HOUSE BILL No. 5958

November 13, 2014, Introduced by Rep. Bolger and referred to the Committee on Judiciary.

A bill to limit governmental action that substantially burdens a person's exercise of religion; to set forth legislative findings; to provide for asserting a burden on exercise of religion as a claim or defense in any judicial or administrative proceeding; and to provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1   Sec. 1. This act shall be known and may be cited as the

2   "Michigan religious freedom restoration act".

3   Sec. 2. The legislature finds and declares all of the

4   following:

5   (a) The free exercise of religion is an inherent, fundamental,

6   and unalienable right secured by article 1 of the state

7   constitution of 1963 and the first amendment to the United States

8   constitution.

1   (b) Laws neutral toward religion may burden religious exercise

2   as surely as laws intended to interfere with religious exercise.

3   (c) Government should not substantially burden religious

4   exercise without compelling justification.

5   (d) In 1993, the congress of the United States enacted the

6   religious freedom restoration act to address burdens placed on the

7   exercise of religion in response to the United States supreme

8   court's decision in Employment Division v Smith, 494 US 872 (1990),

9   which virtually eliminated the requirement that the government

10 justify burdens on religious exercise imposed by laws neutral

11 toward religion.

12   (e) In City of Boerne v P.F. Flores, 521 US 507 (1997), the

13 United States supreme court held that the religious freedom

14 restoration act of 1993 infringed on the legislative powers

15 reserved to the states under the United States constitution.

16   (f) The compelling interest test set forth in prior court

17 rulings, including Porth v Roman Catholic Diocese of Kalamazoo, 209

18 Mich App 630 (1995), is a workable test for striking sensible

19 balances between religious liberty and competing governmental

20 interests in this state.

21   Sec. 3. The purposes of this act are the following:

22   (a) To guarantee application of the compelling interest test,

23 as recognized by the United States supreme court in Sherbert v

24 Verner, 374 US 398 (1963); Wisconsin v Yoder, 406 US 205 (1972);

25 and Gonzales v O Centro Espirita Beneficiente Uniao do Vegetal, 546

26 US 418 (2006), to all cases where free exercise of religion is

27 substantially burdened by government.

1   (b) To provide a claim or defense to persons whose religious

2 exercise is substantially burdened by government.

3   Sec. 4. As used in this act:

4   (a) "Demonstrates" means meets the burdens of going forward

5 with the evidence and of persuasion.

6   (b) "Exercise of religion" means the practice or observance of

7 religion, including an act or refusal to act, that is substantially

8 motivated by a sincerely held religious belief, whether or not

9 compelled by or central to a system of religious belief.

10   (c) "Government" means any branch, department, agency,

11 division, bureau, board, commission, council, authority,

12 instrumentality, employee, official, or other entity of this state

13 or a political subdivision of this state, or a person acting under

14 color of law.

15   Sec. 5. (1) Except as provided in subsection (2), government

16 shall not substantially burden a person's exercise of religion,

17 even if the burden results from a rule of general applicability.

18   (2) Government may substantially burden a person's exercise of

19 religion only if it demonstrates that application of the burden to

20 that person's exercise of religion in that particular instance is

21 both of the following:

22   (a) In furtherance of a compelling governmental interest.

23   (b) The least restrictive means of furthering that compelling

24 governmental interest.

25   (3) A person whose religious exercise has been burdened in

26 violation of this section may assert that violation as a claim or

27 defense in any judicial or administrative proceeding and obtain

1 appropriate relief, including equitable relief, against government.

2   (4) A court or tribunal may award all or a portion of the

3 costs of litigation, including reasonable attorney fees, to a

4 person who prevails against government under this section.

5   Sec. 6. (1) Section 5 applies to all laws of this state and of

6 a political subdivision of this state, and the implementation of

7 those laws, whether statutory or otherwise and whether adopted

8 before or after the effective date of this act, unless the law

9 explicitly excludes application by reference to this act.

10   (2) This act shall be construed in favor of broad protection

11 of religious exercise to the maximum extent permitted by the terms

12 of this act, the state constitution of 1963, and the United States

13 constitution.

14   (3) Nothing in this act shall be construed to authorize any

15 burden on any religious belief.

16   (4) Nothing in this act shall be construed to preempt or

17 repeal any law that is equally or more protective of religious

18 exercise than this act.

19   (5) Nothing in this act shall be construed to affect,

20 interpret, or in any way address those portions of the United

21 States constitution or the state constitution of 1963 that prohibit

22 laws respecting the establishment of religion. Granting government

23 funding, benefits, or exemptions, to the extent permissible under

24 those constitutional provisions, is not a violation of this act. As

25 used in this subsection, the term "granting", used with respect to

26 government funding, benefits, or exemptions, does not include the

27 denial of government funding, benefits, or exemptions.

1   Sec. 7. If any provision of this act or any application of

2 such a provision to any person or circumstance is held to be

3 unconstitutional, the remainder of this act and the application of

4 the provision to any other person or circumstance is not affected.