

COLORADO HB 1180

**Second Regular Session
Seventieth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 16-0059.01 Esther van Mourik x4215

HOUSE BILL 16-1180

HOUSE SPONSORSHIP

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A BILL FOR AN ACT

101 **CONCERNING A PERSON'S FREE EXERCISE OF RELIGION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill:

- ! Specifies that no state action may burden a person's exercise of religion, even if the burden results from a rule of general applicability, unless it is demonstrated that applying the burden to a person's exercise of religion is essential to further a compelling governmental interest and the least restrictive means of furthering that compelling governmental interest;
- ! Defines "exercise of religion" as the practice or observance of religion. The bill specifies that exercise of religion includes the ability to act or refuse to act in a manner substantially motivated by a person's sincerely held religious beliefs, whether or not the exercise is compulsory or central to a larger system of religious belief; except that it does not include the ability to act or refuse to act based on race or ethnicity.
- ! Provides a claim or defense to a person whose exercise of religion is burdened by state action; and
- ! Specifies that nothing in the bill creates any rights by an employee against an employer unless the employer is a government employer.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment. Capital letters indicate new material to be added to existing statute. Dashes through the words indicate deletions from existing statute.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Short title. The short title of this act is the "Colorado Freedom of Conscience Protection Act".

SECTION 2. In Colorado Revised Statutes, **add** part 10 to article 34 of title 24 as follows:

PART 10
COLORADO FREEDOM OF CONSCIENCE
PROTECTION ACT

24-34-1001. Legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS:

(a) THE FRAMERS OF THE UNITED STATES CONSTITUTION, RECOGNIZING FREE EXERCISE OF RELIGION AS AN UNALIENABLE RIGHT, SECURED ITS PROTECTION IN THE FIRST AMENDMENT TO THE CONSTITUTION;

(b) LAWS NEUTRAL TOWARD RELIGION MAY BURDEN RELIGIOUS EXERCISE AS SURELY AS LAWS INTENDED TO INTERFERE WITH RELIGIOUS EXERCISE;

(c) GOVERNMENTS SHOULD NOT BURDEN RELIGIOUS EXERCISE WITHOUT COMPELLING JUSTIFICATION;

(d) INEMPLOYMENTDIVISIONV.SMITH,494U.S.872(1990),THE UNITED STATES SUPREME COURT VIRTUALLY ELIMINATED THE REQUIREMENT THAT THE GOVERNMENT JUSTIFY BURDENS ON RELIGIOUS EXERCISE IMPOSED BY LAWS NEUTRAL TOWARD RELIGION; AND

(e) THE COMPELLING INTEREST TEST AS SET FORTH IN PRIOR FEDERAL COURT RULINGS IS A WORKABLE TEST FOR STRIKING SENSIBLE BALANCES BETWEEN RELIGIOUS LIBERTY AND COMPETING PRIOR GOVERNMENTAL INTERESTS.

(2) THE GENERAL ASSEMBLY HEREBY DECLARES THAT THE PURPOSES OF THIS PART 10 ARE:

(a) TO RESTORE THE COMPELLING INTERESTS TEST AS SET FORTH IN SHERBERT V. VERNER, 374 U.S. 398 (1963) AND WISCONSIN V. YODER, 406 U.S. 205 (1972), AND TO GUARANTEE ITS APPLICATION IN ALL CASES WHERE FREE EXERCISE OF RELIGION IS BURDENED; AND

(b) TO PROVIDE A CLAIM OR DEFENSE TO A PERSON WHOSE EXERCISE OF RELIGION IS BURDENED BY STATE ACTION.

24-34-1002. Definitions. AS USED IN THIS PART 10, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "BURDEN" MEANS ANY ACTION THAT DIRECTLY OR INDIRECTLY CONSTRAINS, INHIBITS, CURTAILS, OR DENIES THE EXERCISE OF RELIGION BY ANY PERSON OR COMPELS ANY ACTION CONTRARY TO A PERSON'S EXERCISE OF RELIGION, AND INCLUDES, BUT IS NOT LIMITED TO, WITHHOLDING BENEFITS; ASSESSING CRIMINAL, CIVIL, OR ADMINISTRATIVE PENALTIES; OR EXCLUDING A PERSON FROM GOVERNMENTAL PROGRAMS OR ACCESS TO GOVERNMENTAL FACILITIES.

(2) "COMPELLING GOVERNMENTAL INTEREST" MEANS A GOVERNMENTAL INTEREST OF THE HIGHEST MAGNITUDE THAT CANNOT OTHERWISE BE ACHIEVED WITHOUT BURDENING THE EXERCISE OF RELIGION.

(3) "DEMONSTRATED" MEANS MEETS THE BURDENS OF GOING FORWARD WITH THE EVIDENCE AND OF PERSUASION.

(4) "EXERCISE OF RELIGION" MEANS THE PRACTICE OR OBSERVANCE OF RELIGION. IT INCLUDES, BUT IS NOT LIMITED TO, THE ABILITY TO ACT OR REFUSE TO ACT IN A MANNER SUBSTANTIALLY MOTIVATED BY A PERSON'S SINCERELY HELD RELIGIOUS BELIEFS, WHETHER OR NOT THE EXERCISE IS COMPULSORY OR CENTRAL TO A LARGER SYSTEM OF RELIGIOUS BELIEF; EXCEPT THAT IT DOES NOT INCLUDE THE ABILITY TO ACT OR REFUSE TO ACT BASED ON RACE OR ETHNICITY.

(5) "GOVERNMENT EMPLOYER" MEANS THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, AND INCLUDES ANY EMPLOYER THAT ENGAGES IN STATE ACTION.

(6) "PERSON" MEANS ANY INDIVIDUAL, ASSOCIATION, PARTNERSHIP, CORPORATION, CHURCH, RELIGIOUS INSTITUTION, ESTATE, TRUST, FOUNDATION, OR OTHER LEGAL ENTITY.

(7) "STATE ACTION" MEANS THE IMPLEMENTATION OR APPLICATION OF ANY LAW, INCLUDING, BUT NOT LIMITED TO, STATE AND LOCAL LAWS, ORDINANCES, RULES, REGULATIONS, AND POLICIES, WHETHER STATUTORY OR OTHERWISE, OR OTHER ACTION BY THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, OTHER ACTION BY A LOCAL GOVERNMENT, MUNICIPALITY, OR INSTRUMENTALITY, OR OTHER ACTION BY A PUBLIC OFFICIAL AUTHORIZED BY LAW.

24-34-1003. Free exercise of religion protected.

(1) NOTWITHSTANDING PART 1 AND PARTS 3 TO 8 OF THIS ARTICLE, NO STATE ACTION MAY BURDEN A PERSON'S EXERCISE OF RELIGION, EVEN IF THE BURDEN RESULTS FROM A RULE OF GENERAL APPLICABILITY, UNLESS IT IS DEMONSTRATED THAT APPLYING THE BURDEN TO A PERSON'S EXERCISE OF RELIGION IS:

(a) ESSENTIAL TO FURTHER A COMPELLING GOVERNMENTAL INTEREST; AND

(b) THE LEAST RESTRICTIVE MEANS OF FURTHERING THAT COMPELLING GOVERNMENTAL INTEREST.

(2) A PERSON WHOSE EXERCISE OF RELIGION HAS BEEN BURDENED, OR IS LIKELY TO BE BURDENED, IN VIOLATION OF THIS PART 10 MAY ASSERT SUCH VIOLATION OR IMPENDING VIOLATION AS A CLAIM OR DEFENSE IN A JUDICIAL PROCEEDING, REGARDLESS OF WHETHER THE STATE OR ANY POLITICAL SUBDIVISION THEREOF OR ANY LOCAL GOVERNMENT, MUNICIPALITY, OR INSTRUMENTALITY IS A PARTY TO THE PROCEEDING. THE PERSON ASSERTING SUCH A CLAIM OR DEFENSE MAY OBTAIN APPROPRIATE RELIEF, INCLUDING RELIEF AGAINST THE STATE OR ANY POLITICAL SUBDIVISION THEREOF OR ANY LOCAL GOVERNMENT, MUNICIPALITY, OR INSTRUMENTALITY. APPROPRIATE RELIEF INCLUDES, BUT IS NOT LIMITED TO, INJUNCTIVE RELIEF, DECLARATORY RELIEF, COMPENSATORY DAMAGES, AND COSTS AND ATTORNEY FEES.

(3) NOTHING IN THIS PART 10 CREATES ANY RIGHTS BY AN EMPLOYEE AGAINST AN EMPLOYER UNLESS THE EMPLOYER IS A GOVERNMENT EMPLOYER.

SECTION 3. Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 4. Applicability. This act applies to state actions occurring on or after the effective date of this act.

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

**GEORGIA SB 129, HB 29, HB 218, and HB
837**

Senate Bill 129

By: Senators McKoon of the 29th, Ligon, Jr. of the 3rd, Crane of the 28th, Bethel of the 54th, Harbin of the 16th and others

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

To amend Title 50 of the Official Code of Georgia Annotated, relating to state government, so as to provide for the preservation of religious freedom; to provide for legislative findings and purposes; to provide for the granting of relief; to provide for definitions; to provide for a short title; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

This Act shall be known and may be cited as the "Georgia Religious Freedom Restoration Act."

SECTION 2.

Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended by adding a new chapter to read as follows:

"CHAPTER 15A

50-15A-1.

(a) The General Assembly finds and determines that:

- (1) The framers of the United States Constitution and the people of this state, recognizing free exercise of religion as an inalienable right, secured its protection in the First Amendment to the United States Constitution and in Paragraphs III and IV of Section I, Article I of the Constitution of this state, respectively;
- (2) Laws neutral toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise;
- (3) Governments should not substantially burden religious exercise without compelling justification;
- (4) In *Employment Division v. Smith*, 494 U.S. 872 (1990) the Supreme Court virtually eliminated the requirement that the government justify burden on religious exercise imposed by laws neutral toward religion;
- (5) The compelling interest test as set forth in prior federal court rulings is a workable test for striking sensible balances between religious liberty and competing prior governmental interests;
- (6) In *City of Boerne v. Flores*, 521 U.S. 507 (1997) the Supreme Court held that the compelling interest test provided for in the federal Religious Freedom Restoration Act must be adopted by a state through legislative act or court decision in order to apply to state or local government action; and
- (7) Courts have consistently held that government has a fundamental, overriding interest in eradicating discrimination.

(b) The purpose of this chapter is to:

- (1) Restore the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened; and
- (2) Provide a claim or defense to persons whose religious exercise is substantially burdened by government.

50-15A-2.

- (a) Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b) of this Code section.
- (b) Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person is:
 - (1) In furtherance of a compelling governmental interest; and
 - (2) The least restrictive means of achieving that compelling governmental interest.
- (c) A person whose religious exercise has been burdened in violation of this chapter may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against government.

50-15A-3.

In any action or proceeding to enforce a provision of this chapter, the court or tribunal may allow the prevailing party, other than government, a reasonable attorney fee as part of costs.

50-15A-4.

Nothing in this chapter shall be construed to:

- (1) Apply to penological rules, regulations, conditions, or policies established by a penal institution that are reasonably related to the safety and security of incarcerated persons, staff, visitors, supervised violators, or the public, or to the maintenance of good order and discipline in any penal institution or parole or probation program; or
- (2) Create any rights by an employee against an employer if such employer is not government.

50-15A-5.

As used in this chapter, the term:

- (1) 'Delinquent act' shall have the same meaning as provided for in Code Section 15-11-2.
- (2) 'Demonstrates' means meets the burdens of going forward with the evidence and of persuasion.
- (3) 'Exercise of religion' means any exercise of religion, whether or not compelled by, or central to, a system of religious belief, including but not limited to the practice or observance of religion under Paragraphs III and IV of Section I, Article I of the Constitution of this state or the Free Exercise Clause of the First Amendment to the Constitution of the United States, or the use, building, or conversion of real property for the purpose of religious exercise.
- (4) 'Government' means the state or any local subdivision of the state or public instrumentality or public corporate body created by or under authority of state law, including but not limited to the executive, legislative, and judicial branches and every department, agency, board, bureau, office, commission, authority, or similar body thereof; municipalities; counties; school districts; special taxing districts; conservation districts; authorities; any other state or local public instrumentality or corporation; or other person acting under color of law.
- (5) 'Penal institution' means any jail, correctional institution, or similar facility for the detention of violators of state laws or local ordinances and any entity supervising such violators placed on parole, probation, or other conditional release and any facility for the restrictive custody of children and any entity supervising children who are not in restrictive custody but who are accused of or adjudicated for a delinquent act.
- (6) 'Restrictive custody' shall have the same meaning as provided for in Code Section 15-11-2."

