

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE BILL 350

By: Pruitt

AS INTRODUCED

An Act relating to religious land use; creating the Religious Land Use and Institutionalized Persons Act of 2001; providing short title; defining terms; prohibiting burden upon free exercise of religion; providing exception; prohibiting imposing a land use regulation in a certain manner; providing exception; stating application of specified provisions; authorizing assertion of certain violations as claim or defense; authorizing certain relief; stating burden of persuasion; stating requirement for application of full faith and credit; construing act; repealing Section 8, Chapter 272, O.S.L. 2000 (51 O.S. Supp. 2000, Section 258); providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 270 of Title 51, unless there is created a duplication in numbering, reads as follows:

This act may be cited as the "Religious Land Use and Institutionalized Persons Act of 2001".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 271 of Title 51, unless there is created a duplication in numbering, reads as follows:

As used in the Religious Land Use and Institutionalized Persons Act of 2001:

1. "Claimant" means a person raising a claim or defense under this act;

2. "Demonstrates" means meets the burdens of going forward with the evidence and of persuasion under the standard of clear and convincing evidence;

3. "Free exercise clause" means that portion of the First Amendment to the Constitution of the United States, and of Section 2 of Article I of the Constitution of the State of Oklahoma, that proscribes laws prohibiting the free exercise of religion;

4. "Government" means:

- a. a state, county, municipality, or other governmental entity created under the authority of this state,
- b. any branch, department, agency, instrumentality, or official of any entity listed in subparagraph a of this paragraph, or
- c. any other person acting under color of state law;

5. "Land use regulation" means a zoning or landmarking law, or the application of such law, that limits or restricts a claimant's use or development of land, including a structure affixed to land, if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest;

6. "Program or activity" means all of the operations of any entity described in paragraph (1) or (2) of Section 606 of the Civil Rights Act of 1964, 42 U.S.C. 2000d-4a; and

7. "Religious exercise" means any exercise of religion, whether or not compelled by, or central to, a system of religious beliefs. The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 272 of Title 51, unless there is created a duplication in numbering, reads as follows:

A. 1. No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or

institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution:

- a. is in furtherance of a compelling governmental interest, and
- b. is the least restrictive means of furthering that compelling governmental interest.

2. This subsection applies in any case in which the substantial burden:

- a. is imposed in a program or activity that receives federal financial assistance, even if the burden results from a rule of general applicability,
- b. affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several states, or with Indian tribes, even if the burden results from a rule of general applicability, or
- c. is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property.

B. 1. No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

2. No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

3. No government shall impose or implement a land use regulation that:

- a. totally excludes religious assemblies from a jurisdiction, or
- b. unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 273 of Title 51, unless there is created a duplication in numbering, reads as follows:

A. No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in Section 2 of the Civil Rights of Institutionalized Persons Act, 42 U.S.C. 1997, even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person:

- 1. Is in furtherance of a compelling governmental interest; and
- 2. Is the least restrictive means of furthering that compelling governmental interest.

B. This section applies in any case in which:

- 1. The substantial burden is imposed in a program or activity that receives federal assistance; or
- 2. The substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several states, or with Indian tribes.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 274 of Title 51, unless there is created a duplication in numbering, reads as follows:

A. A person may assert a violation of this act as a claim or defense in a judicial or administrative proceeding and obtain appropriate relief against a government.

B. If a plaintiff produces prima facie evidence to support a claim alleging a violation of the Free Exercise Clause or a violation of Section 2 of the Civil Rights of Institutionalized Persons Act, 42 U.S.C. 1997, the government shall bear the burden of

persuasion on any element of the claim, except that the plaintiff shall bear the burden of persuasion on whether the law, including a regulation, or government practice that is challenged by the claim substantially burdens the plaintiff's exercise of religion.

C. Adjudication of a claim of a violation of Section 2 of the Civil Rights of Institutionalized Persons Act, 42 U.S.C. 1997, in a nonfederal forum shall not be entitled to full faith and credit in a federal court unless the claimant had a full and fair adjudication of that claim in the nonfederal forum.

D. Nothing in this act shall be construed to amend or repeal the Prison Litigation Reform Act of 1995, including provisions of law amended by that act.

E. Nothing in this subsection shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General, the United States, or any agency, officer, or employee of the United States, acting under any law other than this subsection, to institute or intervene in any proceeding.

F. If the only jurisdictional basis for applying a provision of this act is a claim that a substantial burden by a government on religious exercise affects, or that removal of that substantial burden would affect, commerce with foreign nations, among the several states, or with Indian tribes, the provision shall not apply if the government demonstrates that all substantial burdens on, or the removal of all substantial burdens from, similar religious exercise throughout the nation would not lead in the aggregate to a substantial effect on commerce with foreign nations, among the several states, or with Indian tribes.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 275 of Title 51, unless there is created a duplication in numbering, reads as follows:

A. Nothing in this act shall be construed to authorize any government to burden any religious belief.

B. Nothing in this act shall create any basis for restricting or burdening religious exercise or for claims against a religious organization, including any religiously affiliated school or university, not acting under color of law.

C. Nothing in this act shall create or preclude a right of any religious organization to receive funding or other assistance from a government, or of any person to receive government funding for a religious activity, but this act may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise.

D. Nothing in this act shall:

1. Authorize a government to regulate or affect, directly or indirectly, the activities or policies of a person other than a government as a condition of receiving funding or other assistance; or

2. Restrict any authority that may exist under other law to so regulate or affect, except as provided in this act.

E. A government may avoid the preemptive force of any provision of this act by changing the policy or practice that results in a substantial burden on religious exercise, by retaining the policy or practice and exempting the substantially burdened religious exercise, by providing exemptions from the policy or practice for applications that substantially burden religious exercise, or by any other means that eliminates the substantial burden.

F. With respect to a claim brought under this act, proof that a substantial burden on a person's religious exercise affects, or removal of that burden would affect, commerce with foreign nations, among the several states, or with Indian tribes, shall not establish any inference or presumption that Congress intends that any religious exercise is, or is not, subject to any law other than this act.

G. This act shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this act, the Constitution of the State of Oklahoma and the Constitution of the United States.

H. Nothing in this act shall be construed to preempt state law, or repeal federal law, that is equally as protective of religious exercise as, or more protective of religious exercise than, this act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 276 of Title 51, unless there is created a duplication in numbering, reads as follows:

Nothing in this act shall be construed to affect, interpret, or in any way address that portion of the First Amendment to the Constitution of the United States prohibiting laws respecting an establishment of religion. Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause of the First Amendment of the Constitution of the United States, shall not constitute a violation of this act. For the purpose of this section, the term "granting", used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.

SECTION 8. REPEALER Section 8, Chapter 272, O.S.L. 2000 (51 O.S. Supp. 2000, Section 258), is hereby repealed.

SECTION 9. This act shall become effective November 1, 2001.