

HB99 INTRODUCED



1 HB99
2 1DRG3ZZ-1
3 By Representative Paschal
4 RFD: Judiciary
5 First Read: 06-Feb-24
6 PFD: 05-Feb-24



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SYNOPSIS:

Existing law recognizes that a church, synagogue, or other religious institution may function during a state of emergency proclaimed under the Alabama Emergency Management Act of 1955 if the religious institution complies with any safety precautions issued by state or local government to prevent a threat such as a pandemic.

This bill would provide that a religious institution may not be burdened with public safety precautions that are more restrictive than those that apply to a non-religious organization that provides essential services to the public, and that any precautions that substantially interfere with a religious institution's activities must be the least restrictive means to further a compelling governmental interest.

This bill would further prohibit the state and any local government from discriminating against a religious institution for operating during a state of emergency, and would provide that a religious institution may petition a civil court to prevent or halt the discriminatory action or to award money damages for a violation.



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A BILL

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TO BE ENTITLED

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AN ACT

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34 Relating to religious freedom; to amend Sections
35 31-9-2, 31-9-3, and 31-9-25, Code of Alabama 1975; to add
36 Section 31-9-26 to the Code of Alabama 1975; to further
37 provide for the rights of religious organizations during a
38 state of emergency proclaimed pursuant to the Emergency
39 Management Act of 1955; to provide legislative findings
40 regarding the free exercise of religion during a public health
41 emergency; to specify that health and safety directives
42 applied to religious institutions shall be no different than
43 those applied to secular organizations that provide essential
44 services; to recognize that health and safety measures that
45 impose a substantial burden on religious institutions must be
46 the least restrictive to advance a compelling governmental
47 interest; to prohibit discrimination by the state and local
48 governments against religious institutions; and to recognize a
49 civil action by religious institutions against the state or
50 local governments.

51 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

52 Section 1. Sections 31-9-2 and 31-9-3, Code of Alabama
53 1975, are amended to read as follows:

54 "§31-9-2

55 (a) Because of the existing and increasing possibility
56 of the occurrence of disasters or emergencies of unprecedented



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57 size and destructiveness resulting from enemy attack,
58 sabotage, or other hostile action, or from fire, flood,
59 earthquake, or other natural causes, and in order to
60 ~~insure~~ensure that preparations of this state will be adequate
61 to deal with such disasters or emergencies, and generally to
62 provide for the common defense and to protect the public
63 peace, health, and safety, and to preserve the lives and
64 property of the people of the state, it is hereby found and
65 declared to be necessary:

66 (1) To create a State Emergency Management Agency, and
67 to authorize the creation of local organizations for emergency
68 management in the political subdivisions of the state.

69 (2) To confer upon the Governor and upon the governing
70 bodies of the political subdivisions of the state the
71 emergency powers provided in this article.

72 (3) To provide for the rendering of mutual aid among
73 the political subdivisions of the state, and with other
74 states, and with the federal government with respect to the
75 carrying out of emergency management functions.

76 (4) To authorize the establishment of such
77 organizations and the taking of such steps as are necessary
78 and appropriate to carry out the provisions of this article.

79 (b) It is further declared to be the purpose of this
80 article and the policy of the state that all emergency
81 management functions of this state be coordinated to the
82 maximum extent with the comparable functions of the federal
83 government including its various departments and agencies, of
84 other states and localities and of private agencies of every



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85 type, to the end that the most effective preparation and use
86 may be made of the nation's manpower, resources and facilities
87 for dealing with such disaster or emergency.

88 (c) It is further declared to be the purpose of this
89 article and policy of the State of Alabama to assist and
90 encourage emergency management and emergency preparedness
91 activities on the part of the political subdivisions of the
92 state by authorizing the State of Alabama to make grants, as
93 funds are appropriated for such specific purpose, to any
94 political subdivision of the state in amounts not to exceed
95 the amounts expended, or to be expended, for personnel and
96 administrative costs by such political subdivisions for
97 emergency management and emergency preparedness.

98 (d) It is further declared to be the policy of the
99 state that emergency management should place the least
100 restrictive burden possible on religious worship and
101 activities during a state of emergency. This policy is based
102 on the following legislative findings:

103 (1) That the free exercise of religion is an
104 inalienable right guaranteed by Amendment I of the United
105 States Constitution and Sections 3.01 and 3.02 of the
106 Constitution of Alabama of 2022.