SECTION 3.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 4.

All laws and parts of laws in conflict with this Act are repealed.

A BILL TO BE ENTITLED
AN ACT

To amend Title 50 of the Official Code of Georgia Annotated, relating to state government, so as to provide for the preservation of religious freedom; to provide for a short title; to provide for findings; to provide for definitions; to provide for penalties; to provide for the granting of relief; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

This Act shall be known and may be cited as the "Preventing Government Overreach on Religious Expression Act."

SECTION 2.

- (a) The Georgia General Assembly finds and determines that in passing the Religious Freedom Restoration Act of 1993 with an overwhelming bipartisan majority, the United States Congress specifically affirmed that:
- (1) The framers of the United States Constitution, recognizing free exercise of religion as an inalienable right, secured its protection in the First Amendment to the United States Constitution;
 - (2) Laws neutral toward religion have the same potential to burden religious exercise as laws purposely intended to interfere with religious exercise;
 - (3) Governments should not substantially burden religious exercise without having a compelling justification;
 - (4) In *Employment Division v. Smith*, 494 U.S. 872 (1990), the United States Supreme Court decision had the practical effect of eliminating the requirement, absent a statute enacted by Congress, that the government justify burdens on religious exercise imposed by laws neutral toward religion; and
 - (5) The compelling interest test as set forth by the federal courts is a workable test for striking sensible balances between religious liberty and competing prior governmental interests.
- (b) The Georgia General Assembly further finds and determines that:
- (1) Paragraph III of Section 1 of Article I of the Constitution of this state provides that each person has the natural and inalienable right to worship God, each according to the 30 dictates of that person's own conscience; and no human authority should, in any case, control or interfere with such right of conscience;
 - (2) Paragraph IV of Section 1 of Article I of the Constitution of this state provides that no inhabitant of this state shall be molested in person or property or be prohibited from holding any public office or trust on account of religious opinions; but the right of freedom of religion shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state;
 - (3) In *City of Boerne v. Flores*, 521 U.S. 507 (1997), the protections of religious exercise afforded by the Religious Freedom Restoration Act of 1993 were ruled applicable only to religious exercise burdened by federal law or agencies and provided no protection from burdens on religious exercise from state or local law or governments; this decision mandated that any state seeking to provide the same level of protection of religious exercise from state or local

governments would be required to enact a state statute equivalent to the Religious Freedom Restoration Act of 1993 as enacted by the 103rd United States Congress;

- (4) Since the 1997 Supreme Court decision the following states have enacted state-level Religious Freedom Restoration Act statutes: Alabama, Arizona, Connecticut, Florida, Idaho, Illinois, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, and Virginia; and
- (5) In numerous cases at both the federal and state levels, the Religious Freedom Restoration Act statutes have provided meaningful protections from unreasonable burdens on religious exercise and in no cases have been used to discriminate or undermine the rights of any person or class of people; in fact, these statutes have been models of achieving the balance between preventing government overreach in religious expression allowing governments at all levels to protect peace and public safety, and providing an environment of economic vitality and individual freedom that has made the United States and the State of Georgia models worldwide.

SECTION 3.

Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended by adding a new chapter to read as follows:

"CHAPTER 15A

50-15A-1.

As used in this chapter, the term:

- (1) 'Demonstrates' means meets the burdens of going forward with the evidence and of persuasion.
- (2) 'Exercise of religion' or 'religious exercise' means the practice or observance of religion, whether or not compelled by or central to a system of religious belief, including but not limited to the use, building, or conversion of real property for the practice or observance of religion.
- (3) 'Government' means the state or any local subdivision of the state or public instrumentality or public corporate body created by or under authority of state law, including but not limited to the executive, legislative, and judicial branches and every department, agency, board, bureau, office, commission, authority, or similar body thereof; municipalities; counties; school districts; special taxing districts; conservation districts; authorities; and any other state or local public instrumentality or corporation.
- (4) 'Penal institution' means any jail, correctional institution, or similar facility for the detention of violators of state laws or local ordinances and any entity supervising such violators placed on parole, probation, or other conditional release.

50-15A-2.

- (a) Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b) of this Code section.
- (b) Government may substantially burden a person's exercise of religion only if government demonstrates that the application of such burden to a person is in furtherance of a compelling governmental interest and the least restrictive means of furthering that compelling governmental interest.
- (c) A person whose religious exercise has been burdened in violation of this chapter may assert that claim or defense in a judicial proceeding and obtain appropriate relief against government.

50-15A-3.

- (a) Nothing in this chapter shall be construed to:
- (1) Impair the fundamental right of every parent to control the care and custody of such parent's minor children, including but not limited to control over education, discipline, religious and moral instruction, health, medical care, welfare, place of habitation, counseling, and psychological and emotional well-being of such minor children as provided for under the laws of this state and of the United States;
 - (2) Create any rights by an employee against an employer if such employer is not government; or
 - (3) Apply in any criminal case involving a sexual offense committed against a minor.
- (b) Except as provided by subsection (c) of this Code section, this chapter shall apply to all actions by government.
- (c) This chapter shall apply neither to penological rules, regulations, conditions, or policies established by a penal institution that are reasonably related to the safety and security of incarcerated persons, staff, visitors, supervised violators, or the public nor to the maintenance of good order and discipline in any penal institution or parole or probation program."

SECTION 4.

All laws and parts of laws in conflict with this Act are repealed.

House Bill 218

By: Representatives Teasley of the 37th, Ramsey of the 72nd, Fleming of the 121st, Welch of the 110th, Williamson of the 115th and others

A BILL TO BE ENTITLED
AN ACT

To amend Title 50 of the Official Code of Georgia Annotated, relating to state government, so as to provide for the preservation of religious freedom; to provide for the granting of relief; to provide for definitions; to provide for a short title; to provide for findings; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

This Act shall be known and may be cited as the "Preventing Government Overreach on Religious Expression Act."

SECTION 2.

- (a) The Georgia General Assembly finds and determines that in passing the Religious Freedom Restoration Act of 1993 with an overwhelming bipartisan majority, the United States Congress specifically affirmed that:
- (1) The framers of the United States Constitution, recognizing free exercise of religion as an inalienable right, secured its protection in the First Amendment to the United States Constitution;
 - (2) Laws neutral toward religion have the same potential to burden religious exercise as laws purposely intended to interfere with religious exercise;
 - (3) Governments should not substantially burden religious exercise without having a compelling justification;
 - (4) In *Employment Division v. Smith*, 494 U.S. 872 (1990), the United States Supreme Court decision had the practical effect of eliminating the requirement, absent a statute enacted by Congress, that the government justify burdens on religious exercise imposed by laws neutral toward religion; and
 - (5) The compelling interest test as set forth by the federal courts is a workable test for striking sensible balances between religious liberty and competing prior governmental interests.
- (b) The Georgia General Assembly further finds and determines that:
- (1) Paragraph III of Section 1 of Article I of the Constitution of this state provides that each person has the natural and inalienable right to worship God, each according to the dictates of that person's own conscience; and no human authority should, in any case, control or interfere with such right of conscience;
 - (2) Paragraph IV of Section 1 of Article I of the Constitution of this state provides that no inhabitant of this state shall be molested in person or property or be prohibited from holding any public office or trust on account of religious opinions; but the right of freedom of religion shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state;
 - (3) In *City of Boerne v. Flores*, 521 U.S. 507 (1997), the protections of religious exercise afforded by the Religious Freedom Restoration Act of 1993 were ruled applicable only to religious exercise burdened by federal law or agencies and provided no protection from burdens on religious exercise from state or local law or governments; this decision mandated that any state seeking to provide the same level of protection of religious exercise from state or local

governments would be required to enact a state statute equivalent to the Religious Freedom Restoration Act of 1993 as enacted by the 103rd United States Congress;

- (4) Since the 1997 Supreme Court decision the following states have enacted state-level Religious Freedom Restoration Act statutes: Alabama, Arizona, Connecticut, Florida, Idaho, Illinois, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, and Virginia; and
- (5) In numerous cases at both the federal and state levels, the Religious Freedom Restoration Act statutes have provided meaningful protections from unreasonable burdens on religious exercise and in no cases have been used to discriminate or undermine the rights of any person or class of people; in fact, these statutes have been models of achieving the balance between preventing government overreach in religious expression allowing governments at all levels to protect peace and public safety, and providing an environment of economic vitality and individual freedom that has made the United States a model worldwide.

SECTION 3.

Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended by adding a new chapter to read as follows:

"CHAPTER 15A

50-15A-1.

As used in this chapter, the term:

- (1) 'Demonstrates' means meets the burdens of going forward with the evidence and of persuasion.
- (2) 'Exercise of religion' or 'religious exercise' means the practice or observance of religion, whether or not compelled by or central to a system of religious belief, including but not limited to the use, building, or conversion of real property for the practice or observance of religion.
- (3) 'Government' means the state or any local subdivision of the state or public instrumentality or public corporate body created by or under authority of state law, including but not limited to the executive, legislative, and judicial branches and every department, agency, board, bureau, office, commission, authority, or similar body thereof; municipalities; counties; school districts; special taxing districts; conservation districts; authorities; and any other state or local public instrumentality or corporation.
- (4) 'Penal institution' means any jail, correctional institution, or similar facility for the detention of violators of state laws or local ordinances and any entity supervising such violators placed on parole, probation, or other conditional release.

50-15A-2.

- (a) Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b) of this Code section.
- (b) Government may substantially burden a person's exercise of religion only if government demonstrates that the application of such burden to a person is in furtherance of a compelling governmental interest and the least restrictive means of furthering that compelling governmental interest.
- (c) A person whose religious exercise has been burdened in violation of this chapter may assert that claim or defense in a judicial proceeding and obtain appropriate relief against government.

50-15A-3.

(a) Nothing in this chapter shall be construed to create any rights by an employee against an employer if such employer is not government.

(b) Except as provided by subsection (c) of this Code section, this chapter shall apply to all actions by government.

(c) This chapter shall apply neither to penological rules, regulations, conditions, or policies established by a penal institution that are reasonably related to the safety and security of incarcerated persons, staff, visitors, supervised violators, or the public nor to the maintenance of good order and discipline in any penal institution or parole or probation program."

SECTION 4.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 5.

All laws and parts of laws in conflict with this Act are repealed.

House Bill 837

By: Representatives Setzler of the 35th, Fleming of the 121st, Teasley of the 37th, and Ramsey of the 72nd

A BILL TO BE ENTITLED
AN ACT

To amend Title 50 of the Official Code of Georgia Annotated, relating to state government, so as to provide for the preservation of religious freedom; to provide for the granting of relief; to provide for waiver of sovereign immunity under certain circumstances; to provide for definitions; to provide for a short title; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

SECTION 2.

Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended by adding a new chapter to read as follows:

"CHAPTER 15A

50-15A-1.

- (a) The provisions of subsections (a) and (b) of 42 U.S.C. Section 2000bb-1 as such existed on January 1, 2016, regarding government burdens on the free exercise of religion, shall apply to any government as defined in Code Section 50-15A-4.
- (b) A person aggrieved by a violation of subsection (a) of this Code section may seek a declaratory judgment or injunctive relief against government.

50-15A-2.

In any action or proceeding to enforce a provision of this chapter, the court or tribunal may allow the prevailing party, other than government, reasonable attorney's fees as part of costs.

50-15A-3.

Nothing in this chapter shall be construed to:

- (1) Apply to penological rules, regulations, conditions, or policies established by a penal institution that are reasonably related to the safety and security of incarcerated persons, staff, visitors, supervised violators, or the public, or to the maintenance of good order and discipline in any penal institution or parole or probation program; or
- (2) Create any rights by an employee against an employer if such employer is not government.

