Smith, 494 U.S. 872
23 (1990), the United States Supreme Court virtually eliminated the requirement that the
24 government justify burdens on religious exercise imposed by laws neutral toward
25 religion;

26 **6. Reassertion of compelling interest test.** The compelling interest test set forth in
27 this Act and in federal as well as Maine court rulings prior to Employment Division v.
28 Smith, including Wisconsin v. Yoder, 406 U.S. 205 (1972), and Sherbert v. Verner, 374
29 U.S. 398 (1963), is a workable test for striking sensible balances between religious liberty
30 and competing governmental interests; and

31 **7. Role of legislative bodies to protect free exercise of religion.** The United States
32 Supreme Court's decision in Gonzales v. O Centro Espirita Beneficente Uniao do
33 Vegetal, 546 U.S. 418 (2006), indicates that legislative bodies may enact statutory law for
34 their jurisdictions requiring that laws burdening the free exercise of religion be justified
35 by a compelling governmental interest. Many states have done so, passing laws similar to
36 this Act.

1 **§4803. Purposes**

2 The purposes of this Act are:

3 **1. Application of compelling interest test.** To restore the compelling interest test
4 as set forth in Wisconsin v. Yoder, 406 U.S. 205 (1972), and Sherbert v. Verner, 374 U.S.
5 398 (1963), and to guarantee its application in all cases in which the free exercise of
6 religion is substantially burdened; and

7 **2. Provide claim or defense.** To provide a claim or defense to a person or persons
8 whose exercise of religion is substantially burdened.

9 **§4804. Definitions**

10 As used in this Act, unless the context otherwise indicates, the following terms have
11 the following meanings.

12 **1. Compelling governmental interest.** "Compelling governmental interest" means
13 a governmental interest of the highest magnitude.

14 **2. Exercise of religion.** "Exercise of religion" means the practice or observance of
15 religion. "Exercise of religion" includes, but is not limited to, the ability to act or refuse
16 to act in a manner substantially motivated by a person's sincerely held religious belief,
17 whether or not the exercise of religion is compulsory or central to a larger system of
18 religious belief.

19 **3. Government.** "Government" means the State, a political subdivision of the State
20 and any local government, municipality, instrumentality or public official authorized by
21 law in the State.

22 **4. Substantially burden.** "Substantially burden" means taking an action, including
23 the implementation or application of a law, that directly or indirectly constrains, inhibits,
24 curtails or denies the exercise of religion by a person or compels an action contrary to a
25 person's exercise of religion. "Substantially burden" includes, but is not limited to,
26 withholding benefits from a person, assessing criminal, civil or administrative penalties
27 or excluding a person from government programs or access to government facilities.

28 **§4805. Free exercise of religion protected**

29 **1. Substantial burden prohibited; exceptions.** Government may not substantially
30 burden a person's exercise of religion, even if the burden results from a rule of general
31 applicability, unless applying the burden to that person's exercise of religion in this
32 particular instance:

33 A. Is in furtherance of a compelling governmental interest; and

34 B. Is the least restrictive means of furthering that compelling governmental interest.

35 **2. Claim or defense; relief.** A person whose exercise of religion has been
36 substantially burdened in violation of this Act may assert the violation as a claim or
37 defense in a judicial proceeding. The person asserting such a claim or defense may

1 obtain appropriate relief, including relief against the government. Appropriate relief
2 includes, but is not limited to, injunctive relief, declaratory relief, compensatory damages
3 and costs and attorney's fees.

4 **SUMMARY**

5 This bill enacts the Preservation of Religious Freedom Act. It codifies legislative
6 findings that summarize the enshrinement of the right to the free exercise of religion in
7 the United States Constitution and the Constitution of Maine and case law of the Maine
8 Supreme Judicial Court and the United States Supreme Court interpreting the
9 fundamental and unalienable right to the free exercise of religion, as well as the extent to
10 which a legislative body can legislate in this area.

11 The Preservation of Religious Freedom Act has as its purpose the restoration of the
12 compelling interest test as set forth in Wisconsin v. Yoder, 406 U.S. 205 (1972), and
13 Sherbert v. Verner, 374 U.S. 398 (1963). The Act guarantees the application of the
14 compelling interest test in all cases in which the government substantially burdens the
15 exercise of religion and provides a claim or defense to a person whose exercise of
16 religion is burdened by the government.

17 The Act provides that the government may not directly or indirectly substantially
18 burden a person's exercise of religion unless the application of the burden to the person is
19 in furtherance of a compelling governmental interest and is accomplished through the
20 least restrictive means.

21 The Act allows a person whose exercise of religion has been substantially burdened
22 in violation of the Act to assert the violation as a claim or defense in a court action.

23 The Act's requirement that the government's infringement upon the free exercise of
24 religion be justified by a compelling interest is similar to the requirement placed on the
25 Federal Government through the Religious Freedom Restoration Act of 1993 and that of
26 other states that have passed similar protections.