

SENATE BILL NO. 192—SENATORS CEGAVSKE, HUTCHISON, HAMMOND, HARDY, DENIS; FORD, GOICOECHEA, GUSTAVSON, JONES, KIECKHEFER, KIHUEN, PARKS, ROBERSON, SEGERBLOM, SETTELMAYER, SMITH AND WOODHOUSE

FEBRUARY 26, 2013

JOINT SPONSORS: ASSEMBLYMEN FIORE, DUNCAN, HARDY; GRADY, HAMBRICK, HICKEY, KIRKPATRICK, KIRNER, OSCARSON, STEWART AND WOODBURY

Referred to Committee on Judiciary

SUMMARY—Enacts the Nevada Preservation of Religious Freedom Act to prohibit governmental entities from substantially burdening the exercise of religion. (BDR 3-477)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to religious freedom; prohibiting a governmental entity from substantially burdening the exercise of religion of a person under certain circumstances; authorizing a person whose exercise of religion has been so burdened to assert the violation as a claim or defense in a judicial proceeding; authorizing a court to award damages against a governmental entity that substantially burdens the exercise of religion in certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 **Section 4** of Article 1 of the Nevada Constitution and the First Amendment to
2 the United States Constitution guarantee citizens of this State the free exercise and
3 enjoyment of religious profession and worship. This bill enacts the Nevada
4 Preservation of Religious Freedom Act to further protect those fundamental rights
5 by prohibiting a governmental entity from substantially burdening the exercise of
6 religion of a person. This prohibition applies regardless of whether the burden on



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7 religion is the result of a rule that is generally applicable and not specifically
8 directed at religious activity.

9 However, this bill does not apply to or affect the decision of a governmental
10 entity to grant or deny to religious organizations any appropriation or other money
11 or benefit, or any tax exemption or other type of tax relief. This bill also does not
12 establish or eliminate any claim or defense in a civil or criminal action brought
13 under a federal or state civil rights law, except that this bill protects the acts of
14 religious organizations regarding the employment, education or volunteer service of
15 a person who performs or will be tasked with performing any religious duties for
16 the religious organization, such as spreading or teaching faith, performing
17 devotional services or participating in internal governance of the religious
18 organization.

19 This bill authorizes a person whose exercise of religion has been substantially
20 burdened to bring or defend an action in court and to obtain appropriate relief. A
21 governmental entity is only authorized to substantially burden religious exercise if
22 the governmental entity demonstrates that the burden furthers a compelling
23 governmental interest and is the least restrictive means by which the governmental
24 entity can further that interest. In addition, this bill does not restrict the Nevada
25 Legislature from enacting laws which affect religion if the law explicitly makes the
26 provisions of this bill inapplicable to the new law. This bill further requires a court
27 to award costs and attorney's fees to a person who prevails pursuant to these
28 provisions on a claim or defense against a governmental entity.

1 WHEREAS, The right to the free exercise of religion is set out in
2 Section 4 of Article 1 of the Nevada Constitution and the First
3 Amendment to the United States Constitution; and

4 WHEREAS, The State of Nevada has independent authority to
5 protect the free exercise of religion based on principles that are
6 separate from, complementary to and more expansive than the
7 Nevada and United States Constitutions; and

8 WHEREAS, Laws that are facially neutral toward religion may
9 burden religious exercise as significantly as laws which directly
10 interfere with the exercise of religion; and

11 WHEREAS, The United States Supreme Court has upheld facially
12 neutral laws which burden the exercise of religion with little
13 justification by the governmental entity that enacted the law; and

14 WHEREAS, To balance religious freedom and competing
15 governmental interests, governmental entities must be required to
16 demonstrate compelling justification when it substantially burdens
17 the exercise of religion; now, therefore,



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 41 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 8, inclusive, of this
3 act.

