

Calendar No. 684

106TH CONGRESS
2D SESSION**S. 2869**

To protect religious liberty, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 13, 2000

Mr. HATCH (for himself, Mr. KENNEDY, Mr. HUTCHINSON, Mr. DASCHLE, Mr. BENNETT, Mr. LIEBERMAN, Mr. SCHUMER, and Mr. SMITH of Oregon) introduced the following bill; which was read the first time

JULY 14, 2000

Read the second time and placed on the calendar

A BILL

To protect religious liberty, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Religious Land Use
5 and Institutionalized Persons Act of 2000".

6 **SEC. 2. PROTECTION OF LAND USE AS RELIGIOUS EXER-**
7 **CISE.**

8 (a) **SUBSTANTIAL BURDENS.—**

1 (1) GENERAL RULE.—No government shall im-
2 pose or implement a land use regulation in a manner
3 that imposes a substantial burden on the religious
4 exercise of a person, including a religious assembly
5 or institution, unless the government demonstrates
6 that imposition of the burden on that person, assem-
7 bly, or institution—

8 (A) is in furtherance of a compelling gov-
9 ernmental interest; and

10 (B) is the least restrictive means of fur-
11 thering that compelling governmental interest.

12 (2) SCOPE OF APPLICATION.—This subsection
13 applies in any case in which—

14 (A) the substantial burden is imposed in a
15 program or activity that receives Federal finan-
16 cial assistance, even if the burden results from
17 a rule of general applicability;

18 (B) the substantial burden affects, or re-
19 moval of that substantial burden would affect,
20 commerce with foreign nations, among the sev-
21 eral States, or with Indian tribes, even if the
22 burden results from a rule of general applica-
23 bility; or

24 (C) the substantial burden is imposed in
25 the implementation of a land use regulation or

1 system of land use regulations, under which a
2 government makes, or has in place formal or in-
3 formal procedures or practices that permit the
4 government to make, individualized assessments
5 of the proposed uses for the property involved.

6 (b) DISCRIMINATION AND EXCLUSION.—

7 (1) EQUAL TERMS.—No government shall im-
8 pose or implement a land use regulation in a manner
9 that treats a religious assembly or institution on less
10 than equal terms with a nonreligious assembly or in-
11 stitution.

12 (2) NONDISCRIMINATION.—No government
13 shall impose or implement a land use regulation that
14 discriminates against any assembly or institution on
15 the basis of religion or religious denomination.

16 (3) EXCLUSIONS AND LIMITS.—No government
17 shall impose or implement a land use regulation
18 that—

19 (A) totally excludes religious assemblies
20 from a jurisdiction; or

21 (B) unreasonably limits religious assem-
22 blies, institutions, or structures within a juris-
23 diction.

1 **SEC. 3. PROTECTION OF RELIGIOUS EXERCISE OF INSTITU-**
2 **TIONALIZED PERSONS.**

3 (a) **GENERAL RULE.**—No government shall impose a
4 substantial burden on the religious exercise of a person
5 residing in or confined to an institution, as defined in sec-
6 tion 2 of the Civil Rights of Institutionalized Persons Act
7 (42 U.S.C. 1997), even if the burden results from a rule
8 of general applicability, unless the government dem-
9 onstrates that imposition of the burden on that person—

10 (1) is in furtherance of a compelling govern-
11 mental interest; and

12 (2) is the least restrictive means of furthering
13 that compelling governmental interest.

14 (b) **SCOPE OF APPLICATION.**—This section applies in
15 any case in which—

16 (1) the substantial burden is imposed in a pro-
17 gram or activity that receives Federal financial as-
18 sistance; or

19 (2) the substantial burden affects, or removal of
20 that substantial burden would affect, commerce with
21 foreign nations, among the several States, or with
22 Indian tribes.

23 **SEC. 4. JUDICIAL RELIEF.**

24 (a) **CAUSE OF ACTION.**—A person may assert a viola-
25 tion of this Act as a claim or defense in a judicial pro-
26 ceeding and obtain appropriate relief against a govern-

1 ment. Standing to assert a claim or defense under this
2 section shall be governed by the general rules of standing
3 under article III of the Constitution.

4 (b) BURDEN OF PERSUASION.—If a plaintiff pro-
5 duces prima facie evidence to support a claim alleging a
6 violation of the Free Exercise Clause or a violation of sec-
7 tion 2, the government shall bear the burden of persuasion
8 on any element of the claim, except that the plaintiff shall
9 bear the burden of persuasion on whether the law (includ-
10 ing a regulation) or government practice that is challenged
11 by the claim substantially burdens the plaintiff's exercise
12 of religion.

