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**STATE OF MAINE**

**SENATE**

**126TH LEGISLATURE**

**SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 514, L.D. 1428, Bill, “An Act To Protect Religious Freedom”

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

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

**CHAPTER 337-D**

**PRESERVATION OF RELIGIOUS FREEDOM**

**§4801. Short title**

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

**§4802. Findings**

The Legislature makes the following findings:

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

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

**3. Exercise of religion burdened.** Laws and other government actions neutral toward religion may burden exercise of religion as surely as laws intended to interfere with religious exercise;

**4. Compelling government interest.** Government action should not burden exercise of religion without a compelling interest;

**COMMITTEE AMENDMENT**

1 **5. Effect of 1990 decision.** Prior to 1990, laws and other government actions  
2 burdening exercise of religion had to be justified by a compelling interest. In  
3 Employment Division v. Smith, 494 U.S. 872 (1990), the United States Supreme Court  
4 significantly curtailed the requirement that laws and other government actions burdening  
5 the exercise of religion be justified by a compelling interest;

6 **6. Reassertion of compelling interest test.** The compelling interest test set forth in  
7 this chapter and in federal court rulings prior to Employment Division v. Smith, including  
8 Wisconsin v. Yoder, 406 U.S. 205 (1972), and Sherbert v. Verner, 374 U.S. 398 (1963),  
9 is a workable test for striking sensible balances between religious liberty and competing  
10 governmental interests; and

11 **7. Role of legislative bodies to protect free exercise of religion.** Gonzales v. O  
12 Centro Espirita Beneficente Uniao do Vegetal, 546 U.S. 418 (2006), indicates that  
13 legislative bodies may enact statutory law for their jurisdictions requiring that laws and  
14 other government actions burdening the free exercise of religion be justified by a  
15 compelling state interest. Many states have done so, passing laws similar to this Act.

16 **§4803. Purposes**

17 The purposes of this Act are:

18 **1. Application of compelling interest test.** To restore the compelling interest test  
19 as set forth in Wisconsin v. Yoder, 406 U.S. 205 (1972), and Sherbert v. Verner, 374 U.S.  
20 398 (1963), and to guarantee its application in all cases in which the government  
21 substantially burdens the exercise of religion; and

22 **2. Provide claim or defense.** To provide a claim or defense to a person whose  
23 exercise of religion is burdened by the government.

24 **§4804. Definitions**

25 As used in this chapter, unless the context otherwise indicates, the following terms  
26 have the following meanings.

27 **1. Burden.** "Burden" means a government action that directly or indirectly  
28 constrains, inhibits, curtails or denies the exercise of religion by a person or compels an  
29 action contrary to a person's free exercise of religion. "Burden" also includes, but is not  
30 limited to, a government action that withholds benefits from a person, assesses criminal,  
31 civil or administrative penalties on a person or excludes a person from government  
32 programs or access to government facilities.

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

38 **3. Government.** "Government" means the State and a political subdivision of the  
39 State.

40 **4. Person.** "Person" means an individual, association, partnership, corporation,  
41 church, religious institution, estate, trust, foundation or other legal entity.

1 **§4805. Free exercise of religion protected**

2 **1. Substantial burden prohibited; exceptions.** The government may not  
3 substantially burden a person's exercise of religion, even if the burden results from a rule  
4 of general applicability, unless the government demonstrates that applying the burden to  
5 the person's exercise of religion in this particular instance:

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

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

8 **2. Claim or defense; relief.** A person whose exercise of religion has been burdened,  
9 or is substantially likely to be burdened, in violation of this chapter may assert the  
10 violation as a claim or defense in a judicial proceeding. The person asserting such a  
11 claim or defense may obtain appropriate relief, including relief against the government.  
12 Appropriate relief includes, but is not limited to, injunctive relief, declaratory relief,  
13 compensatory damages and costs and attorney's fees.'

14 **SUMMARY**

15 This amendment, which is the minority report, replaces the bill. It codifies legislative  
16 findings that summarize the enshrinement of the right to the free exercise of religion in  
17 the United States Constitution and the Constitution of Maine and case law of the United  
18 States Supreme Court interpreting the fundamental and unalienable right to the free  
19 exercise of religion, as well as the extent to which a legislative body can legislate in this  
20 area.

21 Specifically, the amendment enacts the Preservation of Religious Freedom Act,  
22 which has as its purpose the restoration of the compelling interest test as set forth in  
23 Wisconsin v. Yoder, 406 U.S. 205 (1972), and Sherbert v. Verner, 374 U.S. 398 (1963).  
24 The amendment guarantees the application of the compelling interest test in all cases in  
25 which the government substantially burdens the exercise of religion and provides a claim  
26 or defense to a person whose exercise of religion is burdened by the government.

27 This amendment provides that the government may not directly or indirectly burden a  
28 person's exercise of religion unless the application of the burden to the person is in  
29 furtherance of a compelling governmental interest and is accomplished through the least  
30 restrictive means.

31 This amendment allows a person whose exercise of religion has been or is  
32 substantially likely to be burdened in violation of this legislation to assert the violation as  
33 a claim or defense in a court action.

34 This amendment's requirement that the government's infringement upon the free  
35 exercise of religion be justified by a compelling interest is similar to the requirement  
36 placed on the Federal Government through the Religious Freedom Restoration Act of  
37 1993 and that of 18 other states that have passed similar protections.

38 **FISCAL NOTE REQUIRED**

39 **(See attached)**