

Calendar No. 163

103D CONGRESS
1ST SESSION

S. 578

[Report No. 103-111]

A BILL

To protect the free exercise of religion.

JULY 27 (legislative day, JUNE 30), 1993
Reported without amendment

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1ST SESSION**S. 578****[Report No. 103-111]**

To protect the free exercise of religion.

IN THE SENATE OF THE UNITED STATES

MARCH 11 (legislative day, MARCH 3), 1993

Mr. KENNEDY (for himself, Mr. HATCH, Mr. BENNETT, Mr. BOND, Mr. BRADLEY, Mr. BUMPERS, Mr. CAMPBELL, Mr. DANFORTH, Mr. DASCHLE, Mr. EXON, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. GRAHAM, Mr. HARKIN, Mr. HATFIELD, Mr. JEFFORDS, Mrs. KASSEBAUM, Mr. KERRY, Mr. LAUTENBERG, Mr. LEVIN, Mr. LIEBERMAN, Mr. METZENBAUM, Ms. MIKULSKI, Ms. MOSELEY-BRAUN, Mr. MOYNIHAN, Mrs. MURRAY, Mr. PACKWOOD, Mr. PELL, Mr. REID, Mr. RIEGLE, Mr. SPECTER, Mr. WELLSTONE, Mr. WOFFORD, Mr. KOHL, Mr. SARBANES, Mrs. BOXER, Mr. DECONCINI, Mr. SASSER, Mr. INOUE, Mr. BROWN, Mr. COHEN, Mr. KEMPTHORNE, Mr. PRYOR, Mr. KERREY, Mr. MCCONNELL, Mr. DODD, Mr. DURENBERGER, Mr. AKAKA, Mr. GLENN, Mr. GREGG, Mr. NICKLES, Mr. COATS, Mr. LUGAR, Mr. BREAUX, Mr. DORGAN, Mr. ROCKEFELLER, and Mr. MACK) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

JULY 27 (legislative day, JUNE 30), 1993

Reported by Mr. BIDEN, without amendment

A BILL

To protect the free exercise of religion.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Religious Freedom
3 Restoration Act of 1993”.

4 **SEC. 2. CONGRESSIONAL FINDINGS AND DECLARATION OF**
5 **PURPOSES.**

6 (a) FINDINGS.—The Congress finds that—

7 (1) the framers of the Constitution, recognizing
8 free exercise of religion as an unalienable right, se-
9 cured its protection in the First Amendment to the
10 Constitution;

11 (2) laws “neutral” toward religion may burden
12 religious exercise as surely as laws intended to inter-
13 fere with religious exercise;

14 (3) governments should not burden religious ex-
15 ercise without compelling justification;

16 (4) in *Employment Division v. Smith*, 494 U.S.
17 872 (1990) the Supreme Court virtually eliminated
18 the requirement that the government justify burdens
19 on religious exercise imposed by laws neutral toward
20 religion; and

21 (5) the compelling interest test as set forth in
22 prior Federal court rulings is a workable test for
23 striking sensible balances between religious liberty
24 and competing prior governmental interests.

25 (b) PURPOSES.—The purposes of this Act are—

1 (1) to restore the compelling interest test as set
2 forth in *Sherbert v. Verner*, 374 U.S. 398 (1963)
3 and *Wisconsin v. Yoder*, 406 U.S. 205 (1972) and
4 to guarantee its application in all cases where free
5 exercise of religion is burdened; and

6 (2) to provide a claim or defense to persons
7 whose religious exercise is burdened by government.

8 **SEC. 3. FREE EXERCISE OF RELIGION PROTECTED.**

9 (a) IN GENERAL.—Government shall not burden a
10 person’s exercise of religion even if the burden results
11 from a rule of general applicability, except as provided in
12 subsection (b).

13 (b) EXCEPTION.—Government may burden a per-
14 son’s exercise of religion only if it demonstrates that appli-
15 cation of the burden to the person—

16 (1) is in furtherance of a compelling govern-
17 mental interest; and

18 (2) is the least restrictive means of furthering
19 that compelling governmental interest.

20 (c) JUDICIAL RELIEF.—A person whose religious ex-
21 ercise has been burdened in violation of this section may
22 assert that violation as a claim or defense in a judicial
23 proceeding and obtain appropriate relief against a govern-
24 ment. Standing to assert a claim or defense under this

1 section shall be governed by the general rules of standing
2 under article III of the Constitution.

3 **SEC. 4. ATTORNEYS FEES.**

4 (a) JUDICIAL PROCEEDINGS.—Section 722 of the Re-
5 vised Statutes (42 U.S.C. 1988) is amended by inserting
6 “the Religious Freedom Restoration Act of 1993,” before
7 “or title VI of the Civil Rights Act of 1964”.

8 (b) ADMINISTRATIVE PROCEEDINGS.—Section
9 504(b)(1)(C) of title 5, United States Code, is amended—

10 (1) by striking “and” at the end of clause (ii);

11 (2) by striking the semicolon at the end of
12 clause (iii) and inserting “, and”; and

13 (3) by inserting “(iv) the Religious Freedom
14 Restoration Act of 1993;” after clause (iii).

15 **SEC. 5. DEFINITIONS.**

16 As used in this Act—

17 (1) the term “government” includes a branch,
18 department, agency, instrumentality, and official (or
19 other person acting under color of law) of the
20 United States, a State, or a subdivision of a State;

21 (2) the term “State” includes the District of
22 Columbia, the Commonwealth of Puerto Rico, and
23 each territory and possession of the United States;

1 (3) the term “demonstrates” means meets the
2 burdens of going forward with the evidence and of
3 persuasion; and

4 (4) the term “exercise of religion” means the
5 exercise of religion under the First Amendment to
6 the Constitution.

7 **SEC. 6. APPLICABILITY.**

8 (a) **IN GENERAL.**—This Act applies to all Federal
9 and State law, and the implementation of that law, wheth-
10 er statutory or otherwise, and whether adopted before or
11 after the enactment of this Act.

12 (b) **RULE OF CONSTRUCTION.**—Federal statutory law
13 adopted after the date of the enactment of this Act is sub-
14 ject to this Act unless such law explicitly excludes such
15 application by reference to this Act.

16 (c) **RELIGIOUS BELIEF UNAFFECTED.**—Nothing in
17 this Act shall be construed to authorize any government
18 to burden any religious belief.

19 **SEC. 7. ESTABLISHMENT CLAUSE UNAFFECTED.**

20 Nothing in this Act shall be construed to affect, inter-
21 pret, or in any way address that portion of the First
22 Amendment prohibiting laws respecting the establishment
23 of religion (referred to in this section as the “Establish-
24 ment Clause”). Granting government funding, benefits, or
25 exemptions, to the extent permissible under the Establish-

1 ment Clause, shall not constitute a violation of this Act.
2 As used in this section, the term “granting”, used with
3 respect to government funding, benefits, or exemptions,
4 does not include the denial of government funding, bene-
5 fits, or exemptions.