13 (c) FULL FAITH AND CREDIT.—Adjudication of a
14 claim of a violation of section 2 in a non-Federal forum
15 shall not be entitled to full faith and credit in a Federal
16 court unless the claimant had a full and fair adjudication
17 of that claim in the non-Federal forum.

18 (d) ATTORNEYS' FEES.—Section 722(b) of the Re-
19 vised Statutes (42 U.S.C. 1988(b)) is amended—

20 (1) by inserting “the Religious Land Use and
21 Institutionalized Persons Act of 2000,” after “Reli-
22 gious Freedom Restoration Act of 1993,”; and

23 (2) by striking the comma that follows a
24 comma.

1 (e) PRISONERS.—Nothing in this Act shall be con-
2 strued to amend or repeal the Prison Litigation Reform
3 Act of 1995 (including provisions of law amended by that
4 Act).

5 (f) AUTHORITY OF UNITED STATES TO ENFORCE
6 THIS ACT.—The United States may bring an action for
7 injunctive or declaratory relief to enforce compliance with
8 this Act. Nothing in this subsection shall be construed to
9 deny, impair, or otherwise affect any right or authority
10 of the Attorney General, the United States, or any agency,
11 officer, or employee of the United States, acting under any
12 law other than this subsection, to institute or intervene
13 in any proceeding.

14 (g) LIMITATION.—If the only jurisdictional basis for
15 applying a provision of this Act is a claim that a substan-
16 tial burden by a government on religious exercise affects,
17 or that removal of that substantial burden would affect,
18 commerce with foreign nations, among the several States,
19 or with Indian tribes, the provision shall not apply if the
20 government demonstrates that all substantial burdens on,
21 or the removal of all substantial burdens from, similar reli-
22 gious exercise throughout the Nation would not lead in
23 the aggregate to a substantial effect on commerce with
24 foreign nations, among the several States, or with Indian
25 tribes.

1 **SEC. 5. RULES OF CONSTRUCTION.**

2 (a) **RELIGIOUS BELIEF UNAFFECTED.**—Nothing in
3 this Act shall be construed to authorize any government
4 to burden any religious belief.

5 (b) **RELIGIOUS EXERCISE NOT REGULATED.**—Noth-
6 ing in this Act shall create any basis for restricting or
7 burdening religious exercise or for claims against a reli-
8 gious organization including any religiously affiliated
9 school or university, not acting under color of law.

10 (c) **CLAIMS TO FUNDING UNAFFECTED.**—Nothing in
11 this Act shall create or preclude a right of any religious
12 organization to receive funding or other assistance from
13 a government, or of any person to receive government
14 funding for a religious activity, but this Act may require
15 a government to incur expenses in its own operations to
16 avoid imposing a substantial burden on religious exercise.

17 (d) **OTHER AUTHORITY TO IMPOSE CONDITIONS ON**
18 **FUNDING UNAFFECTED.**—Nothing in this Act shall—

19 (1) authorize a government to regulate or af-
20 fect, directly or indirectly, the activities or policies of
21 a person other than a government as a condition of
22 receiving funding or other assistance; or

23 (2) restrict any authority that may exist under
24 other law to so regulate or affect, except as provided
25 in this Act.

1 (e) GOVERNMENTAL DISCRETION IN ALLEVIATING
2 BURDENS ON RELIGIOUS EXERCISE.—A government may
3 avoid the preemptive force of any provision of this Act by
4 changing the policy or practice that results in a substan-
5 tial burden on religious exercise, by retaining the policy
6 or practice and exempting the substantially burdened reli-
7 gious exercise, by providing exemptions from the policy or
8 practice for applications that substantially burden reli-
9 gious exercise, or by any other means that eliminates the
10 substantial burden.

11 (f) EFFECT ON OTHER LAW.—With respect to a
12 claim brought under this Act, proof that a substantial bur-
13 den on a person's religious exercise affects, or removal of
14 that burden would affect, commerce with foreign nations,
15 among the several States, or with Indian tribes, shall not
16 establish any inference or presumption that Congress in-
17 tends that any religious exercise is, or is not, subject to
18 any law other than this Act.

19 (g) BROAD CONSTRUCTION.—This Act shall be con-
20 strued in favor of a broad protection of religious exercise,
21 to the maximum extent permitted by the terms of this Act
22 and the Constitution.