50-15A-4.

As used in this chapter, the term:

- (1) 'Delinquent act' shall have the same meaning as provided for in Code Section 15-11-2.
- (2) 'Demonstrates' means meets the burdens of going forward with the evidence and of persuasion.

- (3) 'Exercise of religion' means any exercise of religion, whether or not compelled by, or central to, a system of religious belief, including but not limited to the practice or observance of religion under Paragraphs III and IV of Section I, Article I of the Constitution of this state or the Free Exercise Clause of the First Amendment to the Constitution of the United States, or the use, building, or conversion of real property for the purpose of religious exercise.
- (4) 'Government' means the state or any local subdivision of the state or public instrumentality or public corporate body created by or under authority of state law, including but not limited to the executive, legislative, and judicial branches and every department, agency, board, bureau, office, commission, authority, or similar body thereof; municipalities; counties; school districts; special taxing districts; conservation districts; authorities; any other state or local public instrumentality or corporation; or other person acting under color of law.
- (5) 'Penal institution' means any jail, correctional institution, or similar facility for the detention of violators of state laws or local ordinances and any entity supervising such violators placed on parole, probation, or other conditional release and any facility for the restrictive custody of children and any entity supervising children who are not in restrictive custody but who are accused of or adjudicated for a delinquent act.
- (6) 'Restrictive custody' shall have the same meaning as provided for in Code Section 15-11-2."

SECTION 3.

Said title is further amended by adding a new Code section to Article 2 of Chapter 21, relating to state tort claims, as follows:

“50-21-38.

The defense of sovereign immunity is waived as to any claim, counterclaim, cross-claim, or third-party claim brought in the courts of this state by an aggrieved person seeking a declaratory judgment, injunctive relief, or reasonable attorney's fees against the state or any political subdivision thereof; provided, however, that sovereign immunity is not waived as to any claim for monetary damages or expenses of litigation that are included in or related to such claim, counterclaim, cross-claim, or third-party claim. This Code section shall not be construed to alter or amend any other waiver of sovereign immunity provided by law."

SECTION 4.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 5.

Section 3 of this Act shall apply to all actions filed on or after the effective date of this Act.

SECTION 6.

All laws and parts of laws in conflict with this Act are repealed.

HAWAII HB 1160, HB 2764

A BILL FOR AN ACT

RELATING TO RELIGIOUS RIGHTS

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The purpose of this Act is to ensure that strict scrutiny is applied in all cases where state action burdens the exercise of religion and to provide a claim or defense to a person whose exercise of religion is burdened by state action.

SECTION 2. Chapter 7, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

§7- **Exercise of religion; protected.**

(a) State action shall not burden any person's right to exercise religion; provided that a burden shall be permissible if the burden results from a law or rule of general applicability and the burden to the person's exercise of religion:

- (1) Is essential to further a compelling governmental interest; and
- (2) Is the least restrictive means of furthering that compelling governmental interest.

(b) A person whose exercise of religion has been burdened, or is likely to be burdened, in violation of subsection (a) may assert a violation or impending violation as a claim or defense in a judicial proceeding, regardless of whether the State or a county is a party to the proceeding. A person prevailing on a claim or defense under this section may obtain appropriate relief, including injunctive relief, declaratory relief, compensatory damages, costs, and attorney fees against the acting State or county.

(c) As used in the section:

"Burden" means any action that directly and indirectly constrains, inhibits, curtails, or denies the exercise of religion by any person or compels any action contrary to a person's exercise of religion, including withholding benefits, assessing criminal penalties, assessing civil penalties, assessing administrative penalties, exclusion from governmental programs, and exclusion of access to governmental facilities.

"Compelling governmental interest" means a governmental interest of the highest magnitude that cannot otherwise be achieved without burdening the exercise of religion.

"Exercise of religion" means the practice or observance of religion, including the ability to act or refuse to act in a manner substantially motivated by sincerely held religious belief, whether or not the exercise is compulsory or central to a larger system of religious belief.

"State action" means the implementation or application of any law or other action by the State or any county.

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. New Statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

A BILL FOR AN ACT

RELATING TO RELIGIOUS FREEDOM.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that in 2013, the President responded to the decision of the United States Supreme Court in *U.S. v. Windsor*, 570 U.S. ___, 133 S. Ct. 2675 (2013) by recognizing that “Americans hold a wide range of views” on the issue of same-sex marriage, and “maintaining our Nation’s commitment to religious freedom” is “vital”. Subsequent to the Court’s next landmark ruling in *Obergefell v. Hodges*, 576 U.S. ___, 135 S. Ct. 2071 (2015), legal scholars agree that conflicts between same-sex marriage and religious liberty are inevitable and, therefore, best addressed through legislation. In the *Obergefell v. Hodges* opinion, the Court held that same-sex couples have a right to marry, but also noted that “Many who deem same-sex marriage to be wrong reach that conclusion based on decent and honorable religious or philosophical premises, and neither they nor their beliefs are disparaged here.”

The legislature thus also finds that the State is obligated to protect religious freedom from government intrusion by remedying, deterring, and preventing government interference with religious exercise in a way that complements the protections mandated by the constitutions of the State of Hawaii and the United States. The societal benefit of laws that protect the free exercise of religious beliefs and moral convictions about marriage is that private citizens and institutions will be encouraged to demonstrate tolerance for those beliefs and convictions and therefore contribute to a more respectful, diverse, and peaceful society.

The purpose of this Act, to be known as the Hawaii Religious Freedom Restoration Act of 2016, is to:

-) Protect religious freedom and liberty by establishing as a matter of State policy that the compelling interest test in the free exercise of religion, as established by the United States Supreme Court under *Shubert v. Verner*, 374 U.S. 398 (1963), shall be the standard applicable by the courts of this State in all cases where religious exercise is substantially burdened;
-) Provide a means of judicial relief to persons whose religious exercise has been substantially burdened in violation of this Act; and
-) Harmonize the right of equal protection under the law for same-sex couples with the equally important right to the free exercise of religion in the areas of marriage and public accommodations.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**"CHAPTER
RELIGIOUS FREEDOM RESTORATION ACT**

§ -1 **Findings.** (a) The legislature finds that:

(1) The authors of the Bill of Rights secured the free exercise of religion as an unalienable right under the First Amendment of the United States Constitution;

(2) The free exercise of religion is also guaranteed under article I, section 4 of the Constitution of the State of Hawaii;

(3) Laws neutral toward religion may substantially burden religious exercise as surely as laws intended to interfere with religious exercise;

(4) Government should not substantially burden religious exercise without compelling justification;

(5) The United States Supreme Court in a recent decision virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion; and

(6) The compelling interest test in the free exercise of religion established by the United States Supreme Court is a workable test for striking sensible balances between religious liberty and competing government interests.

(b) The legislature declares its intent that:

(1) It shall be the policy of the State that the compelling interest test in the free exercise of religion, as established by the United States Supreme Court under *Shubert v. Verner*, 374 U.S. 398 (1963), shall be the standard applicable by the courts of this State in all cases where religious exercise is substantially burdened; and

(2) This chapter shall provide a claim or defense to persons whose religious exercise is substantially burdened by government.

§ -2 Free exercise of religion protected. (a) The State and its political subdivisions shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).

(b) Neither the State nor its political subdivisions shall burden a person's exercise of religion unless it demonstrates that imposition of the burden on the person both:

(1) Furthers a compelling government interest; and

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

(c) Notwithstanding any law to the contrary, a person whose religious exercise has been substantially burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against the State or its political subdivisions.

(d) Nothing in this chapter shall be construed to authorize the State or its political subdivisions to substantially burden any religious belief.

(e) Nothing in this chapter shall be construed to affect, interpret, or in any way address that portion of article I, section 4 of the Constitution of the State of Hawaii, prohibiting laws respecting the establishment of religion. Granting government funding, benefits, or exemptions, to the extent permissible under article I, section 4 of the Constitution of the State of Hawaii, shall not constitute a violation of this chapter."

SECTION 3. Chapter 489, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . RELIGIOUS FREEDOM IN PUBLIC ACCOMMODATIONS

§489- Religious freedom in marriage guaranteed. Absolute freedom of conscience in all matters of religious sentiment, belief, and worship pertaining to marriage shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; provided that the liberty of conscience secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the State.

§489- Religious organizations protected. No religious educational, healthcare, or

denominational organization; no organization operated for charitable or educational purposes and that is supervised, operated, controlled by, connected with, or publicly identified with a religious organization or group, regardless of whether its activities are deemed wholly or partly religious; and no individual employed or supervised by any of the foregoing organizations, while acting in the scope of that employment or supervision, shall be required to take any of the following actions if doing so would cause the organization or individual to violate their sincerely held religious beliefs:

- (1) Provide services, accommodations, advantages, facilities, goods, benefits, or privileges for a purpose related to the solemnization or celebration of any marriage;
- (2) Solemnize or celebrate any marriage; or
- (3) Treat as valid any marriage;

provided that a religious organization engaged in the provision of health care, or its individual employees, shall treat a state-recognized marriage as valid for purposes of a spouse's rights to visitation or to surrogate health care decision making.

§489- Individuals and small businesses protected. (a) No individual, sole proprietor, or small business shall be required to take any of the following actions if doing so would cause the individual, sole proprietor, or small business to violate their sincerely held religious belief:

(1) Provide any facility, good, or service that assists or promotes the solemnization or celebration of any marriage, or provide counseling or other services that facilitate the formation or perpetuation of any marriage;

(2) Provide benefits to any spouse of an employee; or

(3) Provide housing, lodging, or similar accommodation to any couple.

(b) This section shall not apply if either:

(1) A party to the marriage is unable to obtain any similar good or service, employment benefits, or housing elsewhere without substantial hardship; or

(2) In the case of an individual who is a government employee or official, another government employee or official is not promptly available and willing to provide the requested government service without inconvenience or delay; provided that no judicial officer authorized to solemnize marriages shall be required to solemnize any marriage if to do so would violate the judicial officer's sincerely held religious beliefs.

(c) For purposes of this section:

"Religious organization" means a privately held corporation or other legal entity that both:

(1) Holds itself out publicly as adhering to specific religious beliefs; and

(2) Is operated consistently with those beliefs.

"Small business" means a partnership or legal entity other than a natural person that either:

(1) Provides services that are primarily performed by an owner of the business;

(2) Has five or fewer employees; or

(3) Owns five or fewer units of housing in the case of a legal entity that offers housing for rent.

§489- Immunity from civil cause of action and other penalties. Notwithstanding any other law to the contrary, no refusal to provide services, accommodations, facilities, goods, or benefits protected by this part shall result in any of the following:

(1) A civil claim or cause of action challenging the refusal under law; or

(2) Any action by any state or county agency to penalize or withhold benefits from any protected entity or individual under any laws of this State or its political subdivisions, including but not limited to laws regarding employment discrimination, housing, public accommodations, educational institutions, licensing, government contracts or grants, or tax-exempt status.

§489- Construction. This part shall be construed in favor of a broad protection of religious

exercise, to the maximum extent permitted by the Constitution of the State of Hawaii and the United States Constitution."

SECTION 4. Chapter 572, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . RELIGIOUS FREEDOM IN MARRIAGE

§572- Religious freedom in marriage guaranteed. Absolute freedom of conscience in all matters of religious sentiment, belief, and worship pertaining to this chapter shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; provided that the liberty of conscience secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the State.

§572- Religious organizations protected. No religious educational, healthcare, or denominational organization; no organization operated for charitable or educational purposes and that is supervised, operated, controlled by, connected with, or publicly identified with a religious organization or group, regardless of whether its activities are deemed wholly or partly religious; and no individual employed or supervised by any of the foregoing organizations, while acting in the scope of that employment or supervision, shall be required to take any of the following actions if doing so would cause the organization or individual to violate their sincerely held religious beliefs:

- (1) Provide services, accommodations, advantages, facilities, goods, benefits, or privileges for a purpose related to the solemnization or celebration of any marriage;
- (2) Solemnize or celebrate any marriage; or
- (3) Treat as valid any marriage;

provided that a religious organization engaged in the provision of health care, or its individual employees, shall treat a state-recognized marriage as valid for purposes of a spouse's rights to visitation or to surrogate health care decision making.

