

1 State of Arkansas  
2 90th General Assembly  
3 Regular Session, 2015  
4

As Engrossed: S4/1/15

# A Bill

SENATE BILL 229

5 By: Senators J. Cooper, J. Hendren, Hester, Irvin, *J. Hutchinson, Hickey, Elliott, L. Chesterfield, Burnett,*  
6 *J. Dismang, J. English*  
7 By: Representatives Ballinger, *Shepherd, Bennett, M. Gray, Vaught, Dotson, Cozart, D. Meeks, Bragg,*  
8 *Hillman, Sullivan, G. Hodges, Wardlaw, Pitsch, Richmond, Brown, Davis, Collins, Womack, Eubanks,*  
9 *Gates*

## For An Act To Be Entitled

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12 *AN ACT TO PROTECT THE RIGHTS AND PRIVILEGES GRANTED*  
13 *UNDER THE UNITED STATES CONSTITUTION AND THE ARKANSAS*  
14 *CONSTITUTION; TO DECLARE AN EMERGENCY; AND FOR OTHER*  
15 *PURPOSES.*

## Subtitle

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19 *TO PROTECT THE RIGHTS AND PRIVILEGES*  
20 *GRANTED UNDER THE UNITED STATES*  
21 *CONSTITUTION AND THE ARKANSAS*  
22 *CONSTITUTION; AND TO DECLARE AN*  
23 *EMERGENCY.*

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

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

### Subchapter 4 – Religious Freedom Restoration Act

#### 16-123-401. Title.

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33 *This subchapter shall be known and may be cited as the "Religious*  
34 *Freedom Restoration Act".*  
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1 16-123-402. Legislative intent.

2 It is the intent of the General Assembly:

3 (1) To restore the compelling interest test as set forth in  
4 Sherbert v. Verner, 374 U.S. 398 (1963) and Wisconsin v. Yoder, 406 U.S. 205  
5 (1972) and to guarantee its application in all cases where free exercise of  
6 religion is substantially burdened;

7 (2) That this act is interpreted consistent with the Religious  
8 Freedom Restoration Act of 1993, 42 U.S.C., § 2000bb, federal case law, and  
9 federal jurisprudence; and

10 (3) To provide a claim or defense to persons whose religious  
11 exercise is substantially burdened by government.

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13 16-123-403. Definitions.

14 As used in this subchapter:

15 (1) "Demonstrates" means meets the burdens of going forward with  
16 the evidence and of persuasion;

17 (2) "Exercise of religion" means religious exercise;

18 (3) "Government" includes a branch, department, agency,  
19 instrumentality, political subdivision, official, or other person acting  
20 under color of state law; and

21 (4) "State law" includes without limitation a law of a political  
22 subdivision.

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24 16-123-404. Free exercise of religion protected.

25 (a) A government shall not substantially burden a person's exercise of  
26 religion even if the burden results from a rule of general applicability,  
27 except that a government may substantially burden a person's exercise of  
28 religion only if it demonstrates that application of the burden to the person  
29 is:

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

31 (2) The least restrictive means of furthering that compelling  
32 governmental interest.

33 (b)(1) A person whose religious exercise has been burdened in  
34 violation of this section may assert that violation as a claim or defense in  
35 a judicial proceeding and obtain appropriate relief against a government.

36 (2) Standing to assert a claim or defense under this section is

1 governed by the general rules of standing under statute, the Arkansas Rules  
2 of Criminal Procedure, the Arkansas Rules of Civil Procedure, or any court  
3 holding from the state's appellate courts.

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5 16-123-405. Construction and applicability.

6 (a) This subchapter applies to all state law, and the implementation  
7 of state law, whether statutory or otherwise, and whether adopted before or  
8 after the effective date of this act.

9 (b) State statutory law adopted after the effective date of this act  
10 is subject to this subchapter unless the state statutory law explicitly  
11 excludes the application by reference to this subchapter.

12 (c) This subchapter does not authorize any part of a government to  
13 burden a religious belief.

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15 16-123-406. Interpretation.

16 (a) This subchapter does not affect, interpret, or in any way address  
17 that portion of the First Amendment of the United States Constitution  
18 prohibiting laws respecting the establishment of religion or of Article 2, §  
19 25 of the Arkansas Constitution concerning protection of religion.

20 (b) Granting government funding, benefits, or exemptions, to the  
21 extent permissible under the First Amendment of the United States  
22 Constitution prohibiting laws respecting the establishment of religion or of  
23 Article 2, § 25 of the Arkansas Constitution, shall not constitute a  
24 violation of this subchapter.

25 (c) As used in this section, "granting", with respect to government  
26 funding, benefits, or exemptions, does not include the denial of government  
27 funding, benefits, or exemptions.

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29 16-123-407. Exemptions.

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

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33 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the  
34 General Assembly of the State of Arkansas that there is not a higher  
35 protection offered by the state than the protection of a person's right to  
36 religious freedom; and that this act is immediately necessary because every

1 day that a person's right to religious freedom is threatened is a day that  
2 the First Amendment to the United States Constitution is compromised.  
3 Therefore, an emergency is declared to exist, and this act being immediately  
4 necessary for the preservation of the public peace, health, and safety shall  
5 become effective on:

6 (1) The date of its approval by the Governor;

7 (2) If the bill is neither approved nor vetoed by the Governor,  
8 the expiration of the period of time during which the Governor may veto the  
9 bill; or

10 (3) If the bill is vetoed by the Governor and the veto is  
11 overridden, the date the last house overrides the veto.

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13 /s/J. Cooper  
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