S T A T E O F N E W Y O R K

883

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the civil rights law, in relation to enacting the religious freedom restoration act

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

Section 1. The civil rights law is amended by adding a new section 79-o to read as follows:

S 79-O. RELIGIOUS FREEDOM RESTORATION ACT. 1. THE LEGISLATURE HEREBY FINDS AND DECLARES THAT THE INALIENABLE RIGHT TO THE FREE EXERCISE OF RELIGION IS SECURED BY THE NEW YORK STATE AND FEDERAL CONSTITUTIONS AND MAY NOT BE BURDENED BY GOVERNMENT ABSENT COMPELLING INTEREST AND JUSTIFICATION, AND THAT SUCH COMPELLING INTEREST MUST MEET THE TESTS OF BEING MORE THAN ROUTINE, MUST RELATE DIRECTLY TO CORE CONSTITUTIONAL ISSUES, AND MUST DO MORE THAN MERELY IMPROVE GOVERNMENT EFFICIENCY. THE LEGISLATURE FURTHER FINDS IT TO BE IN EVERY SENSE IN THE PUBLIC INTEREST TO REQUIRE, AND HEREBY REQUIRES, AS A MATTER OF STATE POLICY, THAT THE APPLICATION OF ANY RULE IN FURTHERANCE OF SUCH COMPELLING INTEREST BE PERFORMED IN THE LEAST RESTRICTIVE MANNER.

THE LEGISLATURE DECLARES THAT THE PURPOSES OF THIS SECTION ARE IN EVERY SENSE IN THE PUBLIC INTEREST AND FOR THE BENEFIT OF THE PEOPLE OF THE STATE OF NEW YORK, THOSE INTERESTS BEING: TO PROVIDE A STANDARDIZED AND WORKABLE TEST FOR BALANCING RELIGIOUS LIBERTY AND GOVERNMENT INTERESTS; TO GUARANTEE APPLICATION OF SUCH TEST IN ALL CASES WHERE EXERCISE OF RELIGION IS SUBSTANTIALLY BURDENED; TO REQUIRE AS A MATTER OF STATE POLICY THAT THE APPLICATION OF ANY RULE OR ACTION BY THE GOVERNMENT IN ANY SUCH CASES BE EXECUTED IN THE LEAST RESTRICTIVE MANNER POSSIBLE; AND TO PROVIDE A CLAIM OR DEFENSE TO PERSONS WHOSE RELIGIOUS EXERCISE IS SUBSTANTIALLY BURDENED BY GOVERNMENT ACTIONS.

2. AS USED IN THIS SECTION:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD04291-01-1

A. "STATE GOVERNMENT" MEANS ANY DEPARTMENT, BUREAU, COMMISSION, BOARD, PUBLIC AUTHORITY OR OTHER AGENCY OF THE STATE, INCLUDING ANY PUBLIC BENEFIT CORPORATION ANY MEMBER OF WHOSE BOARD IS APPOINTED BY THE GOVERNOR, OR ANY OFFICIAL OF ANY SUCH ENTITY DESCRIBED IN THIS SECTION.

B. "LOCAL GOVERNMENT" MEANS ANY VILLAGE, TOWN (OUTSIDE THE AREA OF ANY INCORPORATED VILLAGE), CITY, OR ANY PUBLIC BENEFIT CORPORATION ANY MEMBER OF WHOSE BOARD IS APPOINTED BY A LOCAL GOVERNMENT, OR ANY OFFICIAL OF ANY SUCH ENTITY. WHERE A BOARD INCLUDES MEMBERS APPOINTED BY THE GOVERNOR AND BY A LOCAL GOVERNMENT, THE BOARD SHALL BE CONSIDERED AS INCLUDED IN THE DEFINITION OF STATE GOVERNMENT.

C. "GOVERNMENT" WHEN USED SINGLY MEANS STATE AND LOCAL GOVERNMENT.

D. "EXERCISE OF RELIGION" MEANS AND INCLUDES ANY EXERCISE OF RELIGION, WHETHER OR NOT COMPELLED BY, OR CENTRAL TO, A SYSTEM OF RELIGIOUS BELIEF, AND INCLUDES ANY ACT OR REFUSAL TO ACT THAT IS SUBSTANTIALLY MOTIVATED BY SUCH RELIGIOUS BELIEF, AS WELL AS THE USE, BUILDING, OR CONVERSION OF REAL PROPERTY FOR THE PURPOSE OF RELIGIOUS EXERCISE OF THE PERSON OR ENTITY THAT USES OR INTENDS TO USE THE PROPERTY FOR THAT PURPOSE.

