

State of South Dakota

NINETIETH SESSION
LEGISLATIVE ASSEMBLY, 2015

578W0654

HOUSE BILL NO. 1220

Introduced by: Representatives Craig, Beal, Bolin, Brunner, Campbell, Deutsch, DiSanto, Greenfield (Lana), Haggar (Don), Harrison, Heinemann (Leslie), Hunt, Kaiser, Marty, Novstrup (Al), Partridge, Ring, Schaefer, Solum, Verchio, Wiik, Willadsen, Wollmann, and Zikmund and Senators Greenfield (Brock), Bradford, Haggar (Jenna), Haverly, Jensen (Phil), Novstrup (David), Olson, Otten (Ernie), Rampelberg, and Rave

1 FOR AN ACT ENTITLED, An Act to provide for the free exercise of religion and to declare
2 an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

- 5 (1) "Burden," any action that directly or indirectly constrains, inhibits, curtails, or denies
6 the exercise of religion by any person or compels any action contrary to a person's
7 exercise of religion, and includes withholding benefits; assessing criminal, civil, or
8 administrative penalties; excluding from governmental programs; or denying access
9 to governmental facilities;
- 10 (2) "Compelling governmental interest," a governmental interest of the highest
11 magnitude that cannot otherwise be achieved without burdening the exercise of
12 religion and may include protecting health and safety;
- 13 (3) "Exercise of religion," the practice or observance of religion, including the ability to



1 act or refuse to act in a manner substantially motivated by a person's sincerely held
2 religious beliefs, whether the exercise is compulsory or central to a larger system of
3 religions belief;

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

6 (5) "State action," the implementation or application of any law, including state and local
7 laws, ordinances, rules, regulations, and policies, or other action by the State of South
8 Dakota or any political subdivisions thereof, and any local government, municipality,
9 instrumentality, or public official authorized by law in the state.

10 Section 2. No state action may burden a person's right to exercise of religion, even if the
11 burden results from a rule of general applicability, unless it is demonstrated that applying the
12 burden to that person's exercise of religion in a particular instance:

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

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

15 Section 3. A person whose exercise of religion has been burdened, or is likely to be
16 burdened, in violation of this Act may assert the violation or impending violation as a claim or
17 defense in a judicial proceeding, regardless of whether the State of South Dakota or one of its
18 political subdivisions is a party to the proceeding. The person asserting the claim or defense may
19 obtain appropriate relief, including relief against the state or its political subdivisions.
20 Appropriate relief includes injunctive relief, declaratory relief, compensatory damages, and costs
21 and attorneys fees.

22 Section 4. Nothing in this Act may be construed to:

23 (1) Allow any person to cause physical injury to another person, including a minor child;

24 (2) Give rise to a defense in any action involving criminal sexual conduct against another

1 person, including a minor child; or

2 (3) Give rise to a defense in any action involving criminal prosecution for bigamy, unless
3 bigamy is authorized by the Legislature.

4 Section 5. Whereas, this Act is necessary for the immediate preservation of the public peace,
5 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and
6 effect from and after its passage and approval.