

BILL ANALYSIS

Senate Research Center
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S.B. 138
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As Filed

DIGEST

In 1993, Congress passed the Religious Freedom Restoration Act (RFRA) to “restore” certain protections against government infringement upon the free exercise of religion. RFRA mandated that government must have a “compelling interest” before it can place burdens or restrictions on the free exercise of religion.

In 1997, the Supreme Court held RFRA unconstitutional in the City of Boerne v. Flores case as to state and local governments. In this case, the city prohibited a church from adding to its building based on city ordinances protecting a historical district. The Supreme Court held that Congress exceeded its authority under the Constitution in adopting RFRA; however, this decision does not affect Texas’ ability to enact similar legislation.

S.B. 138 would prohibit a government agency from substantially burdening a person’s free exercise of religion, unless the agency can demonstrate that the burden is the least restrictive means of furthering a compelling governmental interest.

PURPOSE

As proposed, S.B. 138 prohibits a government agency from substantially burdening a person’s free exercise of religion, and authorizes a government agency to burden a person’s free exercise of religion if the agency can demonstrate that the burden is the least restrictive means of furthering a compelling governmental interest.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 5, Civil Practice and Remedies Code, by adding Chapter 110, as follows:

CHAPTER 110. RELIGIOUS FREEDOM

Sec. 110.001. DEFINITIONS. Defines “free exercise of religion” and “government agency.”

Sec. 110.002. APPLICATION. Provides that this chapter applies to any exercise of governmental authority, acts of a government agency, and each law of this state. Provides that exceptions to the application of this chapter are made only with express reference to this chapter.

Sec. 110.003. RELIGIOUS FREEDOM PROTECTED. Prohibits a government agency from burdening a person’s free exercise of religion. Authorizes a government agency to burden a person’s free exercise of religion if it can demonstrate that the burden is the least restrictive means of furthering a compelling governmental interest. Provides that once the government agency demonstrates that the burden is the least restrictive means to insure compliance, it is not further required to separately punish failure to comply or prove that the specific method of imposing the substantial burden is the least restrictive.

Sec. 110.004. DEFENSE. Authorizes a person whose free exercise of religion is burdened in violation of Section 110.003, to assert that violation as a defense in a judicial proceeding.

Sec. 110.005. REMEDIES. Authorizes a court presiding over a civil action wherein a

government agency violates this chapter to take certain action. Provides that this chapter has no effect on Section 498.0045 or 501.008, Government Code, or Chapter 14, Civil Practice and Remedies Code.

Sec. 110.006. SOVEREIGN IMMUNITY WAIVED. Waives and abolishes sovereign immunity to the extent of liability created by Section 110.005. Authorizes a claimant to sue a government agency for damages allowed by Section 110.005.

Sec. 110.007. EFFECT ON RIGHTS. Clarifies that this chapter does not authorize a government agency to burden a person's free exercise of religion. Provides that this chapter affords additional protection to extant protection of religious freedom. Prohibits this chapter from being construed to affect or interpret Section 4, 5, or 6, Article I, Texas Constitution.

Sec. 110.008. GRANT TO RELIGIOUS ORGANIZATION NOT AFFECTED. Provides that this chapter does not affect support to a religious organization.

SECTION 2. Makes application of this Act retroactive. Prohibits a court from awarding damages to a claimant from a violation of this Act, whose damages were incurred before January 1, 2000.

SECTION. 3. Emergency clause.

Effective date: upon passage.