

HOUSE BILL NO. 4075

February 07, 2023, Introduced by Rep. Fink and referred to the Committee on Government Operations.

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 may be cited as the "Michigan religious
2 freedom restoration act".

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

1 (a) The free exercise of religion is an inherent, fundamental,
2 and unalienable right secured by article 1 of the state
3 constitution of 1963 and the First Amendment to the Constitution of
4 the United States.

5 (b) Laws neutral toward religion may burden religious exercise
6 as surely as laws intended to interfere with religious exercise.

7 (c) Government should not substantially burden religious
8 exercise without compelling justification.

9 (d) In 1993, the Congress of the United States enacted the
10 religious freedom restoration act to address burdens placed on the
11 exercise of religion in response to the decision of the Supreme
12 Court of the United States in *Employment Division v Smith*, 494 US
13 872 (1990), which virtually eliminated the requirement that the
14 government justify burdens on religious exercise imposed by laws
15 neutral toward religion.

16 (e) In *City of Boerne v PF Flores*, 521 US 507 (1997), the
17 Supreme Court of the United States held that the religious freedom
18 restoration act of 1993 infringed on the legislative powers
19 reserved to the states under the Constitution of the United States.

20 (f) The compelling interest test set forth in prior court
21 rulings, including *Porth v Roman Catholic Diocese of Kalamazoo*, 209
22 Mich App 630 (1995), is a workable test for striking sensible
23 balances between religious liberty and competing governmental
24 interests in this state.

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

26 (a) To guarantee application of the compelling interest test,
27 as recognized by the Supreme Court of the United States in *Sherbert*
28 *v Verner*, 374 US 398 (1963); *Wisconsin v Yoder*, 406 US 205 (1972);
29 and *Gonzales v O Centro Espirita Beneficiente Uniao do Vegetal*, 546

1 US 418 (2006), to all cases where free exercise of religion is
2 substantially burdened by government.

3 (b) To provide a claim or defense to persons whose religious
4 exercise is substantially burdened by government.

5 Sec. 4. As used in this act:

6 (a) "Demonstrates" means meets the burdens of going forward
7 with the evidence and of persuasion.

8 (b) "Exercise of religion" means the practice or observance of
9 religion, including an act or refusal to act, that is substantially
10 motivated by a sincerely held religious belief, whether or not
11 compelled by or central to a system of religious belief.

12 (c) "Government" means any branch, department, agency,
13 division, bureau, board, commission, council, authority,
14 instrumentality, employee, official, or other entity of this state
15 or a political subdivision of this state, or a person acting under
16 color of law.

17 Sec. 5. (1) Except as provided in subsection (2), government
18 shall not substantially burden a person's exercise of religion,
19 even if the burden results from a rule of general applicability.

20 (2) Government may substantially burden a person's exercise of
21 religion only if it demonstrates that application of the burden to
22 that person's exercise of religion in that particular instance is
23 both of the following:

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

25 (b) The least restrictive means of furthering that compelling
26 governmental interest.

27 (3) A person whose religious exercise has been burdened in
28 violation of this section may assert that violation as a claim or
29 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, except for a law of
9 this state that explicitly excludes application by reference to
10 this act.

11 (2) This act must be construed in favor of broad protection of
12 religious exercise to the maximum extent permitted by the terms of
13 this act, the state constitution of 1963, and the Constitution of
14 the United States.

15 (3) This act must not be construed as authorizing any burden
16 on any religious belief.

17 (4) This act must not be construed as preempting or repealing
18 any law that is equally or more protective of religious exercise
19 than this act.

20 (5) This act must not be construed as affecting, interpreting,
21 or in any way addressing those portions of the Constitution of the
22 United States or the state constitution of 1963 that prohibit laws
23 respecting the establishment of religion. Granting government
24 funding, benefits, or exemptions, to the extent permissible under
25 those constitutional provisions, is not a violation of this act. As
26 used in this subsection, the term "granting," used with respect to
27 government funding, benefits, or exemptions, does not include the
28 denial of government funding, benefits, or exemptions.

29 Sec. 7. If any provision of this act or any application of a

- 1 provision to any person or circumstance is held to be
- 2 unconstitutional, the remainder of this act and the application of
- 3 the provision to any other person or circumstance is not affected.