

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011
4

As Engrossed: H3/18/11

A Bill

HOUSE BILL 1917

5 *By: Representatives Hammer, Hobbs*
6

For An Act To Be Entitled

8 AN ACT TO ENACT THE RELIGIOUS FREEDOM RESTORATION
9 ACT; TO PROVIDE REMEDIES AND PENALTIES FOR VIOLATING
10 OR ABUSING RELIGIOUS PROTECTIONS UNDER THE ACT; AND
11 FOR OTHER PURPOSES.
12
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Subtitle

14 TO ENACT THE RELIGIOUS FREEDOM
15 RESTORATION ACT AND TO PROVIDE REMEDIES
16 AND PENALTIES FOR VIOLATING OR ABUSING
17 RELIGIOUS PROTECTIONS UNDER THE ACT.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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23 SECTION 1. Arkansas Code Title 16, Chapter 123, is amended to add an
24 additional subchapter to read as follows:

25 Subchapter 4--Religious Freedom Restoration Act

26 16-123-401. Title.

27 This subchapter shall be known and may be cited as the "Religious
28 Freedom Restoration Act".
29

30 16-123-402. Definitions.

31 As used in this subchapter:

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

35 (B) "Burden" includes an indirect burden including without
36 limitation withholding benefits, assessing penalties, or an exclusion from



1 programs or access to facilities;

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

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

7 (A) This subchapter;

8 (B) Arkansas Constitution, Art. 2, §§ 24-26; or

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

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

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

17 (6) "Government entity" means:

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

20 (i) State government; or

21 (ii) A political subdivision of the state; or

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

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

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28 16-123-403. Religious freedom preserved.

29 (a) Except as provided in subsection (b) of this section, no
30 government entity shall burden a person's free exercise of religion through
31 the enforcement of a rule of general applicability or otherwise.

32 (b) No government entity shall burden a person's free exercise of
33 religion unless it demonstrates *by a preponderance of the evidence* that
34 application of the burden to the person and the specific act or refusal to
35 act is:

36 (1) Essential to further a compelling governmental interest; and

1 (2) The least restrictive means of furthering the compelling
2 governmental interest.

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4 16-123-404. Construction and applicability.

5 This subchapter does not:

6 (1) Authorize a government entity to burden a religious belief;

7 (2) Affect, interpret, or in any way address those portions of
8 this subchapter, Article 2, §§ 24-26 of the Arkansas Constitution, or the
9 First Amendment to the United States Constitution that prohibit laws
10 respecting the establishment of religion; or

11 (3) Prohibit a grant of government funds, benefits, or
12 exemptions to the extent permissible under those portions of this subchapter,
13 Article 2, §§ 24-26 of the Arkansas Constitution, or the First Amendment to
14 the United States Constitution that prohibit laws respecting the
15 establishment of religion.

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17 16-123-405. Remedies and penalties.

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

22 (2) The court or tribunal may grant any combination of
23 declaratory relief, injunctive relief, and monetary damages deemed
24 appropriate for the violation.

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

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29 /s/Hammer
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