

CS FOR HOUSE BILL NO. 387(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 3/15/00

Referred: State Affairs, Judiciary

Sponsor(s): REPRESENTATIVES CROFT, Coghill, Dyson, Halcro, Cissna, Whitaker, Green

A BILL

FOR AN ACT ENTITLED

1 "An Act requiring governmental entities, including municipalities and school
2 districts, to meet certain requirements before placing a substantial burden on a
3 person's free exercise of religion."

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

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

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

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

11 FINDINGS. The legislature finds that

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

1 (2) in 1990, the United States Supreme Court retreated from over 200 years
 2 of respect for the right to free exercise of religion in *Employment Division v. Smith*, 494 U.S.
 3 872 (1990), an opinion written by Justice Scalia, by holding that the government no longer
 4 had to make reasonable exceptions to general laws in order to accommodate the religious
 5 beliefs of its citizens;

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

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

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

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

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

20 **Sec. 14.14.210. Personal exercise of religious freedom protected.** (a) A
 21 school board or school district may not place a substantial burden on a person's free
 22 exercise of religion unless

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

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

28 (b) A person may bring a civil action against a school board or school district
 29 for a violation of this section, and the court may grant appropriate relief.

30 (c) This section may not be construed to create an establishment of religion
 31 or to authorize the infringement of the individual rights of a third party.

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

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

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

4 **Sec. 29.71.070. Personal exercise of religious freedom protected.** (a) A
5 municipality may not place a substantial burden on a person's free exercise of religion
6 unless

7 (1) the burden is in the form of a rule of general applicability and does
8 not intentionally discriminate against religion or among religions; and

9 (2) application of the burden to the person is essential to further a
10 compelling governmental interest and is the least restrictive means of furthering that
11 compelling governmental interest.

12 (b) A person may bring a civil action against a municipality for a violation of
13 this section, and the court may grant appropriate relief.

14 (c) This section may not be construed to create an establishment of religion
15 or to authorize the infringement of the individual rights of a third party.

16 (d) This section applies to home rule and general law municipalities.

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

18 **Sec. 44.99.130. Personal exercise of religious freedom protected.** (a) A
19 state agency may not place a substantial burden on a person's free exercise of religion
20 unless

21 (1) the burden is in the form of a rule of general applicability and does
22 not intentionally discriminate against religion or among religions; and

23 (2) application of the burden to the person is essential to further a
24 compelling governmental interest and is the least restrictive means of furthering that
25 compelling governmental interest.

26 (b) A person may bring a civil action against a state agency for a violation of
27 this section, and the court may grant appropriate relief.

28 (c) This section may not be construed to create an establishment of religion
29 or to authorize the infringement of the individual rights of a third party.

30 (d) In this section, "state agency" means a department, institution, board,
31 commission, division, authority, public corporation, committee, or other administrative

1 unit of the executive branch of state government, including the University of Alaska,
2 the Alaska Railroad Corporation, and the Alaska Aerospace Development Corporation.