3. STATE AND LOCAL GOVERNMENT SHALL NOT SUBSTANTIALLY BURDEN A PERSON'S EXERCISE OF RELIGION BY ANY ACT OR FAILURE TO ACT.

A. A PERSON WHOSE RELIGIOUS EXERCISE IS, HAS BEEN, OR IS PROPOSED TO BE SUBSTANTIALLY BURDENED IN VIOLATION OF THIS SECTION BY STATE OR LOCAL GOVERNMENT SHALL NOTIFY SUCH GOVERNMENT, WHICH SHALL ACCOMMODATE SUCH PERSON'S RELIGIOUS NEEDS OR ELSE PROVIDE CREDIBLE EVIDENCE THAT APPLICATION OF THE BURDEN TO THE PERSON (1) FURTHERS A COMPELLING GOVERNMENTAL INTEREST, AND (2) IS THE LEAST RESTRICTIVE MEANS OF FURTHERING SUCH COMPELLING GOVERNMENTAL INTEREST.

B. A PERSON WHOSE RELIGIOUS EXERCISE HAS BEEN SUBSTANTIALLY BURDENED IN VIOLATION OF THIS SECTION MAY ASSERT SUCH VIOLATION AS A CLAIM OR DEFENSE IN A JUDICIAL PROCEEDING, PROVIDED, HOWEVER, THAT IT SHALL BE AN EXCEPTION TO THE PROHIBITION ENACTED BY THIS SECTION IN ANY CASE IN WHICH GOVERNMENT PROVIDES CREDIBLE EVIDENCE THAT APPLICATION OF THE BURDEN TO THE PERSON (1) FURTHERS A COMPELLING GOVERNMENTAL INTEREST; AND (2) IS THE LEAST RESTRICTIVE MEANS OF FURTHERING SUCH COMPELLING GOVERNMENTAL INTEREST.

C. A PARTY WHO PREVAILS IN AN ACTION TO ENFORCE THIS SECTION AGAINST A GOVERNMENT SHALL BE ENTITLED TO RECOVER ATTORNEY'S FEES AND COSTS INCURRED IN MAINTAINING SUCH CLAIM OR DEFENSE.

4. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO AUTHORIZE ANY GOVERNMENT TO SUBSTANTIALLY BURDEN ANY RELIGIOUS BELIEF, NOR SHALL THE GRANTING OF GOVERNMENT FUNDING, BENEFITS, OR EXEMPTIONS BE CONSTRUED AS A VIOLATION HEREUNDER, PROVIDED HOWEVER THAT THE WORD "GRANTING" SHALL NOT BE DEEMED TO MEAN OR INCLUDE A DENIAL OF GOVERNMENT FUNDING, BENEFITS, OR EXEMPTIONS.

5. ANY OTHER PROVISION OF ANY OTHER LAW TO THE CONTRARY NOTWITHSTANDING, ANY VILLAGE, TOWN (OUTSIDE THE AREA OF ANY INCORPORATED VILLAGE) OR CITY MAY ENACT ORDINANCES, STANDARDS, RULES, OR REGULATIONS THAT PROTECT THE FREE EXERCISE OF RELIGION IN A MANNER OR TO AN EXTENT EQUAL TO OR GREATER THAN THE PROTECTION PROVIDED IN THIS SECTION.

6. ANY IMPLICATION IN THE FOREGOING TO THE CONTRARY NOTWITHSTANDING, "COMPELLING GOVERNMENT INTEREST" SHALL BE DEEMED TO INCLUDE ACTIVITIES BY GOVERNMENT WHICH PREVENT OR PUNISH ANY ACT WHICH ON ITS FACE WOULD OR IF UNDERTAKEN WOULD CONSTITUTE A VIOLATION, MISDEMEANOR, OR FELONY UNDER THE PENAL OR ANY OTHER LAW OF THIS STATE.

S 2. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to

be invalid and after exhaustion of all further judicial review, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this act directly involved in the controversy in which such judgment shall have been rendered.

S 3. This act shall take effect immediately.