§572- Individuals and small businesses protected. (a) No individual, sole proprietor, or small business shall be required to take any of the following actions if doing so would cause the individual, sole proprietor, or small business to violate their sincerely held religious belief:

- (1) Provide any facility, good, or service that assists or promotes the solemnization or celebration of any marriage, or provide counseling or other services that facilitate the formation or perpetuation of any marriage;
- (2) Provide benefits to any spouse of an employee; or
- (3) Provide housing, lodging, or similar accommodation to any couple.

(b) This section shall not apply if either:

- (1) A party to the marriage is unable to obtain any similar good or service, employment benefits, or housing elsewhere without substantial hardship; or
- (2) In the case of an individual who is a government employee or official, another government employee or official is not promptly available and willing to provide the requested government service without inconvenience or delay; provided that no judicial officer authorized to solemnize marriages shall be required to solemnize any marriage if to do so would violate the judicial officer's sincerely held religious beliefs.

(c) For purposes of this section:

"Religious organization" means a privately held corporation or other legal entity that both:

- (1) Holds itself out publicly as adhering to specific religious beliefs; and
- (2) Is operated consistently with those beliefs.

"Small business" means a partnership or legal entity other than a natural person that either:

- (1) Provides services that are primarily performed by an owner of the business;
- (2) Has five or fewer employees; or

(3) Owns five or fewer units of housing in the case of a legal entity that offers housing for rent.

§572- Immunity from civil cause of action and other penalties. Notwithstanding any other law to the contrary, no refusal to provide services, accommodations, facilities, goods, or benefits protected by this part shall result in any of the following:

- (1) A civil claim or cause of action challenging the refusal under law; or
- (2) Any action by any state or county agency to penalize or withhold benefits from any protected entity or individual under any laws of this State or its political subdivisions, including laws regarding employment discrimination, housing, public accommodations, educational institutions, licensing, government contracts or grants, or tax-exempt status.

§572- Construction. This part shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the Constitution of the State of Hawaii and the United States Constitution."

SECTION 5. Section 489-2, Hawaii Revised Statutes, is amended as by amending the definition of "place of public accommodation" to read as follows:

"Place of public accommodation" means a business, accommodation, refreshment, entertainment, recreation, or transportation facility of any kind whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the general public as customers, clients, or visitors. By way of example, but not of limitation, place of public accommodation includes facilities of the following types:

- (1) A facility providing services relating to travel or transportation;
- (2) An inn, hotel, motel, or other establishment that provides lodging to transient guests;
- (3) A restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises of a retail establishment;
- (4) A shopping center or any establishment that sells goods or services at retail;
- (5) An establishment licensed under chapter 281 doing business under a class 4, 5, 7, 8, 9, 10, 11, or 12 license, as defined in section 281-31;
- (6) A motion picture theater, other theater, auditorium, convention center, lecture hall, concert hall, sports arena, stadium, or other place of exhibition or entertainment;
- (7) A barber shop, beauty shop, bathhouse, swimming pool, gymnasium, reducing or massage salon, or other establishment conducted to serve the health, appearance, or physical condition of persons;
- (8) A park, a campsite, or trailer facility, or other recreation facility;
- (9) A comfort station; or a dispensary, clinic, hospital, convalescent home, or other institution for the infirm;
- (10) A professional office of a health care provider, as defined in section 323D-2, or other similar service establishment;
- (11) A mortuary or undertaking establishment; and
- (12) An establishment that is physically located within the premises of an establishment otherwise covered by this definition, or within the premises of which is physically located a covered establishment, and which holds itself out as serving patrons of the covered establishment.

"Place of public accommodation" does not include the real property, buildings, or other areas owned or leased by a religious organization and regularly used for religious purposes, notwithstanding whether the religious organization permits the community to also use some or all of the real property, buildings, or other areas owned or leased by the religious organization.

No place of public accommodation defined in this section shall be requested to reconstruct any facility or part thereof to comply with this chapter."

SECTION 6. Section 489-3, Hawaii Revised Statutes, is amended to read as follows:

"§489-3 Discriminatory practices prohibition. (a) Unfair discriminatory practices that deny, or attempt to deny, a person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation on the basis of race, sex, including gender identity or expression, sexual orientation, color, religion, ancestry, or disability are prohibited.

(b) Notwithstanding any other law to the contrary, and except as provided in subsection (c), no individual, sole proprietor, or small business shall be required to:

(1) Provide goods or services that assist or promote the solemnization or celebration of any marriage or civil union, or provide counseling or other services that directly facilitate the perpetuation of any marriage or civil union; or

(2) Provide housing or lodging to any couple,
if providing such goods, services, housing, or lodging would cause such individuals, sole proprietors, or owners of such small businesses to violate their sincerely held religious beliefs.

For the purpose of this subsection, "small business" means a legal entity other than a natural person that provides services that are primarily performed by an owner of the business; or a legal entity that has five or fewer employees; or in the case of a legal entity that offers housing or lodging for rent, that owns five or fewer units of housing or lodging.

(c) Subsection (b) shall not apply if a party to the marriage or civil union is unable to obtain any similar goods or services, or housing or lodging elsewhere, without substantial hardship.

(d) Notwithstanding any other provision in this chapter, no refusal to provide goods, services, facilities, privileges, advantages, or accommodations pursuant to subsection (b) shall constitute an unfair discriminatory practice and shall not result in any civil or criminal claim or cause of action challenging such refusal, nor result in any action by the State or any of its political subdivisions to penalize or withhold benefits or privileges, including but not limited to tax exemptions or governmental contracts, grants, or licenses, from any protected entity or individual."

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

INDIANA HB 66

SENATE BILL No. 66

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 22-9-11 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]:

Chapter 11. Fundamental Rights

Sec. 1. In enacting this chapter, the general assembly finds and declares that it is the policy of this state to recognize, preserve, and protect the fundamental rights guaranteed to all citizens by the Constitution of the State of Indiana. Therefore, the general assembly finds and declares that it is the policy of this state that the people's fundamental constitutional rights be treated with the greatest deference by the courts, by the executive, and by the general assembly. The purpose of this chapter is to provide a concrete guarantee to the citizens of Indiana that their fundamental constitutional rights will be recognized, preserved, and protected.

Sec. 2. The following definitions apply throughout this chapter:

- (1) "Fundamental right" means the following:
 - (A) The right to worship under Article 1, Section 2 of the Constitution of the State of Indiana.
 - (B) The right to free exercise and enjoyment of religious opinions and the right of conscience under Article 1, Section 3 of the Constitution of the State of Indiana.
 - (C) The right to freedom of religion under Article 1, Section 4 of the Constitution of the State of Indiana.
 - (D) The right to freedom of thought and speech under Article 1, Section 9 of the Constitution of the State of Indiana.
 - (E) The right of assemblage and petition under Article 1, Section 31 of the Constitution of the State of Indiana.
 - (F) The right to bear arms under Article 1, Section 32 of the Constitution of the State of Indiana.
- (2) "Governmental entity" includes the whole or any part of a branch, department, agency, instrumentality, official, or other individual or entity acting under color of law of any of the following:
 - (A) State government.
 - (B) A political subdivision (as defined in IC 36-1-2-13).
 - (C) An instrumentality of a governmental entity described clause (A) or (B), including a state educational institution, a body politic, a body corporate and politic, or any other similar entity established by law.
- (3) "Person" means the following:
 - (A) An individual, including a group or association of individuals.
 - (B) Any other legal entity.

Sec. 3. A governmental entity may not substantially burden a 30 person's fundamental right unless the governmental entity demonstrates that the application of the burden to the person:

- (1) is in furtherance of a compelling governmental interest; and
- (2) is the least restrictive means of furthering that compelling governmental interest.

Sec. 4. The inclusion of certain rights in this chapter is not intended to affect in any way the rights not included in this chapter.

SECTION 2. IC 34-13-9 IS REPEALED [EFFECTIVE JULY 1, 2016]. (Religious Freedom Restoration).

IOWA HF 2032 and HF 2200

HOUSE FILE 2032

BY WILLS

A BILL FOR

An Act relating to the preservation of religious freedom.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. **729.7 Religious freedom preserved.**

1. As used in this section, unless the context otherwise requires:
 - a. “*Demonstrates*” means meets the burdens of going forward with the evidence and of persuasion under the standard of clear and convincing evidence.
 - b. “*Exercise of religion*” means the practice or observance of religion under Article I, section 3 of the Constitution of the State of Iowa and the First Amendment to the Constitution of the United States.
 - c. “*Fraudulent claim*” means a claim that is dishonest in fact or that is made principally for a patently improper purpose, such as to harass the opposing party.
 - d. “*Frivolous claim*” means a claim that completely lacks merit under existing law and cannot be supported by a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law.
 - e. “*Government entity*” means any branch, department, agency, instrumentality of state government, or any official or other person acting under color of state law, or any political subdivision of the state.
 - f. “*Prevails*” means to obtain prevailing party status as defined by courts construing the federal Civil Rights Attorney’s Fees Awards Act of 1976, 42 U.S.C. §1988.
 - g. “*Substantially burden*” means to inhibit or curtail religiously motivated practice.
2. Except as provided in subsection 3, a government entity shall not substantially burden a person’s exercise of religion even if the burden results from a law of general applicability.
3. A government entity shall not substantially burden a person’s exercise of religion unless the government entity demonstrates that application of the burden to the person is essential to further a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.
 - a. This section shall not be construed to do any of the following:
 - (1) Authorize any government entity to burden any religious belief.
 - (2) Affect, interpret, or in any way address those portions of Article I, section 3 of the Constitution of the State of Iowa or the First Amendment to the Constitution of the United States that prohibit laws respecting the establishment of religion.
 - b. Granting government funds, benefits, or exemptions, to the extent permissible under paragraph “a”, subparagraph (2), shall not constitute a violation of this section. As used in this paragraph, “granting” used with respect to government funding, benefits, or exemptions, shall not include the denial of government funding, benefits, or exemptions.

5. A person whose exercise of religion has been burdened by a government entity in violation of this section may assert that violation as a claim or defense in any judicial or administrative proceeding and may obtain such declaratory relief or monetary damages as may properly be awarded by a court of competent jurisdiction. A person who prevails in any proceeding to enforce this section against a government entity may recover all costs of the action including reasonable attorney fees. The provisions of this subsection relating to attorney fees shall not apply to criminal prosecutions.

6. A person found by a court of competent jurisdiction to have abused the protections of this section by filing a frivolous or fraudulent claim may be assessed the government entity's court costs, if any, and may be enjoined from filing further claims under this section without leave of the court.

EXPLANATION

**The inclusion of this explanation does not constitute agreement with
the explanation's substance by the members of the general assembly.**

This bill enacts new Code section 729.7 to prohibit a government entity from burdening a person's exercise of religion, even if the burden results from a law of general applicability, unless the government entity can demonstrate that the action constituting or resulting in the burden furthers a compelling governmental interest and is the least restrictive means of furthering that interest.

The bill defines "exercise of religion" as the practice or observance of religion under Article I, section 3 of the Constitution of the State of Iowa or the First Amendment to the United States Constitution. The bill defines "government entity" as any branch, department, agency, instrumentality of state government, or any official or other person acting under color of state law, or any political subdivision of the state.

The provisions of the bill do not authorize any government entity to burden any religious belief and do not affect any portions of Article I, section 3 of the Constitution of the State of Iowa or the First Amendment to the United States Constitution that prohibit laws respecting the establishment of religion.

The bill provides that a person whose exercise of religion has been burdened by a government entity may assert a violation of new Code section 729.7 as a claim or defense in any judicial or administrative proceeding and may obtain declaratory relief or monetary damages. A person who prevails in any proceeding to enforce the provisions of new Code section 729.7 against a government entity may recover all costs of the action including reasonable attorney fees, except that attorney fees may not be recovered in cases of criminal prosecution.

The bill provides that a person found to have abused new Code section 729.7 by filing a frivolous or fraudulent claim may be assessed the government entity's court costs and may be enjoined from filing further claims without leave of court. The bill defines "fraudulent claim" as a claim that is dishonest in fact or that is made principally for a patently improper purpose, such as to harass the opposing party. The bill defines "frivolous claim" as a claim that completely lacks merit under existing law and cannot be supported by a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law.