4 **Sec. 2.** *Sections 2 to 8, inclusive, of this act may be cited as*
5 *the Nevada Preservation of Religious Freedom Act.*

6 **Sec. 3. 1.** *Sections 2 to 8, inclusive, of this act apply to all*
7 *state and local laws and ordinances and the implementation of*
8 *those laws and ordinances, whether statutory or otherwise, and*
9 *whether enacted before, on or after October 1, 2013.*

10 **2.** *State laws that are enacted on or after October 1, 2013, are*
11 *subject to the provisions of sections 2 to 8, inclusive, of this act*
12 *unless the law explicitly excludes such application by reference to*
13 *this section.*

14 **3.** *The provisions of sections 2 to 8, inclusive, of this act do*
15 *not:*

16 **(a)** *Authorize a governmental entity to burden any religious*
17 *belief of a person.*

18 **(b)** *Apply to or otherwise affect the decision of a governmental*
19 *entity to grant or deny to a religious organization any:*

20 **(1)** *Appropriation or other money or benefit; or*

21 **(2)** *Tax exemption or other type of tax relief.*

22 **(c)** *Except as otherwise provided in subsection 4, establish or*
23 *eliminate any claim or defense in a civil or criminal action*
24 *brought under a federal or state civil rights law.*

25 **4.** *The provisions of sections 2 to 8, inclusive, of this act apply*
26 *to any claim or defense regarding the employment, education or*
27 *volunteer service of a person who performs or will be tasked with*
28 *performing any religious duties for a religious organization,*
29 *including, without limitation:*

30 **(a)** *Spreading or teaching faith;*

31 **(b)** *Performing devotional services; or*

32 **(c)** *Participating in internal governance.*

33 **Sec. 4.** *As used in sections 2 to 8, inclusive, of this act, unless*
34 *the context otherwise requires, the words and terms defined in*
35 *sections 5, 6 and 7 of this act have the meanings ascribed to them*
36 *in those sections.*

37 **Sec. 5.** *“Exercise of religion” means the ability to act or to*
38 *refuse to act in a manner substantially motivated by a religious*
39 *belief, whether or not the exercise is compulsory or central to a*
40 *larger system of religious belief.*

41 **Sec. 6.** *“Governmental entity” means the State of Nevada, a*
42 *political subdivision of the State or an agency of either.*



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1 **Sec. 7. “Religious organization” means an organization that**
2 **is:**

3 **1. Incorporated, organized or established under law and:**

4 **(a) Whose primary purpose and function are religious;**

5 **(b) Is a religious school organized primarily for religious and**
6 **educational purposes; or**

7 **(c) Is a religious charity organized primarily for religious and**
8 **charitable purposes; and**

9 **2. Recognized as exempt from taxation pursuant to section**
10 **501(c)(3) of the Internal Revenue Code of 1986, 26 U.S.C. §**
11 **501(c)(3), as amended, and does not engage in any activities that**
12 **would disqualify it from such tax-exempt status.**

13 **Sec. 8. 1. Except as otherwise provided in subsection 2 or**
14 **section 3 of this act, a governmental entity shall not substantially**
15 **burden the exercise of religion of a person regardless of whether**
16 **the burden is the result of a rule of general applicability.**

17 **2. A governmental entity may substantially burden the**
18 **exercise of religion of a person only if the governmental entity**
19 **demonstrates that the burden as applied to the person:**

20 **(a) Furthers a compelling governmental interest; and**

21 **(b) Is the least restrictive means of furthering that**
22 **governmental interest.**

23 **3. Notwithstanding any provision of NRS 41.0305 to 41.039,**
24 **inclusive, but subject to the limitation on damages set forth in**
25 **NRS 41.035 when applicable, a person whose religious exercise**
26 **has been substantially burdened in violation of this section may**
27 **assert that violation as a claim or defense in a judicial proceeding**
28 **and obtain appropriate relief against the governmental entity. The**
29 **court shall award costs and attorney’s fees to a person who**
30 **prevails on such a claim or defense against a governmental entity**
31 **pursuant to this section.**

32 **4. The court may find that a person is a vexatious litigant if**
33 **the person makes a claim within the scope of this section which is**
34 **without merit, fraudulent or otherwise intended to harass or annoy**
35 **a governmental entity. If a court finds that a person is a vexatious**
36 **litigant pursuant to this subsection, the court may deny standing to**
37 **the person to bring further claims which allege a violation of this**
38 **section.**

39 **Sec. 9. The provisions of this act apply to an action that is:**

40 1. Pending on October 1, 2013; or

41 2. Filed on or after October 1, 2013.

