

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**

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

6 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

7 **SECTION 1.**

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

10 **SECTION 2.**

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

13 **"CHAPTER 15A**

14 **50-15A-1.**

15 **(a) The General Assembly finds and determines that:**

16 **(1) The framers of the United States Constitution and the people of this state, recognizing**  
17 **free exercise of religion as an inalienable right, secured its protection in the First**  
18 **Amendment to the United States Constitution and in Paragraphs III and IV of Section I,**  
19 **Article I of the Constitution of this state, respectively;**

20 **(2) Laws neutral toward religion may burden religious exercise as surely as laws**  
21 **intended to interfere with religious exercise;**

22 **(3) Governments should not substantially burden religious exercise without compelling**  
23 **justification;**

24 (4) In *Employment Division v. Smith*, 494 U.S. 872 (1990) the Supreme Court virtually  
 25 eliminated the requirement that the government justify burden on religious exercise  
 26 imposed by laws neutral toward religion;

27 (5) The compelling interest test as set forth in prior federal court rulings is a workable  
 28 test for striking sensible balances between religious liberty and competing prior  
 29 governmental interests;

30 (6) In *City of Boerne v. Flores*, 521 U.S. 507 (1997) the Supreme Court held that the  
 31 compelling interest test provided for in the federal Religious Freedom Restoration Act  
 32 must be adopted by a state through legislative act or court decision in order to apply to  
 33 state or local government action; and

34 (7) Courts have consistently held that government has a fundamental, overriding interest  
 35 in eradicating discrimination.

36 (b) The purpose of this chapter is to:

37 (1) Restore the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398  
 38 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972) and to guarantee its application in  
 39 all cases where free exercise of religion is substantially burdened; and

40 (2) Provide a claim or defense to persons whose religious exercise is substantially  
 41 burdened by government.

42 50-15A-2.

43 (a) Government shall not substantially burden a person's exercise of religion even if the  
 44 burden results from a rule of general applicability, except as provided in subsection (b) of  
 45 this Code section.

46 (b) Government may substantially burden a person's exercise of religion only if it  
 47 demonstrates that application of the burden to the person is:

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

49 (2) The least restrictive means of achieving that compelling governmental interest.

50 (c) A person whose religious exercise has been burdened in violation of this chapter may  
 51 assert that violation as a claim or defense in a judicial proceeding and obtain appropriate  
 52 relief against government.

53 50-15A-3.

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

57 50-15A-4.

58 Nothing in this chapter shall be construed to:

59 (1) Apply to penological rules, regulations, conditions, or policies established by a penal  
 60 institution that are reasonably related to the safety and security of incarcerated persons,  
 61 staff, visitors, supervised violators, or the public, or to the maintenance of good order and  
 62 discipline in any penal institution or parole or probation program; or

63 (2) Create any rights by an employee against an employer if such employer is not  
 64 government.

65 50-15A-5.

66 As used in this chapter, the term:

67 (1) 'Delinquent act' shall have the same meaning as provided for in Code Section  
 68 15-11-2.

69 (2) 'Demonstrates' means meets the burdens of going forward with the evidence and of  
 70 persuasion.

71 (3) 'Exercise of religion' means any exercise of religion, whether or not compelled by,  
 72 or central to, a system of religious belief, including but not limited to the practice or  
 73 observance of religion under Paragraphs III and IV of Section I, Article I of the  
 74 Constitution of this state or the Free Exercise Clause of the First Amendment to the  
 75 Constitution of the United States, or the use, building, or conversion of real property for  
 76 the purpose of religious exercise.

77 (4) 'Government' means the state or any local subdivision of the state or public  
 78 instrumentality or public corporate body created by or under authority of state law,  
 79 including but not limited to the executive, legislative, and judicial branches and every  
 80 department, agency, board, bureau, office, commission, authority, or similar body  
 81 thereof; municipalities; counties; school districts; special taxing districts; conservation  
 82 districts; authorities; any other state or local public instrumentality or corporation; or  
 83 other person acting under color of law.

84 (5) 'Penal institution' means any jail, correctional institution, or similar facility for the  
 85 detention of violators of state laws or local ordinances and any entity supervising such  
 86 violators placed on parole, probation, or other conditional release and any facility for the  
 87 restrictive custody of children and any entity supervising children who are not in  
 88 restrictive custody but who are accused of or adjudicated for a delinquent act.

89 (6) 'Restrictive custody' shall have the same meaning as provided for in Code Section  
 90 15-11-2."

91 **SECTION 3.**

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

94 **SECTION 4.**

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