HOUSE FILE 2200

BY SALMON, HEARTSILL, GASSMAN, HOLT, WATTS, KOOIKER, SHEETS, BAXTER, and FISHER

A BILL FOR

An Act relating to the standard of judicial review and providing a claim or defense when a state action burdens a person's exercise of religion, and including effective date provisions.

Section 1. NEW SECTION. **675.1 Short title.**

This chapter shall be known and may be cited as the "*Iowa Conscience Protection Act*".

Sec. 2. NEW SECTION. **675.2 Purpose.**

The purposes of this chapter are as follows:

1. To ensure that strict scrutiny is applied in all cases where state action burdens the exercise of religion.
2. To provide a claim or defense to a person whose exercise of religion is burdened by state action.

Sec. 3. NEW SECTION. **675.3 Definitions.**

As used in this chapter unless the context otherwise requires:

1. "*Burden*" means any state action that directly or indirectly constrains, inhibits, curtails, or denies the exercise of religion by any person or compels any action contrary to a person's exercise of religion, and includes but is not limited to any state action that results in any of the following:
 - a. Withholding of benefits.
 - b. Assessment of criminal, civil, or administrative penalties.
 - c. Exclusion from governmental programs or access to governmental facilities.
2. "*Compelling governmental interest*" means a governmental interest of the highest magnitude that cannot otherwise be achieved without burdening the exercise of religion.
3. "*Exercise of religion*" means the practice or observance of religion. "*Exercise of religion*" includes but is not limited to the ability to act or refuse to act in a manner substantially motivated by a person's sincerely held religious beliefs, whether or not the exercise is compulsory or central to a larger system of religious belief.
4. "*Person*" means an individual, association, partnership, corporation, place of worship, religious institution, educational institution, adoption agency, estate, trust, foundation, or other legal entity.
5. "*State action*" means the implementation or application of any law, including but not limited to state laws, local ordinances, rules, regulations, resolutions, and policies, whether statutory or otherwise, or other action by the state, an agency or instrumentality of the state, or any political subdivision of the state, or any public official whose office is authorized by law of the state.

Sec. 4. NEW SECTION. **675.4 Free exercise of religion protected.**

1. State action shall not burden a person's free exercise of religion, even if the burden results from a law, ordinance, rule, regulation, resolution, or policy of general applicability, unless it is demonstrated that applying the burden to the person's exercise of religion is essential to further a compelling governmental interest and is the least restrictive means of furthering that interest.

2. A person whose exercise of religion has been burdened or is likely to be burdened in violation of this chapter may assert such violation or impending violation as a claim or defense in a judicial, administrative, or other proceeding, regardless of whether the state or any other governmental entity is a party to the proceeding. The person asserting such a claim or defense may obtain appropriate relief, including relief against the state or any other governmental entity taking state action. Appropriate relief includes but is not limited to injunctive relief, declaratory relief, compensatory damages, costs, and attorney fees.

Sec. 5. EFFECTIVE UPON ENACTMENT. This Act, being deemed of immediate importance, takes effect upon enactment.

EXPLANATION

The inclusion of this explanation does not constitute agreement with the explanation's substance by the members of the general assembly.

This bill relates to the standard of judicial review when a state action burdens a person's exercise of religion and provides a claim or defense to a person whose exercise of religion is burdened by a state action.

The bill defines "burden", "exercise of religion", "person", and "state action".

The bill provides that state action shall not burden the exercise of religion of any person unless the person or entity seeking to apply the law to the person can show that the burden is essential to furthering a compelling governmental interest and is the least restrictive means of furthering that interest. Under current law, a court does not apply heightened scrutiny when reviewing a law that burdens a person's exercise of religion when such law is generally applicable. The bill defines "compelling governmental interest" as a governmental interest of the highest magnitude that cannot be achieved without burdening the exercise of religion.

The bill further provides that a person whose exercise of religion has been or is likely to be burdened by state action may assert such violation or impending violation as a claim or defense in a judicial, administrative, or other proceeding. The person asserting the claim may obtain injunctive relief, declaratory relief, compensatory damages, costs, or attorney fees.

The bill takes effect upon enactment.

MAINE LD 1340

An Act To Enact the Preservation of Religious Freedom Act
Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA c. 337-D is enacted to read:

CHAPTER 337-D
PRESERVATION OF RELIGIOUS FREEDOM ACT

§ 4801. Short title

This chapter may be known and cited as "the Preservation of Religious Freedom Act."

§ 4802. Findings

The Legislature makes the following findings:

1. Federal Constitution. The framers of the United States Constitution, recognizing free exercise of religion as a fundamental and unalienable right, secured its protection in the First Amendment of the United States Constitution;

2. State Constitution. The framers of the Constitution of Maine, recognizing free exercise of religion as a fundamental and unalienable right, secured its protection in the Constitution of Maine;

3. Exercise of religion burdened. Laws neutral toward religion may burden exercise of religion as surely as laws intended to interfere with religious exercise;

4. Compelling government interest. Government should not burden the free exercise of religion without a compelling governmental interest;

5. Effect of Supreme Court precedent. Prior to 1990, the United States Supreme Court recognized that laws burdening the free exercise of religion had to be justified by a compelling governmental interest. In Employment Division v. Smith, 494 U.S. 872 (1990), the United States Supreme Court virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion;

6. Reassertion of compelling interest test. The compelling interest test set forth in this Act and in federal as well as Maine court rulings prior to Employment Division v. Smith, including Wisconsin v. Yoder, 406 U.S. 205 (1972), and Sherbert v. Verner, 374 U.S. 398 (1963), is a workable test for striking sensible balances between religious liberty and competing governmental interests; and

7. Role of legislative bodies to protect free exercise of religion. The United States Supreme Court's decision in Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal, 546 U.S. 418 (2006), indicates that legislative bodies may enact statutory law for their jurisdictions requiring that laws burdening the free exercise of religion be justified by a compelling governmental interest. Many states have done so, passing laws similar to this Act.

§ 4803. Purposes

The purposes of this Act are:

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

2. Provide claim or defense. To provide a claim or defense to a person or persons whose exercise of religion is substantially burdened.

§ 4804. Definitions

As used in this Act, unless the context otherwise indicates, the following terms have the following meanings.

1. Compelling governmental interest. "Compelling governmental interest" means a governmental interest of the highest magnitude.

2. Exercise of religion. "Exercise of religion" means the practice or observance of religion. "Exercise of religion" includes, but is not limited to, the ability to act or refuse to act in a manner substantially motivated by a person's sincerely held religious belief, whether or not the exercise of religion is compulsory or central to a larger system of religious belief.

3. Government. "Government" means the State, a political subdivision of the State and any local government, municipality, instrumentality or public official authorized by law in the State.

4. Substantially burden. "Substantially burden" means taking an action, including the implementation or application of a law, that directly or indirectly constrains, inhibits, curtails or denies the exercise of religion by a person or compels an action contrary to a person's exercise of religion. "Substantially burden" includes, but is not limited to, withholding benefits from a person, assessing criminal, civil or administrative penalties or excluding a person from government programs or access to government facilities.

§ 4805. Free exercise of religion protected

1. Substantial burden prohibited; exceptions. Government may not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, unless applying the burden to that person's exercise of religion in this particular instance:

A. Is in furtherance of a compelling governmental interest; and

B. Is the least restrictive means of furthering that compelling governmental interest.

2. Claim or defense; relief. A person whose exercise of religion has been substantially burdened in violation of this Act may assert the violation as a claim or defense in a judicial proceeding. The person asserting such a claim or defense may obtain appropriate relief, including relief against the government. Appropriate relief includes, but is not limited to, injunctive relief, declaratory relief, compensatory damages and costs and attorney's fees.

SUMMARY

This bill enacts the Preservation of Religious Freedom Act. It codifies legislative findings that summarize the enshrinement of the right to the free exercise of religion in the United States Constitution and the Constitution of Maine and case law of the Maine Supreme Judicial Court and the United States Supreme Court interpreting the fundamental and unalienable right to the free exercise of religion, as well as the extent to which a legislative body can legislate in this

area.

The Preservation of Religious Freedom Act has as its purpose the restoration of the compelling interest test as set forth in Wisconsin v. Yoder, 406 U.S. 205 (1972), and Sherbert v. Verner, 374 U.S. 398 (1963). The Act guarantees the application of the compelling interest test in all cases in which the government substantially burdens the exercise of religion and provides a claim or defense to a person whose exercise of religion is burdened by the government.

The Act provides that the government may not directly or indirectly substantially burden a person's exercise of religion unless the application of the burden to the person is in furtherance of a compelling governmental interest and is accomplished through the least restrictive means.

The Act allows a person whose exercise of religion has been substantially burdened in violation of the Act to assert the violation as a claim or defense in a court action.

The Act's requirement that the government's infringement upon the free exercise of religion be justified by a compelling interest is similar to the requirement placed on the Federal Government through the Religious Freedom Restoration Act of 1993 and that of other states that have passed similar protections.

MICHIGAN SB 4

SENATE BILL No. 4

January 20, 2015, Introduced by Senator SHIRKEY and referred to the Committee on Judiciary.

A bill to limit governmental action that substantially burdens a person's exercise of religion; to set forth legislative findings; to provide for asserting a burden on exercise of religion as a claim or defense in any judicial or administrative proceeding; and to provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. This act shall be known and may be cited as the "Michigan religious freedom restoration act".

Sec. 2. The legislature finds and declares all of the following:

- (a) The free exercise of religion is an inherent, fundamental, and unalienable right secured by article 1 of the state constitution of 1963 and the first amendment to the United States constitution.
- (b) Laws neutral toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise.
- (c) Government should not substantially burden religious exercise without compelling justification.
- (d) In 1993, the congress of the United States enacted the religious freedom restoration act to address burdens placed on the exercise of religion in response to the United States supreme court's decision in *Employment Division v Smith*, 494 US 872 (1990), which virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion.
- (e) In *City of Boerne v P.F. Flores*, 521 US 507 (1997), the United States supreme court held that the religious freedom restoration act of 1993 infringed on the legislative powers reserved to the states under the United States constitution.
- (f) The compelling interest test set forth in prior court rulings, including *Porth v Roman Catholic Diocese of Kalamazoo*, 209 Mich App 630 (1995), is a workable test for striking sensible balances between religious liberty and competing governmental interests in this state.

Sec. 3. The purposes of this act are the following:

- (a) To guarantee application of the compelling interest test, as recognized by the United States supreme court in *Sherbert v Verner*, 374 US 398 (1963); *Wisconsin v Yoder*, 406 US 205 (1972); and *Gonzales v O Centro Espirita Beneficiente Uniao do Vegetal*, 546 US 418 (2006), to all cases where free exercise of religion is substantially burdened by government.
- (b) To provide a claim or defense to persons whose religious exercise is substantially burdened by government.

Sec. 4. As used in this act:

- (a) "Demonstrates" means meets the burdens of going forward with the evidence and of persuasion.
- (b) "Exercise of religion" means the practice or observance of religion, including an act or refusal to act, that is substantially motivated by a sincerely held religious belief, whether or not compelled by or central to a system of religious belief.
- (c) "Government" means any branch, department, agency, division, bureau, board, commission, council, authority, instrumentality, employee, official, or other entity of this state or a political subdivision of this state, or a person acting under color of law.

Sec. 5. (1) Except as provided in subsection (2), government shall not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability.

(2) Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to that person's exercise of religion in that particular instance is both of the following:

- (a) In furtherance of a compelling governmental interest.
- (b) The least restrictive means of furthering that compelling governmental interest.

(3) A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in any judicial or administrative proceeding and obtain appropriate relief, including equitable relief, against government. □

(4) A court or tribunal may award all or a portion of the costs of litigation, including reasonable attorney fees, to a □ person who prevails against government under this section.

