

ALASKA STATE LEGISLATURE



REPRESENTATIVE ANDY JOSEPHSON

MEMORANDUM

HB 184 – Non-Discrimination Based on Sexual Orientation, Gender Identity or Expression:

Ministerial Exemption and other Religious Exemptions

May 9th, 2017

During our first hearing for HB 184 in State Affairs last week, a significant amount of confusion arose regarding the religious exemption. I would like to clarify this part of the legislation so that there is no question among members.

I would like to make clear, that the religious exemption in existing law which applies to this legislation is much broader than previously noted in the first hearing, in which we focused on the ministerial exemption in section 5.

Attached is a summary of the **Hosanna-Tabor** case, which explains the interpretation of the ministerial exemption in detail. As explained in committee, the ministerial exemption is a recognized interpretation of the First Amendment by the U.S. Federal Courts. It is because of this that the inclusion, (or lack thereof), of this language does not affect the implementation of this legislation, as the federal interpretation would apply regardless. That being said, the question arose as to under which circumstances this particular exemption applies.

During the hearing it was explained that this exemption applies to the “employment relationship between a religious institution and its minister.” However, as stated in the attached description, what qualifies an employee as a “minister” is not clearly defined. In the specific case of Hosanna-Tabor, this exemption was applied to a teacher, who taught not only religious courses but secular courses as well. It was found that “her job duties reflected a role in conveying the Church’s message and carrying out its mission: As a source of religious instruction, Perich [the teacher] played an important part in transmitting the Lutheran faith.” In summary, the explanation provided in committee was sufficient, in that this exemption applies to positions which “shape its own faith and mission through its appointments.” The example of a teacher vs. a janitor hold true, as this exemption would not apply to positions which do not have purview of the internal governance of a church, or the personification of its beliefs.

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The executive director of the Alaska State Human Rights Commission, Marti Buscaglia, mentioned an additional religious exemption in **Alaska's Administrative Code**, under 6 AAC 30.985. This code states that, "Any organization operated for charitable or educational purposes and supervised or controlled by or in connection with a religious organization is not prohibited from limiting admission to or giving preference to persons of the same religion or denomination or otherwise making a hiring decision that will promote the religious principles for which it is established or maintained."

However, what is even more pertinent than this code is the exemption asserted in surrounding state statute under title 18.

Title 18.80.300 (5), defines the term "employer" as, "a person, including the state and a political subdivision of the state, who has one or more employees in the state but does not include a club that is exclusively social, or a fraternal, charitable, educational, or religious association or corporation, if the club, association, or corporation is not organized for private profit." Given this definition, the entire section of HB 184 which addresses employers does not apply to not for profit religious associations or corporations. Given this state statute, the religious exemption for employers is much broader than that provided by the ministerial exemption.

Using the context of HB 184, which adds "sexual orientation, gender identity or expression" to the prohibitions on discriminatory practices, the ministerial exemption allows religious institutions to discriminate on this basis in specific positions which play an important role in shaping its faith and mission, however, the definition of employer under state statute exempts non-profit religious associations from this prohibition *in all positions*. Essentially, religious organizations are largely exempt from the employment section of this legislation.

Additionally, given the exemption in state statute HB 184 fully allows "the freedom of association", meaning that prohibitions on discrimination cannot apply to a religious associations clubs, social groups, charitable organizations and/or educational organizations.

I hope that this dispels any remaining confusion in regards to religious exemptions which would be applied to HB 184.

If you have any further questions please contact my staffer, Megan Holland at 465-4967