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Senate Bill 4 (as introduced 1-20-15)
Sponsor: Senator Mike Shirkey
Committee: Judiciary

Date Completed: 4-27-15

CONTENT

The bill would create the "Michigan Religious Freedom Restoration Act" to do the following:

- Prohibit government from substantially burdening a person's exercise of religion, except in furtherance of a compelling governmental interest that was the least restrictive means of furthering the interest.**
- Allow a person whose religious exercise had been burdened in violation of the proposed Act to assert the violation as a claim or defense and obtain relief in any proceeding.**
- Allow a court or tribunal to award the costs of litigation, including attorney fees, to a person who prevailed against the government.**
- Specify ways in which the proposed Act could, and could not, be construed.**
- Specify that if any provision of the Act were ruled unconstitutional, it would not affect the rest of the Act.**
- State legislative findings and declarations, and specify the purposes of the proposed Act.**

"Exercise of religion" would mean "the practice or observance of religion, including an act or refusal to act, that is substantially motivated by a sincerely held religious belief, whether or not compelled by or central to a system or religious belief".

"Government" would mean any branch, department, agency, division, bureau, board, commission, council, authority, instrumentality, employee, official, or other entity of this State or a political subdivision of this State, or a person acting under color of law.

Government Burden on Exercise of Religion

The proposed Act would prohibit government from substantially burdening a person's exercise of religion, even if the burden resulted from a rule of general applicability. Government would be permitted to substantially burden a person's exercise of religion only if it demonstrated that application of the burden to that person's exercise of religion was in furtherance of a compelling governmental interest, and was the least restrictive means of furthering that interest.

These provisions would apply to all laws of this State and its political subdivisions, and the implementation of those laws, whether statutory or otherwise and whether adopted before or after the effective date of the proposed Act, unless the law explicitly excluded application by reference to the Act.

Assertion of a Violation

A person whose religious exercise had been burdened in violation of the Act could assert that violation as a claim or defense in any judicial or administrative proceeding and obtain appropriate relief, including equitable relief, against the government. A court or tribunal could award all or a portion of the costs of litigation, including reasonable attorney fees, to a person who prevailed against the government.

Scope & Construction of the Act

The proposed Act would have to be construed in favor of broad protection of religious exercise to the maximum extent permitted by the terms of the Act, the State Constitution, and the United States Constitution. The Act could not be construed to authorize a burden on any religious belief, or to preempt or repeal any law that was equally or more protective of religious exercise than the proposed Act.

Also, the Act could not be construed to affect, interpret, or address the portions of the State Constitution or United States Constitution that prohibit laws respecting the establishment of religion. Granting government funding, benefits, or exemptions, to the extent permitted under those constitutional provisions would not be a violation of the proposed Act. The term "granting", as used with respect to government funding, benefits, or exemptions, would not include the denial of government funding, benefits, or exemptions.

If any provision of the proposed Act, or application of any provision to any person or circumstance, were held to be unconstitutional, the remainder of the Act and the application of the provision to any other person or circumstance would not be affected.

Legislative Findings & Declarations; Purposes of the Act

The bill states certain legislative findings and declarations pertaining to the exercise of religion and Supreme Court precedent.

It also specifies that the purposes of the Act would be as follows:

- "To guarantee application of the compelling interest test, as recognized by the United States supreme court...[in specified opinions], to all cases where free exercise of religion is substantially burdened by government."
- "To provide a claim or defense to persons whose religious exercise is substantially burdened by government."

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The potential fiscal impact of the bill on State and local government is unknown. Currently, religious freedom is protected by the U.S. and Michigan Constitutions. The impact of the bill would depend on whether lawsuits regarding religious freedom and governmental burdens on religious expression were filed based on a cause of action provided by the bill that is not available under the U.S. or Michigan Constitutions. To the extent that the bill resulted in additional litigation, State and local government would incur costs for defense and the potential for payment of the costs of litigation, including reasonable attorney fees, to a person who prevailed in the litigation. "Government" would be broadly defined by the bill to include State government ("any branch, department, agency, division, bureau, board, commission, council, authority, instrumentality, employee, official, or other entity of this state"), political subdivisions of the State (which would include cities, villages, townships, counties, school

districts, intermediate school districts, community colleges, and authorities), and a person acting under color of law.

Fiscal Analyst: Elizabeth Pratt

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.