Sec. 6. (1) Section 5 applies to all laws of this state and of □ a political subdivision of this state, and the implementation of those laws, whether statutory or otherwise and whether adopted before or after the effective date of this act, unless the law explicitly excludes application by reference to this act. □

(2) This act shall be construed in favor of broad protection □ of religious exercise to the maximum extent permitted by the terms of this act, the state constitution of 1963, and the United States constitution. □

(3) Nothing in this act shall be construed to authorize any □ burden on any religious belief. □

(4) Nothing in this act shall be construed to preempt or □ repeal any law that is equally or more protective of religious □ exercise than this act. □

(5) Nothing in this act shall be construed to affect, □ interpret, or in any way address those portions of the United States constitution or the state constitution of 1963 that prohibit □ laws respecting the establishment of religion. Granting government □ funding, benefits, or exemptions, to the extent permissible under □ those constitutional provisions, is not a violation of this act. As □ used in this subsection, the term "granting", used with respect to government funding, benefits, or exemptions, does not include the □ denial of government funding, benefits, or exemptions. □

Sec. 7. If any provision of this act or any application of □ such a provision to any person or circumstance is held to be □ unconstitutional, the remainder of this act and the application of □ the provision to any other person or circumstance is not affected. □

NEW MEXICO HB 55

HOUSE BILL 55

52nd legislature - STATE OF NEW MEXICO - second session, 2016

INTRODUCED BY

David M. Gallegos and Nora Espinoza and James G. Townsend

AN ACT

RELATING TO RELIGIOUS FREEDOM; AMENDING THE HUMAN RIGHTS ACT TO PROHIBIT THE APPLICATION OF ANY LAW THAT BURDENS THE FREE EXERCISE OF RELIGION; AMENDING THE NEW MEXICO RELIGIOUS FREEDOM RESTORATION ACT TO PREVENT DISCRIMINATORY ACTION BY A PERSON OR A GOVERNMENT AGENCY IN RESPONSE TO A PERSON'S FREE EXERCISE OF RELIGION; PROVIDING FOR NOTICE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 28-1-2 NMSA 1978 (being Laws 1969, Chapter 196, Section 2, as amended) is amended to read:

"28-1-2. DEFINITIONS.--As used in the Human Rights Act:

A. "person" means one or more individuals, a limited liability company, partnership, association, organization, corporation, joint venture or any legal or commercial entity, legal representative, business trust, estate, trust, trustees, receivers or the state and all of its political subdivisions;

B. "employer" means any person employing [~~four or more persons~~] a person and any person acting for an employer;

C. "commission" means the human rights commission;

D. "director" or "bureau" means the human rights bureau of the labor relations division of the workforce solutions department;

E. "employee" means any person in the employ of an employer or an applicant for employment;

F. "free exercise of religion" means an act or a refusal to act that is substantially motivated by religious belief;

~~[F.]~~ G. "labor organization" means any organization that exists for the purpose in whole or in part of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in connection with employment;

~~[G.]~~ H. "employment agency" means any person regularly undertaking with or without compensation to procure opportunities to work or to procure, recruit or refer employees;

~~[H.]~~ I. "public accommodation" means any establishment that provides or offers its services, facilities, accommodations or goods to the public, but does not include a bona fide private club or other place or establishment that is by its nature and use distinctly private;

~~[I.]~~ J. "housing accommodation" means any building or portion of a building that is constructed or to be constructed, which is used or intended for use as the residence or sleeping place of any individual;

~~[J.]~~ K. "real property" means lands, leaseholds or commercial or industrial buildings, whether constructed or to be constructed, offered for sale or rent, and any land rented or leased for the use, parking or storage of house trailers;

~~[K.]~~ L. "secretary" means the secretary of workforce solutions;

~~[L.]~~ M. "unlawful discriminatory practices" means those unlawful practices and acts specified in Section 28-1-7 NMSA 1978;

~~[M.]~~ N. "physical or mental handicap" means a physical or mental impairment that substantially limits one or more of a person's major life activities. A person is also considered to be physically or mentally handicapped if the person has a record of a physical or mental handicap or is regarded as having a physical or mental handicap;

~~[N.]~~ O. "major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working;

~~[O.]~~ P. "applicant for employment" means a person applying for a position as an employee;

~~[P.]~~ Q. "sexual orientation" means heterosexuality, homosexuality or bisexuality, whether actual or perceived; and

~~[Q.]~~ R. "gender identity" means a person's self- perception, or perception of that person by another, of the person's identity as a male or female based upon the person's appearance, behavior or physical characteristics that are in accord with or opposed to the person's physical anatomy, chromosomal sex or sex at birth."

SECTION 2. Section 28-1-9 NMSA 1978 (being Laws 1969, Chapter 196, Section 8, as amended) is amended to read:

"28-1-9. EXEMPTIONS.--Nothing contained in the Human Rights Act shall:

A. apply to any single-family dwelling sold, leased, subleased or rented by an owner without the making of any notice, statement or advertisement with respect to the sale, lease, sublease or rental of a dwelling unit that indicates any preference, limitation or discrimination based on race, color, religion, national origin, ancestry, sex, sexual orientation or gender identity. This exemption is subject to these further reservations:

(1) to qualify for the exemption, the seller must not be an owner of or own or have reserved any interest in more than three single-family dwellings; and

(2) if the seller does not currently live in the dwelling or ~~[he]~~ was not the most recent occupant, the exemption granted in this section shall only apply to one sale in twenty-four months;

B. bar any religious or denominational institution or organization that is operated, supervised or controlled by or that is operated in connection with a religious or denominational organization from limiting admission to or giving preference to persons of the same religion or denomination or from making selections of buyers, lessees or tenants as are calculated by the organization or denomination to promote the religious or denominational principles for which it is established or maintained, unless membership in the religious or denominational organization is restricted on account of race, color, national origin or ancestry;

C. bar any religious or denominational institution or organization that is operated, supervised or controlled by or that is operated in connection with a religious or denominational organization from imposing discriminatory employment or renting practices that are based upon sexual orientation or gender identity; ~~[provided that the provisions of the Human Rights Act with respect to sexual orientation and gender identity shall apply to any other:~~

~~(1) for profit activities of a religious or denominational institution or religious organization subject to the provisions of Section 511(a) of the Internal Revenue Code of 1986, as amended; or~~

~~(2) nonprofit activities of a religious or denominational institution or religious organization subject to the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended;]~~

D. burden a person's free exercise of religion by requiring the person to provide a service or to conduct business in a manner inconsistent with adherence to that person's sincerely held religious belief unless that adherence is based on race, age, religion, color, national origin,

ancestry, sex, physical or mental handicap or serious medical condition;

~~[D.]~~ E. apply to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of the living quarters as ~~[his]~~ the owner's residence;

~~[E.]~~ F. apply to public restrooms, public showers, public dressing facilities or sleeping quarters in public institutions, where the preference or limitation is based on sex; and

~~[F.]~~ G. prevent the mandatory retirement of an employee upon reaching the age of sixty-five years or older, if the employer is operating under a retirement plan that meets the requirements of Public Law 93-406, the Employee Retirement Income Security Act of 1974."

SECTION 3. Section 28-22-1 NMSA 1978 (being Laws 2000 (2nd S.S.), Chapter 17, Section 1) is amended to read:

"28-22-1. SHORT TITLE.--~~[Sections 1 through 5 of this act]~~ Chapter 28, Article 22 NMSA 1978 may be cited as the "New Mexico Religious Freedom Restoration Act".

SECTION 4. Section 28-22-2 NMSA 1978 (being Laws 2000 (2nd S.S.), Chapter 17, Section 2) is amended to read:

"28-22-2. DEFINITIONS.--As used in the New Mexico Religious Freedom Restoration Act:

A. "discriminatory action" means an act by a person or a government agency in response to a person's free exercise of religion to:

(1) alter the tax treatment of, or cause any tax, penalty or payment to be assessed against, or to deny, delay or revoke an exemption from taxation under New Mexico laws of any person;

(2) withhold, reduce, exclude, terminate or otherwise deny any state grant, contract, subcontract, cooperative agreement, loan, license, certification, accreditation, employment or other status from or to a person; and

(3) require a person to perform an act or provide or receive a product, good or service where that act conflicts with that person's sincerely held religious belief;

~~[A.]~~ B. "free exercise of religion" means an act or a refusal to act that is substantially motivated by religious belief; ~~and~~

~~[B.]~~ C. "government agency" means the state or any of its political subdivisions, institutions, departments, agencies, commissions, committees, boards, councils, bureaus or authorities; and

D. "person" means one or more individuals, a limited liability company, partnership, association, organization, corporation, joint venture or any legal or commercial entity, legal representative, business trust, estate, trust, trustees, receivers or government agency."

SECTION 5. Section 28-22-3 NMSA 1978 (being Laws 2000 (2nd S.S.), Chapter 17, Section 3) is amended to read:

"28-22-3. RELIGIOUS FREEDOM PROTECTED--EXCEPTIONS.--A ~~[government agency]~~ person shall not restrict a person's free exercise of religion unless:

A. the restriction is in the form of a rule of general applicability and does not ~~[directly]~~ discriminate against religion or among religions; and

B. the application of the restriction to the person is essential to further a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest."

SECTION 6. Section 28-22-4 NMSA 1978 (being Laws 2000 (2nd S.S.), Chapter 17, Section 4) is amended to read:

"28-22-4. PRIVATE REMEDIES.--

A. A person whose free exercise of religion has been restricted by a violation of the New

Mexico Religious Freedom Restoration Act may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a ~~[government agency]~~ person, including:

- (1) injunctive or declaratory relief against a ~~[government agency]~~ person that violates or proposes to violate the provisions of the New Mexico Religious Freedom Restoration Act; and
- (2) damages pursuant to the Tort Claims Act, reasonable attorney fees and costs.

B. Immunity from liability of the ~~[government agency and its]~~ person and the person's employees is waived for an action brought pursuant to this section."

SECTION 7. A new section of the New Mexico Religious Freedom Restoration Act is enacted to read:

"[NEW MATERIAL] NOTIFICATION OF RESTRICTION ON ACTIONS.--

A person offering labor, services, merchandise or goods shall take reasonable measures to ensure that persons, employees, applicants for employment, customers and potential customers are made aware of limitations on the person's ability to perform tasks, activities, services or limitations on merchandise or goods on offer due to the person's sincerely held religious beliefs."

SECTION 8. Section 28-22-5 NMSA 1978 (being Laws 2000 (2nd S.S.), Chapter 17, Section 5) is amended to read:

"28-22-5. CONSTRUCTION OF ACT.--Nothing in the New Mexico Religious Freedom Restoration Act authorizes a ~~[government agency]~~ person to burden a person's free exercise of religion. The protection of the free exercise of religion granted in that act is in addition to the protections granted by federal law and the state and federal constitutions. The New Mexico Religious Freedom Restoration Act does not affect the grant of benefits or tax exemptions to religious organizations nor does it impair any other exemptions granted by law."

SECTION 9. SEVERABILITY.--If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

SECTION 10. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2016.

NORTH CAROLINA

GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

SD SENATE DRS45282-MM-8D* (01/02)

Short Title: NC Religious Freedom Restoration Act. (Public)
Sponsors: Senators Daniel, Newton, and Soucek (Primary Sponsors).
Referred to:

A BILL TO BE ENTITLED
AN ACT TO ENACT THE NORTH CAROLINA RELIGIOUS FREEDOM RESTORATION
ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 147 of the General Statutes is amended by adding a new Article to read:

"Article 9.

"The North Carolina Religious Freedom Restoration Act.

"§ 147-100. Short Title.

This Article shall be known and may be cited as the North Carolina Religious Freedom Restoration Act.

"§ 147-101. Purpose.

The purposes of this Article are to ensure that in all cases where State action burdens the exercise of religion, strict scrutiny is applied; and to provide a claim or defense to a person or persons whose exercise of religion is burdened by State action.

"§ 147-102. Definitions.