107 (2) That during the COVID-19 pandemic, some states and
108 localities imposed overbroad restrictions on religious worship
109 and activities which undermined social well-being and deprived
110 many isolated and vulnerable individuals of needed pastoral
111 care and assistance.

112 (3) That the freedom to gather for worship, to provide



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113 fellowship, and to benevolently serve others out of religious
114 motivations confer essential services on our society that
115 cannot be quantified, such that the free exercise of religion
116 during a state of emergency is necessary to the public health
117 and welfare."

118 "§31-9-3

119 As used in this article, these terms shall have the
120 following meanings:

121 (1) EMERGENCY MANAGEMENT. The preparation for and the
122 carrying out of all emergency functions, other than functions
123 for which military forces or other federal agencies are
124 primarily responsible, to prevent, minimize, and repair injury
125 and damage resulting from disasters caused by enemy attack,
126 sabotage, or other hostile action, or by fire, flood,
127 earthquake, or other natural cause. These functions include,
128 without limitation, public safety services including,
129 fire-fighting services; police services; medical and health
130 services; rescue, engineering, and air raid warning services;
131 communications; radiological, chemical, and other special
132 weapons of defense; evacuation of persons from stricken areas;
133 emergency welfare services (civilian war aid); emergency
134 transportation; plant protection; temporary restoration of
135 public utility services; and other functions related to
136 civilian protection, together with all other activities
137 necessary or incidental to the preparation for and carrying
138 out of the foregoing functions.

139 (2) LOCAL ORGANIZATION. The organization of local
140 emergency management forces designed principally for operation



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141 within their own community but capable of moving to other
142 areas.

143 (3) POLITICAL SUBDIVISION. Any county or municipality
144 created pursuant to law.

145 (4) RELIGIOUS INSTITUTION. A house of worship,
146 including a church, synagogue, shrine, mosque, or temple, and
147 any ministry, mission, or monastic community, or a nonprofit
148 organization with a religious identity that has the primary
149 function of providing spiritual or material assistance to the
150 public.

151 ~~(4)~~ (5) STATE OF EMERGENCY. When the Governor duly
152 proclaims the existence of conditions of disaster or of
153 extreme peril to the safety of persons and property within the
154 state caused by fire, flood, storm, epidemic, technological
155 failure or accident, riot, drought, sudden and severe energy
156 shortage, plant or animal infestation or disease, earthquake,
157 explosion, terrorism, or man-made disaster, or other
158 conditions, other than conditions resulting from a labor
159 controversy or conditions causing a state of war emergency,
160 which, by reason of their magnitude, are or are likely to be
161 beyond the control of the services, personnel, equipment, and
162 facilities of any single county, city and county, or city, and
163 require the combined forces of a mutual aid region or regions
164 to combat, or energy shortage requires extraordinary measures
165 beyond the authority vested in the Alabama Public Service
166 Commission.

167 (6) STATE PUBLIC HEALTH EMERGENCY. An occurrence or
168 imminent threat of an illness or health condition that does



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169 all of the following:

170 a. Is believed to be caused by any of the following:

171 1. Bioterrorism.

172 2. The appearance of a novel or previously controlled
173 or eradicated infectious agent or biological toxin.

174 3. A natural disaster.

175 4. A chemical attack or accidental release.

176 5. A nuclear or radiological attack or accident.

177 b. Poses a high probability of any of the following

178 harms:

179 1. A large number of deaths in the affected population.

180 2. A large number of serious or long-term disabilities
181 in the affected population.

182 3. Widespread exposure to an infectious or toxic agent
183 that poses a significant risk of substantial future harm to a
184 large number of people in the affected population.

185 ~~(6)~~ (7) STATE TECHNOLOGICAL EMERGENCY. An emergency
186 caused by a technological failure or accident, including, but
187 not limited to, an explosion, transportation accident,
188 radiological accident, or chemical or other hazardous material
189 incident."

