

CS FOR HOUSE BILL NO. 195(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered: 4/11/01

Referred: Judiciary, Finance

Sponsor(s): REPRESENTATIVES DYSON, Meyer, Wilson, Croft, Green

A BILL

FOR AN ACT ENTITLED

1 **"An Act requiring governmental entities to meet certain requirements before placing a**
2 **substantial burden on 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 section
5 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 to
9 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 of

1 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) the free exercise rights of Alaska citizens are so vital and fundamental that
 6 it is in the public interest to provide a statutory guarantee of these rights to secure against a
 7 change in judicial interpretation; and

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

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

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

17 * **Sec. 4.** AS 44.99 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 governmental entity may not place a substantial burden on a person's free exercise of
 20 religion, even if the substantial burden is in the form of a rule of general applicability,
 21 unless the governmental entity demonstrates with clear and convincing evidence that
 22 application of the substantial burden to the person is essential to further a compelling
 23 governmental interest and is the least restrictive means of furthering that compelling
 24 governmental interest.

25 (b) A person may bring a civil action against a governmental entity for a
 26 violation of this section, and the court may grant an injunction and attorney fees.

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

29 (d) In this section,

30 (1) "exercise of religion" means the exercise of religion under art. I,
 31 sec. 4, Constitution of the State of Alaska, and under the First Amendment to the

1 Constitution of the United States;
2 (2) "governmental entity" means
3 (A) a branch, department, agency, instrumentality, or corporate
4 authority of the state;
5 (B) an official or other person acting under color of state law;
6 or
7 (C) a political subdivision of the state.