

**Michigan State Senate  
Judiciary Committee  
Hearing on Senate Bill 4  
April 28, 2015**

**Testimony Submitted by:**



Mr. Chairman. Members of the Committee. Good Afternoon.

I'm Leslee Fritz, Deputy Director of the Michigan Department of Civil Rights. I am joined by our Director of Law and Policy, Dan Levy. We are here to express concern about the perceived need for a Michigan Religious Freedom Restoration Act (RFRA), and opposition to the bill in its present form.

Our statement will be brief out of respect to the many others who wish to address this Committee.

The Michigan Civil Rights Commission and the Michigan Department of Civil Rights have been strong supporters of the constitutional guarantee of religious freedom for all Americans, regardless of their faith, since our creation more than 50 years ago. We believe government should, to the greatest extent possible, accommodate the religious beliefs and practices of each of its citizens. However, a religious accommodation can never be used to justify harming the rights of others.

Religious freedom, in short, protects the right of every person to practice their religion, as long as doing so neither imposes that religious view on others, nor inflicts a greater harm upon the rights of others.

Historically, these constitutional guarantees have meant that any law that burdens the free exercise of religion must meet a strict scrutiny test that requires the law to both further a compelling government interest and be the least restrictive way of furthering that interest. When Congress observed that the courts were weakening this standard in the 1980s and 1990s, they passed the federal RFRA. RFRA was intended to reinstate the strict scrutiny test.

Because we are not aware of any effort by Michigan Courts to strip the strict scrutiny test from Michigan jurisprudence, we see no need for a state law that reestablishes it.

More concerning, the bill as proposed expands the language used in the federal RFRA.

For example, Section 6, subsection 2 has no parallel in federal law. It requires that the Michigan law be construed broadly and to the “maximum extent permitted”. This language appears to require that whenever this law conflicts with another, this one wins without permitting courts to weigh the considerations that usually apply to such conflicts.

In the next subsection this bill changes the language of the federal law from “Nothing in this chapter shall be construed to authorize any government to burden any religious belief” into nothing shall be construed to “authorize any burden on any religious belief.” The removal of those two simple words expands the bill’s authority beyond government action to private and other entities – a significant change in scope.

These, and other additional sections, make the Michigan version far more expansive than its federal counterpart.

And the impact of this expansion is our biggest concern.

Broadening the legislation beyond the actions of government allows businesses and individuals to use the law as justification for actions that previously would have been considered illegal discrimination. It undermines the fundamental protections of Michigan’s primary civil rights laws – the Elliott Larsen Civil Rights Act - essentially creating a rule of law that says that firing someone, or denying them service, is only illegal for the non-religious.

The sponsor of this bill has claimed in media interviews, including his op-ed which ran earlier this month in the Detroit News, that this is not his intention – that he is not trying to create a “license to discriminate.” If that is true, then what he intended is not accomplished by what he introduced.

There is a simple fix that would put all of this concern to rest.

Amend Senate Bill 4 to include language like that in Texas which clarifies that the law “does not establish or eliminate a defense to a civil action or criminal prosecution under a federal or state [or local] civil rights law.”

This simple amendment would ensure that no existing civil rights protections are weakened, intentionally or unintentionally, by passage of this bill.

Without this amendment, Senate Bill 4 will create the same unnecessary controversy we just witnessed in Indiana. It will undermine our civil rights protections and threaten our economy. Without this amendment, Senate Bill 4 should not pass.

Thank you. We would be happy to answer any questions you may have.