190 Section 2. Section 31-9-25, Code of Alabama 1975, is
191 amended to read as follows:

192 "§31-9-25

193 (a) During the existence of a state of emergency
194 declared pursuant to Section 31-9-8, a business entity or a
195 ~~church, mosque, synagogue, or other bona fide~~ religious
196 institution may continue or resume its business or religious



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197 operations if the business entity or religious institution
198 complies with all of the ~~safety precautions~~health and safety
199 directives issued by the Governor, a state department or
200 agency, or a county or municipal governing body or agency
201 thereof under the authority of the Alabama Emergency
202 Management Act of 1955, Article 1 of this chapter, to prevent
203 a threat to the public caused by a pandemic, epidemic, or
204 bioterrorism event, or the appearance of a novel or previously
205 controlled or eradicated infectious agent or biological toxin.

206 (b) With respect to a religious institution, the safety
207 precautions shall conform to the following standards:

208 (1) During a state of emergency, the Governor, a state
209 department or agency, or a county or municipal governing body
210 or agency thereof shall not prohibit or restrict a religious
211 institution from holding worship services or conducting
212 activities to any greater extent than the operations of other
213 organizations or businesses that provide essential services
214 necessary to the public health and welfare.

215 (2) The Governor, a state department or agency, or a
216 county or municipal governing body or agency thereof may
217 require a religious institution to comply with neutral health
218 and safety directives imposed under a state of emergency that
219 are applicable to all organizations or businesses that provide
220 essential services. However, no health or safety directive may
221 impose a substantial burden on the activities of a religious
222 institution unless the burden is essential to further a
223 compelling governmental interest and the directive is the
224 least restrictive means of furthering the compelling



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225 governmental interest.

226 ~~(b)~~ (c) Notwithstanding the existence of a state of
227 emergency declared pursuant to Section 31-9-8, the Alabama
228 State House may not be closed to the public while the
229 Legislature is in session.

230 ~~(e)~~ (d) If a provision of this section is inconsistent
231 with any proclamation, order, rule, or other directive adopted
232 under this article, this section shall prevail."

233 Section 3. Section 31-9-26 is added to the Code of
234 Alabama 1975, to read as follows:

235 §31-9-26

236 (a) The Governor, a state department or agency, or a
237 county or municipal governing body or agency of the same may
238 not under the color of law discriminate or retaliate against
239 any religious institution during a state of emergency or as
240 the result of a state of emergency that has expired.

241 Discrimination or retaliation includes, but is not limited to,
242 the following examples:

243 (1) Imposing health and safety directives on a
244 religious institution that are more restrictive than
245 directives imposed on a business entity or a secular
246 organization, event, or activity.

247 (2) Pursuing the denial or revocation of a religious
248 institution's tax exempt status.

249 (3) Disallowing the tax deductibility of donations or
250 gifts made to a religious institution.

251 (4) Imposing a criminal or a civil fine on a religious
252 institution, or on its clergy, staff, members, or attendees,



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253 or on the beneficiaries of the religious institution's
254 mission.

255 (5) Enjoining, interfering with, or restricting the
256 worship services, distinctive practices or disciplines, or
257 activities of a religious institution.

258 (6) Denying or revoking any license, certificate, or
259 accreditation of any operation of a religious institution.

260 (7) Withholding, denying, or revoking any benefit to
261 which the religious institution has a right under law or
262 contract.

263 (b) Any discriminatory or retaliatory action in
264 violation of this section may be asserted by a religious
265 institution as grounds for the following:

266 (1) A defense or counterclaim in any judicial or
267 administrative proceeding brought by the Governor, a state
268 department or agency, or a county or municipal governing body
269 or agency of the same, or a private person against the
270 religious institution.

271 (2) A claim against the Governor or a state department
272 or agency in a civil action brought by the religious
273 institution in the Circuit Court of Montgomery County or as
274 the grounds for a claim against a county or municipal
275 governing body or agency of the same in the circuit court of
276 the county in which the political subdivision is located.

277 (c) Remedies available to a religious institution under
278 this section include all of the following:

279 (1) Declaratory relief.

280 (2) Injunctive relief.



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281 (3) Compensatory damages, subject to a defense of
282 immunity from liability asserted on any constitutional,
283 statutory, or judicial grounds.

284 (4) Reasonable attorney fees and costs.

285 (d) Any civil action brought under this section by a
286 religious institution shall be brought no later than two years
287 after the date the religious institution knew or should have
288 known of the discriminatory or retaliatory action.

289 Section 4. This act shall become effective on October
290 1, 2024.