

The Senate Committee on Judiciary offers the following substitute to SB 129:

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.

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.