

Amendment No. 379

Senate Amendment to Senate Bill No. 192	(BDR 3-477)
Proposed by: Senate Committee on Judiciary	
Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION		Initial and Date	SENATE ACTION		Initial and Date
Adopted	☐	Lost ☐	Adopted	☐	Lost ☐
Concurred In	☐	Not ☐	Concurred In	☐	Not ☐
Receded	☐	Not ☐	Receded	☐	Not ☐

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

KCP



Date: 4/16/2013

S.B. No. 192—Enacts the Nevada Preservation of Religious Freedom Act to prohibit governmental entities from substantially burdening the exercise of religion. (BDR 3-477)



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:

Section 4 of Article I 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 Preservation of Religious Freedom 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.

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

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 on a claim or defense against a governmental entity.

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 must 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 ~~77~~ 8, inclusive, of this act.

Sec. 2. *Sections 2 to ~~77~~ 8, inclusive, of this act may be cited as the Nevada Preservation of Religious Freedom Act.*

Sec. 3. *1. Sections 2 to ~~77~~ 8, 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, on or after October 1, 2013.*

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

3. The provisions of sections 2 to ~~77~~ 8, inclusive, of this act ~~shall not be construed as authorizing any~~ do not:

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

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

(1) Appropriation or other money or benefit; or

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

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

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

- (a) Spreading or teaching faith;
- (b) Performing devotional services; or
- (c) Participating in internal governance.

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

Sec. 5. "Exercise of religion" means the ability to act or to refuse to act in a manner substantially motivated by a religious belief, whether or not the exercise is compulsory or central to a larger system of religious belief.

Sec. 6. "Governmental entity" means the State of Nevada, a political subdivision of the State or an agency of either.

Sec. 7. "Religious organization" means an organization that is:

- 1. Incorporated, organized or established under law and:
 - (a) Whose primary purpose and function are religious;
 - (b) Is a religious school organized primarily for religious and educational purposes; or
 - (c) Is a religious charity organized primarily for religious and charitable purposes; and

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

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

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

- (a) Furthers a compelling governmental interest; and
 - (b) Is the least restrictive means of furthering that governmental interest.
3. Notwithstanding any provision of NRS 41.0305 to 41.039, inclusive, but subject to the limitation on damages set forth in NRS 41.035 when applicable, a person whose religious exercise has been substantially burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against the governmental entity. The court shall award costs and attorney's fees to a person who prevails ~~in an action brought~~ on such a claim or defense against a governmental entity pursuant to this section.

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

~~Sec. 8.~~ Sec. 9. The provisions of this act apply to an action that is:

- 1. Pending on October 1, 2013; or
- 2. Filed on or after October 1, 2013.