

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

248E0244

HOUSE BILL NO. 1190

Introduced by: Representatives Brown (Richard), Adelstein, Hennies (Thomas), Lange, McCaulley, Monroe, Sebert, Smidt, Valandra, and Van Gerpen and Senators Bogue, Diedrich (Larry), Reedy, Staggers, and Symens

1 FOR AN ACT ENTITLED, An Act to provide that the free exercise of religion is protected.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. Terms used in this Act mean:

4 (1) "Demonstrates," meets the burdens of going forward with evidence, and persuasion
5 under the standard of clear and convincing evidence;

6 (2) "Exercise of religion," the ability to act or refusal to act in a manner substantially
7 motivated by a religious belief, whether or not the exercise is compulsory or central
8 to a larger system of religious belief;

9 (3) "Government," includes this state and any agency or political subdivision of this state;

10 (4) "Political subdivision," includes any county, city, school district, taxing district,
11 municipal corporation, or agency of a county, city, school district, or municipal
12 corporation;

13 (5) "Substantially burden," to inhibit or curtail religiously motivated practices.

14 Section 2. Free exercise of religion is a fundamental right that applies in this state, even if

1 laws, rules, or other government actions are facially neutral.

2 Section 3. Except as provided in section 4 of this Act, no government may substantially
3 burden a person's exercise of religion even if the burden results from a rule of general
4 applicability.

5 Section 4. Government may substantially burden a person's exercise of religion only if it
6 demonstrates that application of the burden to the person is both:

- 7 (1) Essential to further a compelling governmental interest; and
- 8 (2) The least restrictive means of furthering that compelling governmental interest.

9 Section 5. A person whose religious exercise is substantially burdened in violation of this Act
10 may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate
11 relief against a government. A party who prevails in any action to enforce this chapter against
12 a government shall recover attorney's fees and costs.

13 Section 6. This Act applies to all state laws and local ordinances and the implementation of
14 those laws and ordinances, whether statutory or otherwise, and whether enacted or adopted
15 before, on or after the effective date of this Act.

16 Section 7. This Act may not be construed to authorize any government to substantially
17 burden any religious belief.

18 Section 8. Nothing in this Act may be construed to affect, interpret, or in any way address
19 S.D. Const., Art. VI, § 3 or S.D. Const., Art. VIII, §§ 16 and 20. Any granting of government
20 funding, benefits, or exemptions permissible under the First Amendment of the United States
21 Constitution does not constitute a violation of this Act. As used in this section, the term,
22 granting, used with respect to government funding, benefits, or exemptions does not include the
23 denial of government funding, benefits, or exemptions.