

1 State of Arkansas
2 90th General Assembly
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4

As Engrossed: H2/11/15 S2/26/15

A Bill

HOUSE BILL 1228

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
9

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.
15
16

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.
22
23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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26 SECTION 1. Arkansas Code Title 16, Chapter 123, is amended to add an
27 additional subchapter to read as follows:
28

Subchapter 4 – Conscience Protection Act

16-123-401. Title.

31 This subchapter shall be known and may be cited as the "Conscience
32 Protection Act".
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16-123-402. Legislative intent.

35 It is the intent of the General Assembly to:
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1 (1) Ensure that in all cases in which state action *substantially*
2 *burdens* the exercise of religion strict scrutiny is applied;

3 (2) Provide a claim or defense to a person whose exercise of
4 *religion is *substantially 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) "Compelling governmental interest" means a governmental
12 *interest of the highest magnitude that cannot otherwise be achieved without*
13 *burdening the exercise of religion;*

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

19 (3) "Government entity" means:

20 (A) A branch, department, agency, board, commission, or
21 *other instrumentality of:*

22 (i) State government; or

23 (ii) A political subdivision of the state, including
24 *without limitation a city or county; or*

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

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

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

33 (6) "State action" means the implementation or application of
34 *any law, including without limitation state and local laws, ordinances,*
35 *rules, regulations, and policies, whether statutory or otherwise, or other*
36 *action by the state or any political subdivision thereof and any local*

1 government, municipality, instrumentality, or public official authorized by
2 law in the state; and

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

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

9
10 16-123-404. Religious freedom preserved.

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

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

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

20
21 16-123-405. Construction and applicability.

22 This subchapter does not:

23 (1) Authorize a government entity to substantially burden a
24 religious belief;

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

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

34 (4) Create a right or cause of action with respect to an
35 employee against an employer if the employer is not a government entity.
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16-123-406. 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 § 16-123-404, may assert the violation or impending violation as a claim or defense in a judicial or administrative proceeding.

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

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

16-123-407. Exemptions.

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

SECTION 2. 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