

ASSEMBLY, No. 3766

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MARCH 16, 2020

Sponsored by:

Assemblyman RONALD S. DANCER

District 12 (Burlington, Middlesex, Monmouth and Ocean)

SYNOPSIS

Establishes the “New Jersey Religious Freedom Restoration Act.”

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning religious freedom and supplementing Title 10
2 of the Revised Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. Short title.

8 This act shall be known and may be cited as the “New Jersey
9 Religious Freedom Restoration Act.”
10

11 2. Definitions.

12 As used in this act:

13 a. “Government entity” means the State, any county,
14 municipality, district, public authority, or public agency, and any
15 other political subdivision or public body in the State.

16 b. “Demonstrates” means to meet the burdens of going forward
17 with the evidence and of persuasion.

18 c. “Exercise of religion” means an act or refusal to act that is
19 substantially motivated by a religious belief, whether or not the
20 religious exercise is compulsory or central to a larger system of
21 religious belief.
22

23 3. Free exercise of religion protected.

24 a. A government entity shall not substantially burden a
25 person’s exercise of religion, even if the burden results from a rule
26 of general applicability, unless it demonstrates that application of
27 the burden to the person:

28 (1) Is in furtherance of a compelling governmental interest; and

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

31 b. A person whose religious exercise has been burdened in
32 violation of this section may assert that violation as a claim or
33 defense in a judicial proceeding and obtain appropriate relief.
34

35 4. Attorney’s fees and costs.

36 The prevailing plaintiff in any action or proceeding to enforce a
37 provision of this act is entitled to reasonable attorney’s fees and
38 costs to be paid by the government entity.
39

40 5. Applicability; construction.

41 a. This act shall apply to all State laws and local ordinances
42 and the implementation of such laws and ordinances, whether
43 statutory or otherwise, and whether adopted before or after the
44 enactment of this act.

45 b. State law adopted after the date of the enactment of this act
46 is subject to this act unless such law explicitly excludes such
47 application by reference to this act.

1 c. Nothing in this act shall be construed to authorize the
2 government to burden any religious belief.

3 d. This act shall not be applicable to the provisions of the
4 “Comprehensive Drug Reform Act of 1987,” N.J.S.2C:35-1 et seq.

5 e. Nothing in this act shall be construed to affect, interpret, or
6 in any way address that portion of Art. I, Sec. 3 of the New Jersey
7 Constitution prohibiting laws respecting the establishment of
8 religion.

9 f. Nothing in this act shall create any rights by an employee
10 against an employer if the employer is not a governmental agency.

11 g. Nothing in this act shall be construed to affect, interpret, or
12 in any way address that portion of Art. I, Sec. 3 of the New Jersey
13 Constitution and the First Amendment to the Constitution of the
14 United States respecting the establishment of religion. This act shall
15 not be construed to permit any practice prohibited by those
16 provisions.

17

18 6. Rights of certain churches or religious organizations or
19 individuals.

20 a. The following individuals or entities may not be required to
21 solemnize any marriage or provide services, accommodations,
22 facilities, goods, or privileges for a purpose related to the
23 solemnization, formation, or celebration of any marriage if such an
24 action would cause the individual or entity to violate a sincerely
25 held religious belief of the individual or entity:

26 (1) A church;

27 (2) A religious organization or a member thereof;

28 (3) A religious corporation or association;

29 (4) A religious fraternal benefit society;

30 (5) A religious school or educational institution;

31 (6) An integrated auxiliary of a church;

32 (7) An individual employed by a church or religious
33 organization while acting in the scope of that employment;

34 (8) A clergy member; or

35 (9) A minister.

36 b. A refusal to solemnize any marriage or provide services,
37 accommodations, facilities, goods, or privileges under subsection a.
38 of this section may not serve as the basis for:

39 (1) A civil cause of action against any entity or individual
40 protected under subsection a. of this section; or

41 (2) A civil cause of action, criminal prosecution, or any other
42 action by this State or a political subdivision to penalize or withhold
43 benefits or privileges, including tax exemptions or governmental
44 contracts, grants, or licenses, from any entity or individual
45 protected under subsection a. of this section.

46

47 7. This act shall take effect on the 90th day following
48 enactment.

STATEMENT

This bill would establish the “New Jersey Religious Freedom Restoration Act.”

The bill provides that a government entity shall not substantially burden a person’s exercise of religion, even if the burden results from a rule of general applicability, unless it demonstrates that application of the burden to the person:

(1) Is in furtherance of a compelling governmental interest; and

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

A person whose religious exercise has been burdened in violation of the bill could assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief. The prevailing plaintiff in an action or proceeding to enforce a provision of the bill would be entitled to reasonable attorney’s fees and costs to be paid by the government entity.

The “compelling interest” test in the bill is a standard set forth in a number of United States Supreme Court decisions, including Wisconsin v. Yoder, 406 U.S. 205 (1972), and Sherbert v. Verner, 374 U.S. 398 (1963).

However, in Employment Division, Department of Human Resources of Oregon v. Smith, 494 U.S. 872 (1990), the Supreme Court held that the states may enforce laws that have an incidental impact on religion. In response to the Smith decision, in 1993 Congress enacted the federal Religious Freedom Restoration Act (RFRA), 42 U.S.C. §2000bb et seq. This statute provides that, in cases where the free exercise of religion is affected, laws of general applicability must be narrowly tailored to meet a compelling government interest. The Supreme Court, in City of Boerne v. Flores, 521 U.S. 507 (1997), held that RFRA was invalid as applied to the states. In response, a number of states enacted their own state Religious Freedom Restoration Acts. To date, 21 states have enacted such statutes. This bill is modeled on the Florida version, Fla. Stat. s.761.01 et seq.