

## SENATE BILL NO. 215

INTRODUCED BY C. GLIMM, M. BLASDEL, K. BOGNER, B. BROWN, M. CUFFE, J. ELLSWORTH, C. FRIEDEL, B. GILLESPIE, G. HERTZ, S. HINEBAUCH, D. HOWARD, D. KARY, B. KEENAN, M. LANG, T. MANZELLA, T. MCGILLVRAY, R. OSMUNDSON, K. REGIER, C. SMITH, G. VANCE, J. WELBORN, S. BERGLEE, M. BERTOGLIO, M. BINKLEY, J. CARLSON, P. FIELDER, F. FLEMING, W. GALT, J. GILLETTE, S. GREEF, S. GUNDERSON, E. HILL, C. HINKLE, J. HINKLE, D. LENZ, W. MCKAMEY, M. NOLAND, J. TREBAS, B. USHER, S. VINTON, K. ZOLNIKOV

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE FREE EXERCISE OF RELIGION; RECOGNIZING THE FREE EXERCISE OF RELIGION AS A FUNDAMENTAL RIGHT; RESTORING THE USE OF THE COMPELLING GOVERNMENTAL INTEREST TEST TO DECISIONS IN LEGAL CASES REGARDING THE FREE EXERCISE OF RELIGION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, in *Employment Division v. Smith*, 494 U.S. 872 (1990), the United States Supreme Court significantly curtailed the requirement that laws and other state action burdening the free exercise of religion be justified by a compelling interest; and

WHEREAS, *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006), interprets the Religious Freedom Restoration Act of 1993, which requires that federal laws and other actions by the federal government burdening the free exercise of religion must be justified by a compelling governmental interest; and

WHEREAS, the Religious Freedom Restoration Act of 1993 was passed in response to the *Employment Division v. Smith* decision and only applies to federal laws; and

WHEREAS, following the *Gonzales* decision favorably applying the Religious Freedom Restoration Act of 1993, many states have responded by passing laws similar to this act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

1            **NEW SECTION. Section 1. Short title.** [This act] may be cited as the "Montana Religious Freedom  
2 Restoration Act".

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4            **NEW SECTION. Section 2. Legislative findings.** The legislature finds that:

5            (1) the framers of the United States constitution, recognizing free exercise of religion as an  
6 unalienable right, secured its protection in the first amendment to the United States constitution;

7            (2) the framers of the Montana constitution, recognizing free exercise of religion as a fundamental  
8 right, secured its protection in the Montana constitution;

9            (3) laws and other state action that are neutral toward religion may burden the exercise of religion as  
10 surely as laws intended to interfere with religious exercise;

11            (4) state action should not burden exercise of religion without compelling justification;

12            (5) prior to 1990, laws and other state action burdening exercise of religion had to be justified by a  
13 compelling governmental interest; and

14            (6) the compelling governmental interest test set forth in prior federal court rulings and [sections 1  
15 through 5] is a workable test and strikes a sensible balance between religious liberty and competing  
16 governmental interests.

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18            **NEW SECTION. Section 3. Purpose.** The purpose of [sections 1 through 5] is:

19            (1) to restore the compelling governmental interest test and to guarantee its application in all cases in  
20 which the exercise of religion is SUBSTANTIALLY burdened by state action; and

21            (2) to provide a claim or defense to a person or persons whose exercise of religion is SUBSTANTIALLY  
22 burdened by state action.

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24            **NEW SECTION. Section 4. Definitions.** As used in [sections 1 through 5], the following definitions  
25 apply:

26            (1) "~~Burden~~ SUBSTANTIALLY BURDEN" means any action that directly or indirectly constrains, inhibits,  
27 curtails, or denies the exercise of religion by any person or compels any action contrary to a person's exercise  
28 of religion and includes but is not limited to withholding of benefits, assessment of criminal, civil, or

administrative penalties, or exclusion from governmental programs or access to governmental facilities.

(2) "Compelling governmental interest" means a governmental interest of the highest order that cannot otherwise be achieved without burdening the exercise of religion.

(3) "Exercise of religion" means the practice or observance of religion. The term includes but is not limited to the ability to act or refuse to act in a manner substantially motivated by one's sincerely held religious belief, whether or not the exercise is compulsory or central to a larger system of religious belief.

(4) "Person" means any individual, association, partnership, corporation, church, religious institution, estate, trust, foundation, or other legal entity.

(5) "State action" means the implementation or application of any law, including but not limited to state and local laws, ordinances, rules, regulations, and policies, whether statutory or otherwise, or other action by the state or a political subdivision and a local government, municipality, instrumentality, or public official authorized by law in the state of Montana.

**NEW SECTION. Section 5. Free exercise of religion protected.** (1) State action may not SUBSTANTIALLY burden a person's right to the exercise of religion, even if the burden results from a rule of general applicability, unless it is demonstrated that applying the burden to that person's exercise of religion:

(a) is essential to further a compelling governmental interest; and

(b) is the least restrictive means of furthering that compelling governmental interest.

(2) A person whose exercise of religion has been SUBSTANTIALLY burdened or is likely to be SUBSTANTIALLY burdened in violation of [sections 1 through 5] may assert the violation or impending violation as a claim or defense in a judicial or administrative proceeding, regardless of whether the state of Montana or one of its political subdivisions is a party to the proceeding. The person asserting such a claim or defense may obtain appropriate relief, including relief against the state of Montana or its political subdivisions. Appropriate relief includes but is not limited to injunctive relief, declaratory relief, compensatory damages, and costs and attorney fees.

**NEW SECTION. Section 6. Codification instruction.** [Sections 1 through 5] are intended to be codified as an integral part of Title 27, and the provisions of Title 27 apply to [sections 1 through 5].

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2 NEW SECTION. **Section 7. Severability.** If a part of [this act] is invalid, all valid parts that are

3 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,

4 the part remains in effect in all valid applications that are severable from the invalid applications.

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6 NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

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