

Senate Bill 221

By: Senators Harbin of the 16th, Heath of the 31st, Ligon, Jr. of the 3rd, Thompson of the 14th, Kirk of the 13th and others

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 protection of religious freedom; to provide for the granting of relief;
3 to provide for applicability; to provide for definitions; to provide for waiver of sovereign
4 immunity under certain circumstances; to provide for construction; to provide a short title;
5 to repeal conflicting laws; and for other 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 Religious Freedom Restoration Act."

9 **SECTION 2.**

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

12 "CHAPTER 15A

13 50-15A-1.

14 (a) The General Assembly finds and determines that:

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

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

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

23 (4) The compelling interest test as set forth in court rulings is a workable test for striking
 24 sensible balances between religious liberty and competing prior governmental interests;

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

29 (6) Courts have consistently held that government has a fundamental, overriding interest
 30 in eradicating discrimination.

31 (b) The purpose of this chapter is:

32 (1) To provide for the compelling interest test in striking sensible balances between
 33 religious liberty and competing prior governmental interests and to guarantee its
 34 application in all cases where free exercise of religion is substantially burdened; and

35 (2) To provide a claim or defense for persons whose religious exercise is substantially
 36 burdened by government.

37 50-15A-2.

38 As used in this chapter, the term:

39 (1) 'Demonstrates' means meets the burdens of going forward with the evidence and of
 40 persuasion.

41 (2) 'Exercise of religion' means the exercise of those rights protected by Article I, Section
 42 I, Paragraphs III and IV of the Constitution of this state.

43 (3) 'Government' means a branch of government, department, agency, instrumentality,
 44 or official of the State of Georgia or of any political subdivision or local government
 45 authority.

46 50-15A-3.

47 (a) Government shall not substantially burden a person's exercise of religion even if the
 48 burden results from a law, rule, regulation, ordinance, or resolution of general applicability,
 49 except as provided in subsection (b) of this Code section.

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

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

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

54 (c) A person whose religious exercise has been burdened in violation of this Code section
 55 may assert that violation as a claim or defense in a judicial proceeding and obtain
 56 appropriate relief against a government. Standing to assert a claim or defense under this

57 Code section shall be governed by the general rules of standing under the Constitution and
 58 laws of this state.

59 (d) The prevailing party, other than the state, may be entitled, in the discretion of the court,
 60 to costs and reasonable attorney fees from the nonprevailing party; provided, however, that
 61 in any action brought against a judicial officer for an act or omission taken in such officer's
 62 judicial capacity, such officer shall not be liable for any costs or attorney fees unless the
 63 court hearing the claim or defense for relief under this chapter finds such act or omission
 64 to be in excess of his or her jurisdiction.

65 50-15A-4.

66 Nothing in this chapter shall be construed to limit Article I, Section I, Paragraph IV of the
 67 Constitution of this state.

68 50-15A-5.

69 (a) This chapter shall apply to all laws, rules, regulations, ordinances, or resolutions of
 70 government, and the implementation of the same, whether enacted or adopted before or
 71 after July 1, 2019.

72 (b) Any general law enacted after July 1, 2019, shall be subject to this chapter unless such
 73 general law explicitly excludes such application by reference to this chapter.

74 (c) Nothing in this chapter shall be construed to authorize any government to burden any
 75 religious belief."

76 **SECTION 3.**

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

79 "50-21-38.

80 The defense of sovereign immunity is waived as to any claim, counterclaim, cross-claim,
 81 or third-party claim brought in the courts of this state by an aggrieved person seeking a
 82 declaratory judgment, injunctive relief, or reasonable attorney fees against the state or any
 83 political subdivision thereof under Chapter 15A of this title; provided, however, that
 84 sovereign immunity is not waived as to any claim for monetary damages or expenses of
 85 litigation that are included in or related to such claim, counterclaim, cross-claim, or
 86 third-party claim. This Code section shall not be construed to alter or amend any other
 87 waiver of sovereign immunity provided by law."

88 **SECTION 4.**

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