

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
89th General Assembly
Regular Session, 2013

As Engrossed: S3/19/13 S4/2/13
A Bill

SENATE BILL 1119

By: Senator Hester
By: Representative Ballinger

For An Act To Be Entitled

AN ACT TO ENACT THE RELIGIOUS FREEDOM RESTORATION ACT; TO PROVIDE REMEDIES AND PENALTIES FOR VIOLATING OR ABUSING RELIGIOUS PROTECTIONS UNDER THE ACT; AND FOR OTHER PURPOSES.

Subtitle

TO ENACT THE RELIGIOUS FREEDOM RESTORATION ACT; AND TO PROVIDE REMEDIES AND PENALTIES FOR VIOLATING OR ABUSING RELIGIOUS PROTECTIONS UNDER THE ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. Legislative findings.

The General Assembly finds that it is a compelling state interest to enforce the generally applicable criminal laws of the State of Arkansas through the provisions of this act.

SECTION 2. Arkansas Code Title 16, Chapter 123, is amended to add an additional subchapter to read as follows:

Subchapter 4 – Religious Freedom Restoration Act

16-123-401. Title.

This subchapter shall be known and may be cited as the "Religious Freedom Restoration Act".



16-123-402. Definitions.

As used in this subchapter:

(1)(A) "Burden" means to prevent, inhibit, or curtail religiously motivated practice consistent with a sincerely held religious belief.

(B) "Burden" includes an indirect burden including without limitation withholding benefits, assessing penalties, or an exclusion from programs or access to facilities;

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

(3) "Exercise of religion" means the exercise of sincerely held religious beliefs guaranteed by:

(A) This subchapter;

(B) Arkansas Constitution, Article 2, §§ 24-26; or

(C) The First Amendment to the United States Constitution;

(4) "Fraudulent claim" means a claim that is dishonest in fact or that is made principally for a patently improper purpose including without limitation to harass the opposing party;

(5) "Frivolous claim" means a claim that completely lacks merit under existing law and cannot be supported by a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law;

(6) "Government entity" means:

(A) A branch, department, agency, board, commission, or other instrumentality of:

(i) State government; or

(ii) A political subdivision of the state; or

(B) An official or other person acting in his or her official capacity under color of state law; and

(7) "Prevails" means to obtain prevailing party status as defined by courts construing the federal Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. § 1988.

16-123-403. Religious freedom preserved.

(a) Except as provided in subsection (b) of this section, a government entity shall not burden a person's free exercise of religion through the enforcement of a rule of general applicability or otherwise.

(b) A government entity shall not burden a person's free exercise of religion unless it demonstrates by clear and convincing evidence that application of the burden to the person and the specific act or refusal to act is:

- (1) In furtherance of a compelling governmental interest; and
- (2) The least restrictive means of furthering the compelling governmental interest.

16-123-404. Construction and applicability.

This subchapter does not:

- (1) Authorize a government entity to burden a religious belief;
- (2) Affect, interpret, or in any way address those portions of this subchapter, Article 2, §§ 24-26, of the Arkansas Constitution or the First Amendment to the United States Constitution that prohibit laws respecting the establishment of religion; or
- (3) Prohibit a grant of government funds, benefits, or exemptions to the extent permissible under those portions of this subchapter, Article 2, §§ 24-26, of the Arkansas Constitution or the First Amendment to the United States Constitution that prohibit laws respecting the establishment of religion.

16-123-405. Remedies and penalties.

(a)(1) A person whose exercise of religion has been burdened by a government entity in violation of this subchapter may in any judicial or administrative proceeding before a court or other tribunal of competent jurisdiction assert the violation as a claim or defense.

(2) The court or tribunal may grant any combination of declaratory and injunctive relief deemed appropriate for the violation.

(b)(1) A person who prevails against a government entity in any proceeding to enforce this subchapter may recover reasonable costs and attorney's fees.

(2) A person who files a fraudulent claim or frivolous claim under this subchapter may be assessed reasonable costs and attorney's fees.

16-123-406. Notice – Right to accommodate.

(a) A person may not bring an action under this subchapter unless no more than sixty (60) days before bringing the action the person gives written notice by certified mail, return receipt requested, to the government entity allegedly burdening the person's free exercise of religion:

(1) That the person's free exercise of religion is burdened by an exercise of the government entity's governmental authority;

(2) Of the particular act or refusal to act that is burdened;
and

(3) Of the manner in which the exercise of governmental authority burdens the act or refusal to act.

(b) A person may bring an action under this subchapter within the sixty-day period established by subsection (a) of this section, if:

(1) The exercise of governmental authority that threatens to burden the person's free exercise of religion is imminent; and

(2) The person was not informed and did not otherwise have knowledge of the exercise of the governmental authority in time to reasonably provide the written notice under subsection (a) of this section.

16-123-407. Exemptions.

The following entities are exempt from this subchapter:

(1) The Department of Correction;

(2) The Department of Community Correction;

(3) The Division of Youth Services of the Department of Human Services; and

(4) Any state, county, or local entity, jail, or correctional facility that houses inmates or persons otherwise in state custody.

/s/Hester