

## No. 2002-214

## AN ACT

## SB 1421

Protecting the free exercise of religion; and prescribing the conditions under which government may substantially burden a person's free exercise of religion.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

**Section 1. Short title.**

This act shall be known and may be cited as the Religious Freedom Protection Act.

**Section 2. Legislative findings.**

The General Assembly finds and declares as follows:

(1) Laws and governmental actions which are facially neutral toward religion, as well as laws and governmental actions intended to interfere with religious exercise, may have the effect of substantially burdening the free exercise of religion. However, neither State nor local government should substantially burden the free exercise of religion without compelling justification.

(2) The General Assembly intends that all laws which it has heretofore enacted or will hereafter enact and all ordinances and regulations which have been or will be adopted by political subdivisions or executive agencies shall be construed so as to avoid the imposition of substantial burdens upon the free exercise of religion without compelling justification.

**Section 3. Definitions.**

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Agency." A Commonwealth agency or a non-Commonwealth agency. The term shall not include the courts of this Commonwealth or a grand jury acting pursuant to 42 Pa.C.S. § 4548 (relating to powers of investigating grand jury).

"Commonwealth agency." The Commonwealth, including the Executive Department and its boards and commissions; an independent administrative department, board and commission; or a public official thereof, acting under color of State law.

"Correctional employee." A public official, employee, agent, contractor or volunteer working for or providing services relating to a correctional facility or its inmates.

"Free exercise of religion." The practice or observance of religion under section 3 of Article I of the Constitution of Pennsylvania.

**“Non-Commonwealth agency.”** A political subdivision, municipal authority or any other local government instrumentality authorized by law, or a public official thereof, acting under the color of State law.

**“Person.”** An individual or a church, association of churches or other religious order, body or institution which qualifies for exemption from taxation under section 501(c)(3) or (d) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501).

**“Substantially burden.”** An agency action which does any of the following:

- (1) Significantly constrains or inhibits conduct or expression mandated by a person’s sincerely held religious beliefs.
- (2) Significantly curtails a person’s ability to express adherence to the person’s religious faith.
- (3) Denies a person a reasonable opportunity to engage in activities which are fundamental to the person’s religion.
- (4) Compels conduct or expression which violates a specific tenet of a person’s religious faith.

Section 4. Free exercise of religion protected.

(a) General rule.—Except as provided in subsection (b), an agency shall not substantially burden a person’s free exercise of religion, including any burden which results from a rule of general applicability.

(b) Exceptions.—An agency may substantially burden a person’s free exercise of religion if the agency proves, by a preponderance of the evidence, that the burden is all of the following:

- (1) In furtherance of a compelling interest of the agency.
- (2) The least restrictive means of furthering the compelling interest.

Section 5. Actions.

(a) Claim or defense.—A person whose free exercise of religion has been burdened or likely will be burdened in violation of section 4 may assert that violation against an agency as a claim or defense in any judicial or administrative proceeding.

(b) Notice.—Notwithstanding subsection (a) and except as provided in subsection (c), a person may not bring an action in court to assert a claim under this act unless, at least 30 days prior to bringing the action, the person gives written notice to the agency by certified mail, return receipt requested, informing the agency of all of the following:

- (1) The person’s free exercise of religion has been or is about to be substantially burdened by an exercise of the agency’s governmental authority.
- (2) A description of the act or refusal to act which has burdened or will burden the person’s free exercise of religion.
- (3) The manner in which the exercise of the governmental authority burdens the person’s free exercise of religion.

(c) Exception.—A person may bring an action in court without providing the notice required by subsection (b) if any of the following occur:

(1) The exercise of governmental authority which threatens to substantially burden the person's free exercise of religion is imminent.

(2) The person was not informed and did not otherwise have knowledge of the exercise of the governmental authority in time to reasonably provide notice.

(3) The provision of the notice would delay an action to the extent that the action would be dismissed as untimely.

(4) The claim or defense is asserted as a counterclaim in a pending proceeding.

(d) Limitation.—Prior to the expiration of the 30-day period referred to in subsection (b), an agency which receives notice in accordance with subsection (b) may remedy the substantial burden on the person's free exercise of religion.

(e) Jurisdiction.—A person alleging a violation of section 4 by a Commonwealth agency may bring an action in Commonwealth Court in accordance with this section and the applicable rules of court. In accordance with this section and applicable rules of court, a person alleging a violation of section 4 by a non-Commonwealth agency may bring an action in the court of common pleas for the county where the non-Commonwealth agency's office is located.

(f) Remedies.—If a person asserts a claim or defense in accordance with this section and proves, by clear and convincing evidence, that the person's free exercise of religion has been burdened or likely will be burdened in violation of section 4, a court may award the person such declaratory or injunctive relief as may be appropriate. No court shall award monetary damages for a violation of this act. Unless the court finds that the actions of the agency were dilatory, obdurate or vexatious, no court shall award attorney fees for a violation of this act.

(g) Inmate claims.—To the extent permitted under the Federal law, an agency shall be deemed not to have violated the provisions of this act if a rule, policy, action, omission or regulation of a correctional facility or its correctional employees is reasonably related to legitimate penological interests, including the deterrence of crime, the prudent use of institutional resources, the rehabilitation of prisoners or institutional security.

#### Section 6. Applicability.

(a) General rule.—This act shall apply to any State or local law or ordinance and the implementation of that law or ordinance, whether statutory or otherwise and whether adopted or effective prior to or after the effective date of this act. Any law enacted by the General Assembly after the effective date of this act shall be subject to this act unless the General Assembly expressly excludes that law from this act by specific reference to this act. This act shall not apply to actions of the courts of this Commonwealth or to any rules of procedure or to common law adopted by the courts of this Commonwealth.

(b) **Exceptions.**—Notwithstanding subsection (a) and subject to existing religious exceptions, this act shall not apply to any of the following:

(1) Any criminal offense under 18 Pa.C.S. (relating to crimes and offenses) or under the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, which is graded as a felony or a misdemeanor.

(2) Any provision of 75 Pa.C.S. (relating to vehicles) which does any of the following:

(i) Requires the licensing of motor vehicle operators.

(ii) Requires the registration of motor vehicles.

(iii) Requires financial responsibility for motor vehicle accidents.

(iv) Protects the public from the unsafe operation of motor vehicles or from dangerous conditions on the highways.

(3) Any provision of law which requires physicians or professional nurses to be properly licensed in order to practice their profession.

(4) Any provision of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code, which prevents the endangerment of the health or safety of individuals in facilities which are licensed or supervised under the Public Welfare Code.

(5) Any provision of the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act, which requires the safe construction or operation of licensed health care facilities.

(6) Any provision of the act of November 10, 1999 (P.L.491, No.45), known as the Pennsylvania Construction Code Act, which prevents the endangerment of health and safety.

(7) Any provision of law which requires the reporting of abuse.

#### **Section 7. Construction.**

Nothing in this act shall be construed to authorize any government to prohibit or penalize the holding of any religious belief or to take any action contrary to the Constitution of the United States or the Constitution of Pennsylvania. Nothing in this act shall be construed to require a religiously affiliated health care facility to provide, allow, participate in or refer for health care services which are contrary to the religious beliefs or practices of the facility, provided that the facility shall provide notice to its patients of its policies regarding those health care services.

#### **Section 8. Effective date.**

This act shall take effect immediately.

**APPROVED**—The 9th day of December, A.D. 2002.

**MARK S. SCHWEIKER**