

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

State of Arkansas *As Engrossed: H2/11/15 S2/26/15 S3/16/15 S3/26/15*

90th General Assembly

A Bill

Regular Session, 2015

HOUSE BILL 1228

By: Representatives Ballinger, Beck, Bentley, House, Speaks, Harris, Rushing, Womack, Vaught, Gonzales, Tosh, Copeland, C. Fite, Gates, Lundstrum, Payton, B. Smith, Brown, Cozart, Farrer, Lowery, Sullivan, Richmond, J. Mayberry, Dotson, M. Gray, D. Meeks, Miller, Drown
By: Senator Hester

For An Act To Be Entitled

AN ACT TO ENACT THE RELIGIOUS FREEDOM RESTORATION ACT TO BE KNOWN AS MARY'S LAW; TO PROVIDE PROTECTION FOR RELIGIOUS PRACTICE AND TO PROVIDE REMEDIES AND PENALTIES FOR VIOLATING OR ABUSING RELIGIOUS PROTECTIONS; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO ENACT THE RELIGIOUS FREEDOM RESTORATION ACT; AND TO DECLARE AN EMERGENCY.

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 governmental interest to comply with federal civil rights laws.

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. Legislative intent.

It is the intent of the General Assembly to:

(1) Ensure that in all cases in which state action substantially burdens the exercise of religion strict scrutiny is applied;

(2) Provide a claim or defense to a person whose exercise of religion is substantially burdened by state action; and

(3) Implement Article 2, § 24, of the Arkansas Constitution, which states that "[N]o human authority can, in any case or manner whatsoever, control or interfere with the right of conscience".

16-123-403. Legislative findings.

The General Assembly finds that:

(1) The Arkansas Constitution recognizes the free exercise of religion;

(2) Laws neutral toward religion have the same potential to burden religious exercise as laws purposely intended to interfere with religious exercise;

(3) Governments should not substantially burden the free exercise of religion without compelling justification;

(4) In *Employment Division v. Smith*, 494 U.S. 872 (1990), the United States Supreme Court virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion;

(5) In response, Congress passed the Religious Freedom Restoration Act of 1993, 42 U.S.C., § 2000bb, to restore the compelling interest test set forth in the federal cases of *Wisconsin v. Yoder*, 406 U.S. 205 (1972), and *Sherbert v. Verner*, 374 U.S. 398 (1963);

(6) The compelling interest test is a workable test for striking sensible balances between religious liberty and competing government interests;

(7) In *City of Boerne v. Flores*, 521 U.S. 507 (1997), the United States Supreme Court held that the protections of religious exercise afforded by the Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb, only applied to religious exercise burdened by federal law or

agencies and provided no protection from burdens on religious exercise from state or local law or governments;

(8) To provide the same level of protection from burdens on religious exercise from state or local governments, a state must enact an equivalent to the Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb, that was passed by Congress; and

(9) Since the 1997 Supreme Court decision in City of Boerne v. Flores, many states have enacted statutes similar to the Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb, including: Alabama, Arizona, Connecticut, Florida, Idaho, Illinois, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, and Virginia.

16-123-404. Definitions.

As used in this subchapter:

(1) "Compelling governmental interest" means a governmental interest of the highest magnitude that cannot otherwise be achieved without burdening the exercise of religion;

(2) "Exercise of religion" means the practice or observance of religion including without limitation the ability to act or refuse to act in a manner substantially motivated by a person's sincerely held religious beliefs, whether or not the exercise is compulsory or central to a larger system of religious belief;

(3) "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, including without limitation a city or county; or

(B) An official or other person acting under color of state law;

(4) "Person" means an individual, association, partnership, corporation, church, religious institution, estate, trust, foundation, or other legal entity;

(5) "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;

(6) "State action" means the implementation or application of any law, including without limitation state and local laws, ordinances, rules, regulations, and policies, whether statutory or otherwise, or other action by the state or any political subdivision thereof and any local government, municipality, instrumentality, or public official authorized by law in the state; and

(7)(A) "Substantial burden" means to prevent, inhibit, or curtail religiously-motivated practice consistent with a sincerely held religious belief.

(B) "Substantial burden" includes without limitation withholding benefits, assessing penalties, or an exclusion from programs or access to facilities.

16-123-405. Religious freedom preserved.

A state action shall not substantially burden a person's right to exercise of religion, even if the substantial burden results from a rule of general applicability, unless it is demonstrated that applying the substantial burden to the person's exercise of religion in this particular instance:

(1) Is essential to further a compelling governmental interest;
and

(2) Is the least restrictive means of furthering that compelling governmental interest.

16-123-406. Construction and applicability.

This subchapter does not:

(1) Authorize a government entity to substantially 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;

(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; or

(4) Create a right or cause of action with respect to an employee against an employer if the employer is not a government entity.

16-123-407. Remedies and penalties.

(a) Regardless of whether the state or one of its political subdivisions is a party to the proceeding, a person whose exercise of religion has been substantially burdened, or is likely to be substantially burdened, in violation of § 16-123-405, may assert the violation or impending violation as a claim or defense in a judicial or administrative proceeding.

(b)(1) A person asserting a claim or defense under this subchapter may obtain appropriate relief, including relief against the state or a political subdivision of the state when the state or the political subdivision of the state is a party to the proceedings.

(2) Appropriate relief under this subsection includes without limitation:

(A) Injunctive relief;

(B) Declaratory relief;

(C) Compensatory damages; and

(D) Costs and attorney's fees.

16-123-408. Exemptions.

The Department of Correction, the Department of Community Correction, a county jail, and a detention facility are exempt from this subchapter.

SECTION 3. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that there is not a higher protection offered by the state than the protection of a person's right to religious freedom; and that this act is immediately necessary because every day that a person's right to religious freedom is threatened is a day that the First Amendment to the United States Constitution is compromised. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

/s/Ballinger