

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

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

A Bill

SENATE BILL 1119

5 By: Senator Hester
6 By: Representative Ballinger
7

For An Act To Be Entitled

9 AN ACT TO ENACT THE RELIGIOUS FREEDOM RESTORATION
10 ACT; TO PROVIDE REMEDIES AND PENALTIES FOR VIOLATING
11 OR ABUSING RELIGIOUS PROTECTIONS UNDER THE ACT; AND
12 FOR OTHER PURPOSES.
13
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Subtitle

16 TO ENACT THE RELIGIOUS FREEDOM
17 RESTORATION ACT; AND TO PROVIDE REMEDIES
18 AND PENALTIES FOR VIOLATING OR ABUSING
19 RELIGIOUS PROTECTIONS UNDER THE ACT.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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24 SECTION 1. DO NOT CODIFY. Legislative findings.

25 The General Assembly finds that it is a compelling state interest to
26 enforce the generally applicable criminal laws of the State of Arkansas
27 through the provisions of this act.
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29 SECTION 2. Arkansas Code Title 16, Chapter 123, is amended to add an
30 additional subchapter to read as follows:
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32 Subchapter 4 – Religious Freedom Restoration Act
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34 16-123-401. Title.

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



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2 16-123-402. Definitions.

3 As used in this subchapter:

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

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

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

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

15 (A) This subchapter;

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

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

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

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

25 (6) "Government entity" means:

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

28 (i) State government; or

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

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

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

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36 16-123-403. Religious freedom preserved.

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

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

8 (1) In furtherance of a compelling governmental interest; and

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

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12 16-123-404. Construction and applicability.

13 This subchapter does not:

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

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

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

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25 16-123-405. Remedies and penalties.

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

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

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

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

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2 16-123-406. Notice – Right to accommodate.

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

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

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

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

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

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

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

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21 16-123-407. Exemptions.

22 The following entities are exempt from this subchapter:

23 (1) The Department of Correction;

24 (2) The Department of Community Correction;

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

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

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30 /s/Hester
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