

ASSEMBLY BILL NO. 246—ASSEMBLYMAN ANDERSON

MARCH 21, 2005

Referred to Committee on Judiciary

SUMMARY—Enacts Nevada Religious Freedom Restoration Act to prohibit governmental entities from substantially burdening the exercise of religion. (BDR 3-4)

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 in 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:

Section 4 of Article 1 of the Nevada Constitution and the First Amendment to the United States Constitution guarantee citizens of this State the free exercise and enjoyment of religious profession and worship.

This bill enacts the Nevada Religious Freedom Restoration Act to further protect those fundamental rights by prohibiting a governmental entity from substantially burdening the exercise of religion of a person. This prohibition applies regardless of whether the burden on religion is the result of a rule that is generally applicable and not specifically directed at religious activity.

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



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

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

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

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

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

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

Section 1. Chapter 41 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this act.

Sec. 2. *Sections 2 to 7, inclusive, of this act may be cited as the Nevada Religious Freedom Restoration Act.*

Sec. 3. 1. *Sections 2 to 7, inclusive, of this act apply to all state and local laws and ordinances and the implementation of those laws and ordinances, whether statutory or otherwise, and whether enacted before or after October 1, 2005.*

2. *State laws that are enacted on or after October 1, 2005, are subject to the provisions of this act unless the law explicitly excludes such application by reference to this section.*

3. *The provisions of sections 2 to 7, inclusive, of this act must not be construed as authorizing any governmental entity to burden any religious belief of a person.*

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

Sec. 5. *“Exercise of religion” means the ability to act or refuse to act in a manner substantially motivated by a religious*



1 *belief, whether or not the exercise is compulsory or central to a*
2 *larger system of religious belief.*

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

5 **Sec. 7.** 1. *Except as otherwise provided in subsection 2 or*
6 *section 3 of this act, a governmental entity shall not substantially*
7 *burden the exercise of religion of a person regardless of whether*
8 *the burden is the result of a rule of general applicability.*

9 2. *A governmental entity may substantially burden the*
10 *exercise of religion of a person only if the governmental entity*
11 *demonstrates that the burden as applied to the person:*

12 (a) *Furtheres a compelling governmental interest; and*

13 (b) *Is the least restrictive means of furthering that*
14 *governmental interest.*

15 3. *Notwithstanding any provision of NRS 41.0305 to 41.039,*
16 *inclusive, but subject to the limitation on damages set forth in*
17 *NRS 41.035 when applicable, a person whose religious exercise*
18 *has been substantially burdened in violation of this section may*
19 *assert that violation as a claim or defense in a judicial proceeding*
20 *and obtain appropriate relief against the governmental entity. The*
21 *court shall award costs and attorney’s fees to a person who*
22 *prevails in an action brought against a governmental entity*
23 *pursuant to this section.*

24 **Sec. 8.** *The amendatory provisions of this act apply to an*
25 *action that is:*

- 26 1. *Pending on October 1, 2005; or*
27 2. *Filed on or after October 1, 2005.*



