

HOUSE BILL NO. 387

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES CROFT, Coghill, Dyson, Halcro, Cissna

Introduced: 2/16/00

Referred: Community and Regional Affairs, Health, Education and Social Services, State Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act prohibiting governmental entities, including municipalities and school
2 districts, from restricting a person's free exercise of religion."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new
5 section to read:

6 SHORT TITLE. This Act may be cited as the "Alaska Religious Freedom Protection
7 Act."

8 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section
9 to read:

10 **FINDINGS.** The legislature finds that

11 (1) the First Amendment to the Constitution of the United States and art. I,
12 sec. 4, Constitution of the State of Alaska, recognize and protect the right of free exercise of
13 religion;

14 (2) in 1990, the United States Supreme Court retreated from over 200 years

1 of respect for the right to free exercise of religion in *Employment Division v. Smith*, 494 U.S.
 2 872 (1990), an opinion written by Justice Scalia, by holding that the government no longer
 3 had to make reasonable exceptions to general laws in order to accommodate the religious
 4 beliefs of its citizens;

5 (3) while the Alaska Supreme Court has not chosen to follow this retreat from
 6 protection for religion, the free exercise rights of Alaska citizens are so vital and fundamental
 7 that it is in the public interest to provide a statutory guarantee of these rights to secure against
 8 a change in judicial interpretation; and

9 (4) while it is improper for the legislature to tell the judiciary how to interpret
 10 the Constitution of the State of Alaska, it is proper for the legislature to establish different
 11 rights or to secure established rights in a different manner or to a different degree than the
 12 minimum set by the Constitution of the State of Alaska as long as that legislative action does
 13 not interfere with the rights of other persons.

14 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section
 15 to read:

16 INTENT. It is not the intent of the legislature, by protecting the individual free
 17 exercise of religion, to create an establishment of religion or an official state religion.

18 * **Sec. 4.** AS 14.14 is amended by adding a new section to article 1 to read:

19 **Sec. 14.14.210. Personal exercise of religious freedom protected.** (a)

20 Except as provided in (b) of this section, a school board or school district may not
 21 restrict a person's free exercise of religion.

22 (b) A school board or school district may restrict a person's free exercise of
 23 religion only if

24 (1) the restriction is in the form of a rule of general applicability and
 25 does not intentionally discriminate against religion or among religions; and

26 (2) application of the restriction to the person is essential to further a
 27 compelling governmental interest and is the least restrictive means of furthering that
 28 compelling governmental interest.

29 (c) A person may bring a civil action against a school board or school district
 30 for a violation of this section, and the court may grant a declaratory judgment, an
 31 injunction, or damages.

1 (d) This section may not be construed to create an establishment of religion
2 or to authorize the infringement of a person's individual rights.

3 * **Sec. 5.** AS 29.10.200 is amended by adding a new paragraph to read:

4 (60) AS 29.71.070 (personal exercise of religious freedom protected).

5 * **Sec. 6.** AS 29.71 is amended by adding a new section to read:

6 **Sec. 29.71.070. Personal exercise of religious freedom protected.** (a)

7 Except as provided in (b) of this section, a municipality may not restrict a person's
8 free exercise of religion.

9 (b) A municipality may restrict a person's free exercise of religion only if

10 (1) the restriction is in the form of a rule of general applicability and
11 does not intentionally discriminate against religion or among religions; and

12 (2) application of the restriction to the person is essential to further a
13 compelling governmental interest and is the least restrictive means of furthering that
14 compelling governmental interest.

15 (c) A person may bring a civil action against a municipality for a violation of
16 this section, and the court may grant a declaratory judgment, an injunction, or
17 damages.

18 (d) This section may not be construed to create an establishment of religion
19 or to authorize the infringement of a person's individual rights.

20 (e) This section applies to home rule and general law municipalities.

21 * **Sec. 7.** AS 44.62 is amended by adding a new section to article 2 to read:

22 **Sec. 44.99.130. Personal exercise of religious freedom protected.** (a)

23 Except as provided in (b) of this section, a state agency may not restrict a person's
24 free exercise of religion.

25 (b) A state agency may restrict a person's free exercise of religion only if

26 (1) the restriction is in the form of a rule of general applicability and
27 does not intentionally discriminate against religion or among religions; and

28 (2) application of the restriction to the person is essential to further a
29 compelling governmental interest and is the least restrictive means of furthering that
30 compelling governmental interest.

31 (c) A person may bring a civil action against a state agency for a violation of

1 this section, and the court may grant a declaratory judgment, an injunction, or
2 damages.

3 (d) This section may not be construed to create an establishment of religion
4 or to authorize the infringement of a person's individual rights.

5 (e) In this section, "state agency" means a department, institution, board,
6 commission, division, authority, public corporation, committee, or other administrative
7 unit of the executive branch of state government, including the University of Alaska,
8 the Alaska Railroad Corporation, and the Alaska Aerospace Development Corporation.