

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015

A Bill

HOUSE BILL 1228

4
5 By: Representatives Ballinger, Beck, Bentley, House, Speaks, Harris, Rushing, Womack, Vaught,
6 Gonzales, Tosh, Copeland, C. Fite, Gates, Lundstrum, Payton, B. Smith, Brown, Cozart, Farrer, Lowery,
7 Sullivan, Richmond, J. Mayberry, Dotson, M. Gray, D. Meeks, Miller, Drown
8 By: Senator Hester

For An Act To Be Entitled

11 AN ACT TO ENACT THE CONSCIENCE PROTECTION ACT; TO
12 PROVIDE REMEDIES AND PENALTIES FOR VIOLATING OR
13 ABUSING RELIGIOUS PROTECTIONS; TO DECLARE AN
14 EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

18 TO ENACT THE CONSCIENCE PROTECTION ACT
19 AND TO PROVIDE REMEDIES AND PENALTIES FOR
20 VIOLATING OR ABUSING RELIGIOUS
21 PROTECTIONS; AND TO DECLARE AN EMERGENCY.

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

26 SECTION 1. Arkansas Code Title 16, Chapter 123, is amended to add an
27 additional subchapter to read as follows:

Subchapter 4 – Conscience Protection Act

16-123-401. Title.

32 This subchapter shall be known and may be cited as the "Conscience
33 Protection Act".

16-123-402. Legislative intent.

36 It is the intent of the General Assembly to:



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

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

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

8
 9 16-123-403. Definitions.

10 As used in this subchapter:

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

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

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

20 (3) "Demonstrates" means to meet the burdens of going forward
 21 with the evidence and of persuasion under the standard of clear and
 22 convincing evidence;

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

28 (5) "Government entity" means:

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

31 (i) State government; or

32 (ii) A political subdivision of the state, including
 33 without limitation a city or county; or

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

36 (6) "Person" means an individual, association, partnership,

1 corporation, church, religious institution, estate, trust, foundation, or
 2 other legal entity;

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

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

12
 13 16-123-404. Religious freedom preserved.

14 A state action shall not burden a person's right to exercise of
 15 religion, even if the burden results from a rule of general applicability,
 16 unless it is demonstrated by clear and convincing evidence that applying the
 17 burden to the person's exercise of religion in this particular instance:

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

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

22
 23 16-123-405. Construction and applicability.

24 This subchapter does not:

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

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

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

35
 36 16-123-406. Remedies and penalties.

1 (a) A person whose exercise of religion has been burdened, or is
 2 likely to be burdened, in violation of this subchapter may assert the
 3 violation or impending violation as a claim or defense in a judicial or
 4 administrative proceeding, regardless of whether the state or one of its
 5 political subdivisions is a party to the proceeding.

6 (b) The person asserting a claim or defense under this subchapter may
 7 obtain appropriate relief, including relief against the state or its
 8 political subdivisions, including without limitation:

- 9 (1) Injunctive relief;
- 10 (2) Declaratory relief;
- 11 (3) Compensatory damages; and
- 12 (4) Costs and attorney fees.

13
 14 16-123-407. Exemptions.

15 The Department of Correction and the Department of Community Correction
 16 are exempt from this subchapter.

17
 18 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
 19 General Assembly of the State of Arkansas that there is not a higher
 20 protection offered by the state than the protection of a person's right to
 21 religious freedom; and that this act is immediately necessary because every
 22 day that a person's right to religious freedom is threatened is a day that
 23 the First Amendment to the United States Constitution is compromised.
 24 Therefore, an emergency is declared to exist, and this act being immediately
 25 necessary for the preservation of the public peace, health, and safety shall
 26 become effective on:

- 27 (1) The date of its approval by the Governor;
- 28 (2) If the bill is neither approved nor vetoed by the Governor,
 29 the expiration of the period of time during which the Governor may veto the
 30 bill; or
- 31 (3) If the bill is vetoed by the Governor and the veto is
 32 overridden, the date the last house overrides the veto.