The following definitions apply in this Article (North Carolina Religious Freedom Restoration Act):

- (1) Burden. – Any action that directly or indirectly constrains, inhibits, curtails, or denies the exercise of religion by any person or compels any action contrary to a person's exercise of religion, and includes, but is not limited to, withholding benefits; assessing criminal, civil, or administrative penalties; or exclusion from governmental programs or access to governmental facilities.
- (2) Compelling governmental interest. – A governmental interest of the highest magnitude that cannot otherwise be achieved without burdening the exercise of religion.
- (3) Exercise of religion. – The practice or observance of religion. It includes, but is not limited to, the ability to act or refuse to act in a manner substantially motivated by one's sincerely held religious beliefs, whether or not the exercise is compulsory or central to a larger system of religious belief.
- (4) Person. – Any individual, association, partnership, corporation, church, religious institution, estate, trust, foundation, or other legal entity.
- (5) State action. – The implementation or application of any law, including, but not limited to, State and local laws, ordinances, rules, regulations, and policies, whether statutory or otherwise, or other action by the State or any political subdivision thereof and any local government, municipality, instrumentality, or public official authorized by law in the State.

"§ 147-103. Free Exercise of Religion Protected.

(a) State action shall not burden a person's right to exercise of religion, even if the burden results from a rule of general applicability, unless it is demonstrated that applying the burden to that person's exercise of religion in this particular instance:

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

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

(b) A person whose exercise of religion has been burdened, or is likely to be burdened, in violation of this Act may assert such violation or impending violation as a claim or defense in a judicial proceeding, regardless of whether the State or one of its political subdivisions is a party to the proceeding. The person asserting such a claim or defense may obtain appropriate relief, including relief against the State or its political subdivisions. Appropriate relief includes, but is not limited to, injunctive relief, declaratory relief, compensatory damages, and costs and attorney fees.

"§ 147-104. Limitations.

(a) Nothing in this Act shall be construed to do any of the following:

1. Authorize the State to burden any religious belief.

Affect, interpret, or in any way address those portions of the First Amendment to the United States Constitution or Sec. 13 of Article I of the North Carolina Constitution that prohibit laws respecting the establishment of religion.

(b) Granting government funding, benefits, or exemptions, to the extent permissible under the First Amendment to the United States Constitution or Sec. 13 of Article I of the North Carolina Constitution, shall not constitute a violation of this section. As used in this subsection, the term "granting," used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.

"§ 147-105. Severability.

If any subsection or portion of this Article is declared invalid, that declaration shall not affect the validity of the remaining portions."

SECTION 2. This act is effective when it becomes law and applies to cases, actions, and causes of action for which the trial court has not entered final judgment as of that date.

**OKLAHOMA HB 1371, SB 440, SB 723 and
SB 898**

STATE OF OKLAHOMA
1st Session of the 55th Legislature (2015)
HOUSE BILL 1371 By: Strohm

AS INTRODUCED

An Act relating to the Oklahoma Religious Freedom Act; amending 51 O.S. 2011, Section 252, which relates to definitions; adding certain definition; prohibiting state or subdivision from making certain claim under certain action; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 51 O.S. 2011, Section 252, is amended to read as follows:

Section 252. In this act the Oklahoma Religious Freedom Act:

1. "Demonstrates" means the burdens of going forward with the evidence and of persuasion under the standard of clear and convincing evidence are met;
2. "Exercise of religion" means the exercise of religion under Article 1, Section 2, of the Constitution of the State of Oklahoma, the Oklahoma Religious Freedom Act, and the First Amendment to the Constitution of the United States;
3. "Fraudulent claim" means a claim that is dishonest in fact or that is made principally for a patently improper purpose, such as to harass the opposing party;
4. "Frivolous claim" means a claim which lacks merit under existing law and which cannot be supported by a good-faith argument for the extension, modification, or reversal of existing law or the establishment of new law;
5. "Governmental entity" means any branch, department, agency, or instrumentality of state government, or any official or other person acting under color of state law, or any political subdivision of this state;
6. "Person" means a natural or juridical person, including but not limited to unincorporated nonprofit associations;
7. "Prevails" means to obtain prevailing party status as defined by courts construing the federal Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. § 1988; and
8. "Substantially burden" means to inhibit or curtail religiously motivated practice.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 255A of Title 51, unless there is created a duplication in numbering, reads as follows:

In any action brought under the Oklahoma Religious Freedom Act, neither the State of Oklahoma nor any subdivision thereof shall be entitled to claim a governmental interest which purports to require

any person to participate in any marriage ceremony, celebration, or other related activity or to provide items or services for such purposes against the person's religious beliefs.

SECTION 3. This act shall become effective November 1, 2015.

STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

SENATE BILL 440

By: Silk

An Act relating to religious freedom; creating the Oklahoma Religious Freedom Restoration Act of 2015; defining terms; providing certain protections from governmental action for certain religious beliefs; stating protected actions; stating prohibited remedies and actions; providing defense to certain actions; setting dismissal and transfer procedure; prohibiting certain discovery during certain time; allowing certain attorney fees, costs and damages; ensuring governmental entity provides certain service under certain condition; providing severability; construing provisions; repealing 51 O.S. 2011, Sections 251, 252, 253, 254, 255, 256, 257 and 258, which relate to the Oklahoma Religious Freedom Act; providing for codification; and declaring an emergency

AS INTRODUCED

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1850 of Title 25, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Religious Freedom Reformation Act of 2015".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1850.1 of Title 25, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Religious entity" means an organization, regardless of its not-for-profit or for-profit status, and regardless of whether its activities are deemed wholly or aptly religious, that is:
 - a. religious corporation, association, educational institution or society,
 - b. an entity operated, supervised or controlled by, or connected with, a religious corporation, association, educational institution or society, or
 - c. a privately-held business operating consistently with its sincerely held religious beliefs, with regard to any activity described in this act and amendments thereto; and
2. "Governmental entity" means the executive, legislative, and judicial branches and any and all agencies, boards, commissions, departments, districts, authorities or other entities, subdivisions or part whatsoever of state and local government, as well as any person acting under color of law.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1850.2 of Title 25, unless there is created a duplication in numbering, reads as follows:

Notwithstanding any other provision of law, no individual or religious entity shall be required by any governmental entity to do any of the following, if it would be contrary to the sincerely held religious beliefs of the individual or religious entity regarding sex, gender or sexual orientation:

1. Provide any services, accommodations, advantages, facilities, goods or privileges;
2. Provide counseling, adoption, foster care, and other social services;
3. Provide employment or employment benefits, related to, or related to the celebration of, any marriage, domestic partnership, civil union or similar arrangement;
4. Solemnize any marriage, domestic partnership, civil union or similar arrangement; or
5. Treat any marriage, domestic partnership, civil union or similar arrangement as valid.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1850.3 of Title 25, unless there is created a duplication in numbering, reads as follows:

A. Notwithstanding any other provision of law, no refusal by an individual or religious entity to engage in any activity described in Section 3 of this act, and amendments thereto, shall result in:

1. A civil claim or cause of action under state or local law based upon such refusal; or
2. An action by any governmental entity to penalize, withhold benefits from, discriminate against or otherwise disadvantage any protected individual or religious entity, under any state or local law.

B. Any individual or religious entity named in or subject to a civil action, an administrative action or any action by a governmental entity may immediately assert the protections provided in Section 3 of this act, and amendments thereto, or this section, as a defense by moving to dismiss such action. If the motion to dismiss is filed in an action before an administrative tribunal, within fifteen (15) days after filing such motion any party to the action may elect to transfer jurisdiction of the action to a district court with proper venue. Within sixty (60) days after the transfer of jurisdiction, the district court shall decide whether the claimed protection applies. The district court shall not permit any additional discovery or fact-finding prior to making its decision.

C. If a governmental entity, or any person asserts a claim or cause of action, or takes any adverse action against an individual or religious entity in violation of subsection A of this section, the individual or religious entity shall be entitled, upon request, such to recover individual violation.

D. If non-religious entity invokes any of the protections provided in an individual employed by a governmental entity or other non-religious entity invokes any of the protections provided in Section 3 of this act, and amendments thereto, as a basis for declining to provide a lawful service that is otherwise consistent with the entity's duties or policies, the individual's employer, in directing the performance of such service, shall otherwise ensure that the requested service is provided, if it can be done without undue hardship to the employer.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1850.4 of Title 25, unless there is created a duplication in numbering, reads as follows:

A. If any word, phrase, clause or provision of this act, and any amendments thereto, or the application of any such word, phrase, clause or provision to any person or circumstance is held invalid, the remaining provisions shall be given effect without the invalid portion and to this end the provisions of Sections 1 through 4 of this act, and amendments thereto, are severable.

B. Nothing in Sections 1 through 4 of this act, and amendments thereto, shall be construed to allow any individual or entity acting under color of state law to perform any marriage prohibited by state law including, but not limited to, laws relating to plural marriage, incest, consanguinity and marriageable age.

C. Nothing in Sections 1 through 4 of this act, and amendments thereto, shall be construed to authorize any governmental discrimination or penalty against any individual or religious entity based upon its performance, facilitation or support of any celebrations of same-gender unions or relationships.

D. The provisions of Sections 1 through 4 of this act, and amendments thereto, shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by their terms and by the constitution of this state and the United States of America.

SECTION 6. REPEALER 51 O.S. 2011, Sections 251, 252, 253, 254, 255, 256, 257 and 258, are hereby repealed.

SECTION 7. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

STATE OF OKLAHOMA
1st Session of the 55th Legislature (2015)

SENATE BILL 723 By: Brecheen

AS INTRODUCED

An Act relating to the Oklahoma Religious Freedom Act; amending 51 O.S. 2011, Sections 252 and 253, which relate to definitions and burden upon free exercise of religion; modifying definitions; authorizing certain action; authorizing certain relief; and providing an effective date.
BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 51 O.S. 2011, Section 252, is amended to read as follows:

Section 252. In this act:

1. "Demonstrates" means the burdens of going forward with the evidence and of persuasion under the standard of clear and convincing evidence are met;
2. "Exercise of religion" means the practice, observance, and exercise of religion under Article 1, Section 2, of the Constitution of the State of Oklahoma, the Oklahoma Religious Freedom Act, and the First Amendment to the Constitution of the United States. It includes, but is not limited to, the ability to act or refuse to act in a manner substantially motivated by one's sincerely held religious belief, whether or not the exercise is compulsory or central to a larger system of religious belief;
3. "Fraudulent claim" means a claim that is dishonest in fact or that is made principally for a patently improper purpose, such as to harass the opposing party;
4. "Frivolous claim" means a claim which lacks merit under existing law and which cannot be supported by a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law;
5. "Governmental entity" means any branch, department, agency, or instrumentality of state government, or any official or other person acting under color of state law, or any political subdivision of this state;
6. "Prevails" means to obtain prevailing party status as defined by courts construing the federal Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. § 1988; and
7. "Substantially burden" means to ~~inhibit or curtail religiously motivated practice~~ directly or indirectly constrain, inhibit, curtail or deny the exercise of religion by any person or compel any action contrary to a person's exercise of religion and includes, but is not limited to, withholding benefits, assessing criminal, civil or administrative penalties or excluding from governmental programs or access to governmental facilities.

SECTION 2. AMENDATORY 51 O.S. 2011, Section 253, is amended to read as follows:

Section 253. A. Except as provided in subsection B of this section, no governmental entity shall substantially burden a person's free exercise of religion even if the burden results from a rule of general applicability.

B. No governmental entity shall substantially burden a person's free exercise of religion unless it demonstrates that application of the burden to the person is:

1. Essential to further a compelling governmental interest; and
2. The least restrictive means of furthering that compelling governmental interest.

C. A person whose exercise of religion has been substantially burdened or is likely to be substantially burdened in violation of this act may assert such violation or impending violation as a claim or defense in a judicial proceeding, regardless of whether the state or a political subdivision is a party to the proceeding. The person asserting such a claim or defense may

obtain appropriate relief, including relief against the state or its political subdivisions. Appropriate relief includes, but is not limited to, injunctive or declaratory relief, compensatory damages, and attorney fees and costs.

SECTION 3. This act shall become effective November 1, 2015.