23 (h) NO PREEMPTION OR REPEAL.—Nothing in this
24 Act shall be construed to preempt State law, or repeal
25 Federal law, that is equally as protective of religious exer-

1 cise as, or more protective of religious exercise than, this
2 Act.

3 (i) SEVERABILITY.—If any provision of this Act or
4 of an amendment made by this Act, or any application
5 of such provision to any person or circumstance, is held
6 to be unconstitutional, the remainder of this Act, the
7 amendments made by this Act, and the application of the
8 provision to any other person or circumstance shall not
9 be affected.

10 **SEC. 6. ESTABLISHMENT CLAUSE UNAFFECTED.**

11 Nothing in this Act shall be construed to affect, inter-
12 pret, or in any way address that portion of the first
13 amendment to the Constitution prohibiting laws respect-
14 ing an establishment of religion (referred to in this section
15 as the “Establishment Clause”). Granting government
16 funding, benefits, or exemptions, to the extent permissible
17 under the Establishment Clause, shall not constitute a vio-
18 lation of this Act. In this section, the term “granting”,
19 used with respect to government funding, benefits, or ex-
20 emptions, does not include the denial of government fund-
21 ing, benefits, or exemptions.

1 **SEC. 7. AMENDMENTS TO RELIGIOUS FREEDOM RESTORA-**
2 **TION ACT.**

3 (a) **DEFINITIONS.**—Section 5 of the Religious Free-
4 dom Restoration Act of 1993 (42 U.S.C. 2000bb–2) is
5 amended—

6 (1) in paragraph (1), by striking “a State, or
7 a subdivision of a State” and inserting “or of a cov-
8 ered entity”;

9 (2) in paragraph (2), by striking “term” and all
10 that follows through “includes” and inserting “term
11 ‘covered entity’ means”; and

12 (3) in paragraph (4), by striking all after
13 “means” and inserting “religious exercise, as defined
14 in section 8 of the Religious Land Use and Institu-
15 tionalized Persons Act of 2000.”.

16 (b) **CONFORMING AMENDMENT.**—Section 6(a) of the
17 Religious Freedom Restoration Act of 1993 (42 U.S.C.
18 2000bb–3(a)) is amended by striking “and State”.

19 **SEC. 8. DEFINITIONS.**

20 In this Act:

21 (1) **CLAIMANT.**—The term “claimant” means a
22 person raising a claim or defense under this Act.

23 (2) **DEMONSTRATES.**—The term “dem-
24 onstrates” means meets the burdens of going for-
25 ward with the evidence and of persuasion.

1 (3) FREE EXERCISE CLAUSE.—The term “Free
2 Exercise Clause” means that portion of the first
3 amendment to the Constitution that proscribes laws
4 prohibiting the free exercise of religion.

5 (4) GOVERNMENT.—The term “government”—

6 (A) means—

7 (i) a State, county, municipality, or
8 other governmental entity created under
9 the authority of a State;

10 (ii) any branch, department, agency,
11 instrumentality, or official of an entity list-
12 ed in clause (i); and

13 (iii) any other person acting under
14 color of State law; and

15 (B) for the purposes of sections 4(b) and
16 5, includes the United States, a branch, depart-
17 ment, agency, instrumentality, or official of the
18 United States, and any other person acting
19 under color of Federal law.

20 (5) LAND USE REGULATION.—The term “land
21 use regulation” means a zoning or landmarking law,
22 or the application of such a law, that limits or re-
23 stricts a claimant’s use or development of land (in-
24 cluding a structure affixed to land), if the claimant
25 has an ownership, leasehold, easement, servitude, or

1 other property interest in the regulated land or a
2 contract or option to acquire such an interest.

3 (6) PROGRAM OR ACTIVITY.—The term “pro-
4 gram or activity” means all of the operations of any
5 entity as described in paragraph (1) or (2) of section
6 606 of the Civil Rights Act of 1964 (42 U.S.C.
7 2000d–4a).

8 (7) RELIGIOUS EXERCISE.—

9 (A) IN GENERAL.—The term “religious ex-
10 ercise” includes any exercise of religion, wheth-
11 er or not compelled by, or central to, a system
12 of religious belief.

13 (B) RULE.—The use, building, or conver-
14 sion of real property for the purpose of religious
15 exercise shall be considered to be religious exer-
16 cise of the person or entity that uses or intends
17 to use the property for that purpose.