

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Engrossed: H3/12/99

A Bill

HOUSE BILL 2262

5 By: Representative Rackley
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For An Act To Be Entitled

9 "AN ACT TO BE KNOWN AS THE 'ARKANSAS STUDENT RELIGIOUS
10 LIBERTY ACT OF 1999' ; AND FOR OTHER PURPOSES. AN ACT
11 TO BE KNOWN AS THE 'ARKANSAS STUDENT RELIGIOUS LIBERTY
12 ACT OF 1999' ."

Subtitle

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14 "AN ACT TO BE KNOWN AS THE 'ARKANSAS
15 STUDENT RELIGIOUS LIBERTY ACT OF 1999' ."
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. This act shall be known as may be cited as the "Arkansas
22 Student Religious Liberty Act of 1999".
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24 SECTION 2. Legislative findings.

25 (a) The General Assembly finds the following:

26 (1) Judicial decisions concerning religion, free speech and public
27 education are widely misunderstood and misapplied;

28 (2) Confusion surrounding these decisions has caused some to be
29 less accommodating of the religious liberty and free speech rights of students
30 than permitted under the First Amendment to the United States Constitution;

31 (3) Confusion surrounding these decisions has resulted in needless
32 litigation and conflicts;

33 (4) The Supreme Court of the United States has ruled that the
34 establishment clause of the First Amendment to the United States Constitution
35 requires that public schools neither advance nor inhibit religion. Public
36 schools should be neutral in matters of faith and treat religion with fairness

1 and respect;

2 (5) Neutrality to religion does not require hostility to religion.
3 The establishment clause does not prohibit reasonable accommodation of
4 religion, nor does the clause bar appropriate teaching about religion;

5 (6) Accommodation of religion is required by the free speech and
6 free exercise clauses of the First Amendment as well as by the Equal Access
7 Act (20 U.S.C. § 4071 et seq.) and the Religious Freedom Restoration Act of
8 1993 (42 U.S.C. § 2000bb et seq.); and

9 (7) Setting forth the religious liberty rights of students in a
10 statute would assist students and parents in the enforcement of the religious
11 liberty rights of the students and provide impetus to efforts in public
12 schools to accommodate religious belief in feasible cases.

13 (b) The purpose of this act is to create a safe harbor for schools
14 desiring to avoid litigation and to allow the free speech and religious
15 liberty rights of students to the extent permissible under the establishment
16 clause.

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18 SECTION 3. Definitions.

19 As used in this act unless the context otherwise requires:

20 (1) "Establishment clause" means the portion of the First Amendment to
21 the United States Constitution that forbids laws respecting an establishment
22 of religion;

23 (2) "Free exercise clause" means the portion of the First Amendment to
24 the United States Constitution that forbids laws prohibiting the free exercise
25 of religion;

26 (3) "Free speech clause" means the portion of the First Amendment to the
27 United States Constitution that forbids laws abridging the freedom of speech;

28 (4) "Public school" means any school that:

29 (A) Is operated by the state, a political subdivision of the
30 state, or governmental agency within the state; and

31 (B) Receives state financial assistance; and

32 (5) "Student" means an individual attending a public school.

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34 SECTION 4. Rights of students.

35 (a) A student shall have the right to carry out an activity described in
36 any of subdivisions (b)(1)-(4), if the student does not:

1 (1) Infringe on the rights of the school to:

2 (A) Maintain order and discipline;

3 (B) Prevent disruption of the educational process; and

4 (C) Determine educational curriculum and assignments;

5 (2) Harass other persons or coerce other persons to participate in
6 the activity; or

7 (3) Otherwise infringe on the rights of other persons.

8 (b) Subject to the provisions of subsection (a), a student shall be
9 permitted to voluntarily:

10 (1) Pray in a public school, vocally or silently, alone or with
11 other students to the same extent and under the same circumstances as a
12 student is permitted to vocally or silently reflect, meditate or speak on non-
13 religious matters alone or with other students in such public school;

14 (2) Express religious viewpoints in a public school to the same
15 extent and under the same circumstances as a student is permitted to express
16 viewpoints on non-religious topics or subjects in such school;

17 (3) Speak to and attempt to share religious viewpoints with other
18 students in a public school to the same extent and under the same
19 circumstances as a student is permitted to speak to and attempt to share non-
20 religious viewpoints with such other students;

21 (4) Possess or distribute religious literature in a public school,
22 subject to reasonable time, place, and manner restrictions to the same extent
23 and under the same circumstances as a student is permitted to possess or
24 distribute literature on non-religious topics or subjects in such school; and

25 (5) Be absent, in accordance with local education agency
26 attendance policy, from a public school to observe religious holidays and
27 participate in other religious practices to the same extent and under the same
28 circumstances as a student is permitted to be absent from a public school for
29 non-religious purposes.

30 (c) No action may be maintained pursuant to this act unless the student
31 has exhausted the following administrative remedies:

32 (1) The student or the student's parent or guardian shall state
33 their complaint to the school's principal;

34 (2) If the concerns are not resolved, then the student or the
35 student's parent or guardian shall make a complaint in writing to the
36 superintendent with the specific facts of the alleged violation;

1 (3) The superintendent shall investigate and take appropriate
2 action to ensure the rights of the student are resolved within thirty (30)
3 days of receiving the written complaint; and

4 (4) Only after the superintendent's investigation and action may a
5 student or the student's parent or guardian pursue any other legal action
6 pursuant to this act.

7 (d) If a right of a student established under this section is violated
8 by a public school, the student may assert the violation as a cause of action
9 or a defense in a judicial proceeding and obtain appropriate relief against
10 the public school. Any such action shall be brought in the circuit or chancery
11 court where the violation occurred or where the student resides. Standing to
12 assert a cause of action or defense under this section shall be governed by
13 the Arkansas Rules of Civil Procedure and common law interpretations of such
14 rules.

15 (e) A student prevailing in a claim brought against a public school for
16 a violation of this section or an action brought by a public school against a
17 student for conduct covered by this section shall be entitled to reasonable
18 attorney fees, court costs, and the cost of bringing or defending the action.
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20 SECTION 5. Construction with First Amendment establishment clause.

21 (a) Nothing in this act shall be construed to affect, interpret, or in
22 any way address the establishment clause.

23 (b) The specification of religious liberty or free speech rights in this
24 act shall not be construed to exclude or limit religious liberty or free
25 speech rights otherwise protected by federal, state or local law.
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27 SECTION 6. Teachers and administrators.

28 Nothing in this act shall be construed to support, encourage or permit a
29 teacher, administrator or other employee of the public schools to lead, direct
30 or encourage any religious or anti-religious activity in violation of that
31 portion of the First Amendment of the United States Constitution prohibiting
32 laws respecting an establishment of religion.
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34 SECTION 7. All provisions of this act of a general and permanent nature
35 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
36 Revision Commission shall incorporate the same in the Code.

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SECTION 8. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 9. All laws and parts of laws in conflict with this act are hereby repealed.

/s/ Rackley