STATE OF OKLAHOMA
2nd Session of the 55th Legislature (2016)

SENATE BILL 898

By: Brecheen

AS INTRODUCED

An Act relating to the Oklahoma Religious Freedom Act; amending 51 O.S. 2011, Sections 252 and 253, which relate to definitions and burden upon free exercise of religion; modifying definitions; authorizing certain action; authorizing certain relief; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 51 O.S. 2011, Section 252, is amended to read as follows: Section 252. In this act:

1. "Demonstrates" means the burdens of going forward with the evidence and of persuasion under the standard of clear and convincing evidence are met;
2. "Exercise of religion" means the practice, observance, and exercise of religion under Article 1, Section 2, of the Constitution of the State of Oklahoma, the Oklahoma Religious Freedom Act, and the First Amendment to the Constitution of the United States. It includes, but is not limited to, the ability to act or refuse to act in a manner substantially motivated by one's sincerely held religious belief, whether or not the exercise is compulsory or central to a larger system of religious belief;
3. "Fraudulent claim" means a claim that is dishonest in fact or that is made principally for a patently improper purpose, such as to harass the opposing party;
4. "Frivolous claim" means a claim which lacks merit under existing law and which cannot be supported by a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law;
5. "Governmental entity" means any branch, department, agency, or instrumentality of state government, or any official or other person acting under color of state law, or any political subdivision of this state;
6. "Prevails" means to obtain prevailing party status as defined by courts construing the federal Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. § 1988; and
7. "Substantially burden" means to inhibit or curtail religiously motivated practice directly or indirectly constrain, inhibit, curtail or deny the exercise of religion by any person or compel any action contrary to a person's exercise of religion and includes, but is not limited to, withholding benefits, assessing criminal, civil or administrative penalties or excluding from governmental programs or access to governmental facilities.

SECTION 2. AMENDATORY 51 O.S. 2011, Section 253, is amended to read as follows:

Section 253. A. Except as provided in subsection B of this section, no governmental entity shall substantially burden a person's free exercise of religion even if the burden results from a rule of general applicability.

B. No governmental entity shall substantially burden a person's free exercise of religion unless it demonstrates that application of the burden to the person is:

1. Essential to further a compelling governmental interest; and
2. The least restrictive means of furthering that compelling governmental interest.

C. A person whose exercise of religion has been substantially burdened or is likely to be substantially burdened in violation of this act may assert such violation or impending violation as

a claim or defense in a judicial proceeding, regardless of whether the state or a political subdivision is a party to the proceeding. The person asserting such a claim or defense may obtain appropriate relief, including relief against the state or its political subdivisions. Appropriate relief includes, but is not limited to, injunctive or declaratory relief, compensatory damages, and attorney fees and costs.

SECTION 3. This act shall become effective November 1, 2016.

WEST VIRGINIA HB 4012, HB 2508 and SB 11

INTRODUCED H.B.

2016R1745B

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4012

BY DELEGATES O'NEAL, MR. SPEAKER, (MR. ARMSTEAD, HANSHAW, MOYE, FAST, A. EVANS, AZINGER, WAXMAN, ROMINE, ROWAN AND R. PHILLIPS

[Introduced January 26, 2016; Referred to the Committee on the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5-11C-1, §5-11C-2, §5-11C-3, §5-11C-4 and §5-11C-5, all relating to establishing the West Virginia Religious Freedom Restoration Act to ensure that, in all cases where state action substantially burdens the exercise of religion, strict scrutiny is applied; to provide a claim or defense to a person or persons whose exercise of religion is substantially burdened by state action; including a short title; providing definitions; and addressing applicability construction, remedies and severability.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §5-11C-1, §5-11C-2, §5-11C-3, §5-11C-4 and §5-11C-5, all to read as follows:

ARTICLE 11C. WEST VIRGINIA RELIGIOUS FREEDOM RESTORATION

ACT.

§5-11C-1. Short title.

This article may be known and cited as the "West Virginia Religious Freedom Restoration Act."

§5-11C-2. Purposes.

The purpose of this article is to:

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

(2) To provide a claim or defense to persons whose religious exercise is substantially burdened by state action.

§5-11C-3. Definitions.

As used in this article:

"Substantial burden" means any action that directly or indirectly constrains, inhibits, curtails or denies the exercise of religion by any person or directly or indirectly compels any action contrary to a person's exercise of religion. "Substantial burden" includes, but is not limited to, withholding benefits, assessing criminal, civil or administrative penalties or damages, or exclusion from governmental programs or access to governmental facilities.

"Exercise of religion" means the sincere practice or observance of religion, or any action that is motivated by a sincerely held religious belief, whether or not the exercise is compulsory or central to a larger system of religious belief.

"Person" means any individual, association, partnership, corporation, church, religious institution, estate, trust, foundation or other legal entity.

"State action" means the implementation or application of any law, including, but not limited to, state and local laws, ordinances, rules, regulations and policies, whether statutory or otherwise.

§5-11C-4. Applicability; construction; remedies.

(a) State action may not substantially burden a person's right to exercise of religion, even if the burden results from a rule of general applicability, unless it is demonstrated that applying the burden to that person's exercise of religion in this particular instance:

(1) Is in furtherance of a compelling governmental interest; and

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

(b) A person whose exercise of religion has been burdened, or is likely to be burdened, in violation of this article may assert such violation or impending violation as a claim or defense in any judicial or administrative proceeding. The person asserting such a claim or defense may obtain appropriate relief, including relief against the state or its political subdivisions, including, but not limited to, injunctive relief, declaratory relief, compensatory damages, and costs and attorney fees.

(c) This article applies to all state and local laws, and the implementation of those laws, whether statutory or otherwise, and whether adopted before or after the effective date of this article.

§5-11C-5. Severability.

If a subsection or portion of this article is declared invalid, that declaration does not affect the validity of the remaining portions.

WEST VIRGINIA LEGISLATURE 2016 REGULAR SESSION

Introduced House Bill 2508

2015 Carryover

(BY DELEGATES R. PHILLIPS, J. NELSON, SOBONYA, R. SMITH, ARVON, MILLER,
GEARHEART, ELLINGTON, A. EVANS AND MOFFATT)

[Introduced January 13, 2016; referred to the Committee on the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5-11B-1, §5-11B-2, §5-11B-3, §5-11B-4, §5-11B-5 and §5-11B-6, all relating to creating the West Virginia Freedom of Conscience Protection Act to ensure that, in all cases where state action burdens the exercise of religion, strict scrutiny is applied and to provide a claim or defense to a person or persons whose exercise of religion is burdened by state action; short title; definitions; applicability; construction; remedies; effective date; and severability.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §5-11B-1, §5-11B-2, §5-11B-3, §5-11B-4, §5-11B-5 and §5-11B-6, all to read as follows:

ARTICLE 11B. WEST VIRGINIA FREEDOM OF CONSCIENCE PROTECTION ACT. §5-11B-1. Short title.

This article shall be known and may be cited as the "West Virginia Freedom of Conscience Protection Act."

§5-11B-2. Purposes.

The purpose of this article is to:

- (1) Ensure that in all cases where state action burdens the exercise of religion strict scrutiny is applied; and
- (2) Provide a claim or defense to a person or persons whose exercise of religion is burdened by state action.

§5-11B-3. Definitions.

As used in the Freedom of Conscience Protection Act:

- (1) "Burden" means any action that directly or indirectly constrains, inhibits, curtails or denies the exercise of religion by any person or compels any action contrary to a person's exercise of religion, and includes, but is not limited to, withholding benefits, assessing criminal, civil or administrative penalties or exclusion from governmental programs or access to governmental facilities.
- (2) "Compelling governmental interest" means a governmental interest of the highest magnitude that cannot otherwise be achieved without burdening the exercise of religion.
- (3) "Exercise of religion" means the practice or observance of religion. It includes, but is not limited to, the ability to act or refuse to act in a manner substantially motivated by one's sincerely held religious beliefs, whether or not the exercise is compulsory or central to a larger system of religious belief.

(4) "Person" means any individual, association, partnership, corporation, church, religious institution, estate, trust, foundation or other legal entity.

(5) "State action" means the implementation or application of any law, including, but not limited to, state and local laws, ordinances, rules, regulations and policies, whether statutory or otherwise, or other action by the state or any political subdivision thereof and any local government, municipality, instrumentality or public official authorized by law in the state. §5-11B-4. Applicability; construction; remedies.

(a) State action may not burden a person's right to exercise of religion, even if the burden results from a rule of general applicability, unless it is demonstrated that applying the burden to that person's exercise of religion in this particular instance:

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

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

(b) A person whose exercise of religion has been burdened, or is likely to be burdened, in violation of this article may assert such violation or impending violation as a claim or defense in a judicial proceeding, regardless of whether the state or one of its political subdivisions is a party to the proceeding. The person asserting such a claim or defense may obtain appropriate relief, including relief against the state or its political subdivisions. Appropriate relief includes, but is not limited to, injunctive relief, declaratory relief, compensatory damages, and costs and attorney fees.

(c) Any law adopted after July 1, 2015, is subject to this article unless the law explicitly excludes such application by reference to this article.

§5-11B-5. Effective date.

This article becomes operative upon its enactment.

§5-11B-6. Severability.

If any subsection or portion of this article is declared invalid, that declaration shall not affect the validity of the remaining portions.

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced Senate Bill 11

BY SENATORS KARNES, GAUNCH, LEONHARDT, TRUMP, TAKUBO, BOSO AND
BLAIR

[Introduced January 13, 2016; Referred to the Committee on the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5-11C-1, §5-11C-2, §5-11C-3, §5-11C-4 and §5-11C-5, all relating to establishing the West Virginia Freedom of Conscience Protection Act; ensuring that, in all cases where state action burdens the exercise of religion, strict scrutiny is applied; to provide a claim or defense to a person or persons whose exercise of religion is burdened by state action; including a short title; providing definitions; and addressing applicability construction, remedies and severability.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §5-11C-1, §5-11C-2, §5-11C-3, §5-11C-4 and §5-11C-5, all to read as follows:

ARTICLE 11C. WEST VIRGINIA FREEDOM OF CONSCIENCE PROTECTION ACT. §5-11C-1. Short title.

This article may be known and cited as the "West Virginia Freedom of Conscience Protection Act."

§5-11C-2. Purposes.

The purpose of this article is to:

- (1) Ensure that in all cases where state action burdens the exercise of religion strict scrutiny is applied; and
- (2) Provide a claim or defense to a person or persons whose exercise of religion is burdened by state action.

§5-11C-3. Definitions.

As used in this article:

"Burden" means any action by the state or any political subdivision of the state, or any local government, municipality, instrumentality or public official authorized by law in the state that directly or indirectly constrains, inhibits, curtails or denies the exercise of religion by any person or compels any action contrary to a person's exercise of religion. "Burden" includes, but is not limited to, any action by the state or one of its political subdivisions with respect to withholding benefits, assessing criminal, civil or administrative penalties or damages, or enforcing a statute, regulation or ordinance, or exclusion from governmental programs or access to governmental facilities.

"Compelling governmental interest" means a governmental interest of the highest magnitude that cannot otherwise be achieved without burdening the exercise of religion.

"Exercise of religion" means the sincere practice or observance of religion or religious conscience. It includes, but is not limited to, the ability to act or refuse to act in a manner substantially motivated by one's sincerely held religious beliefs or religious conscience, whether or not the exercise is compulsory or central to a larger system of religious belief.

"Person" means any individual, association, partnership, corporation, church, religious institution, estate, trust, foundation or other legal entity.

"State action" means the implementation or application of any law, including, but not limited to, state and local laws, ordinances, rules, regulations and policies, whether statutory or otherwise.

§5-11C-4. Applicability; construction; remedies.

(a) State action may not burden a person's right to exercise of religion, even if the burden results from a rule of general applicability, unless it is demonstrated that applying the burden to that person's exercise of religion in this particular instance:

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

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

(b) This article shall be construed in favor of a broad protection of religious exercise to the maximum extent permitted by the term of this article and the state and federal Constitutions.

(c) A person whose exercise of religion has been burdened, or is likely to be burdened, in violation of this article may assert such violation or impending violation as a claim or defense in any judicial or administrative proceeding. The person asserting such a claim or defense may obtain appropriate relief, including relief against the state or its political subdivisions, including, but not limited to, injunctive relief, declaratory relief, compensatory damages, and costs and attorney fees.

(d) All laws and state action in existence at the time of the enactment of this article are subject to this article. Any law or state action adopted after the time of enactment of this article is also subject to this article, unless the Legislature explicitly excludes the application of this article to a law by reference to this article.

§5-11C-5. Severability.

If a subsection or portion of this article is declared invalid, that declaration does not affect the validity of the remaining portions.