

Senate Bill 284

By: Senators Kirk of the 13th, Ligon, Jr. of the 3rd, Stone of the 23rd, Mullis of the 53rd, Hill of the 32nd 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 prohibit discriminatory action against a person who believes, speaks, or acts in
3 accordance with a sincerely held religious belief or moral conviction that marriage is or
4 should be recognized as the union of one man and one woman or that sexual relations are
5 properly reserved to such marriage; to provide for definitions; to provide for the granting of
6 relief; to provide for construction and application; to provide for waiver of sovereign
7 immunity under certain circumstances; to provide for a short title; to provide for an effective
8 date; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 SECTION 1.

11 This Act shall be known and may be cited as the "First Amendment Defense Act of Georgia."

12 SECTION 2.

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

15 "CHAPTER 15A

16 50-15A-1.

17 As used in this chapter, the term:

18 (1) 'Discriminatory action' means any action to:

19 (A) Alter in any way state tax treatment of an exemption from taxation under state law;

20 (B) Cause any tax, penalty, or payment to be assessed against a person or deny, delay,
21 or revoke an exemption from taxation under state law;

22 (C) Disallow a deduction for state tax purposes of any charitable contribution made to
23 or by a person;

24 (D) Deny, withhold, reduce, exclude, terminate, reprimand, censure, or otherwise make
 25 unavailable any government grant, contract, subcontract, cooperative agreement, loan,
 26 guarantee, license, certification, scholarship, accreditation, employment, or other
 27 similar position or status from or to a person;

28 (E) Deny, withhold, reduce, exclude, terminate, or otherwise make unavailable any
 29 public benefit from or to a person, including for purposes of this chapter admission to,
 30 equal treatment in, or eligibility for a degree from any educational program at any
 31 educational facility administered by a government; or

32 (F) Deny, withhold, reduce, exclude, terminate, condition, or otherwise make
 33 unavailable access to any speech forum (whether a traditional, limited, or nonpublic
 34 forum) administered by a government, including access to education facilities available
 35 for use by student or community organizations.

36 (2) 'Government' means the state or any local subdivision of the state or public
 37 instrumentality or public corporate body created by or under authority of state law,
 38 including but not limited to the executive, legislative, and judicial branches and every
 39 department, agency, board, bureau, office, commission, authority, or similar body
 40 thereof; municipalities; counties; school districts; special taxing districts; conservation
 41 districts; authorities; and any other state or local public instrumentality or corporation.

42 (3) 'Person' means any individual, corporation, partnership, proprietorship, firm,
 43 enterprise, association, public or private organization of any character, or other legal
 44 entity.

45 (4) 'Public benefit' shall have the same meaning as set forth in Code Section 50-36-1.

46 50-15A-2.

47 (a) Government shall not take any discriminatory action against a person wholly or
 48 partially on the basis that such person believes, speaks, or acts in accordance with a
 49 sincerely held religious belief or moral conviction that marriage is or should be recognized
 50 as the union of one man and one woman or that sexual relations are properly reserved to
 51 such a marriage.

52 (b) A person may assert a violation of this chapter as a claim or defense in a judicial,
 53 agency, or other proceeding and obtain special damages, a declaratory judgment, or
 54 injunctive or other appropriate relief against a government.

55 (c) Notwithstanding any other provision of law, an action under this chapter may be
 56 commenced, and relief may be granted, in a court of competent jurisdiction without regard
 57 to whether the person commencing the action has sought or exhausted available
 58 administrative remedies.

59 (d) The Attorney General may bring an action for a declaratory judgment or injunctive
60 relief for any violation of this chapter.

61 (e) When an aggrieved person prevails in an action pursuant to this Code section, the court
62 may award reasonable attorney's fees and expenses of litigation.

63 (f) No person having a claim for damages against a government under this chapter shall
64 bring any action against such government upon such claim without first giving notice of
65 the claim to such government, in writing, by certified mail or statutory overnight delivery,
66 at least 30 days prior to filing such action, setting forth the particular discriminatory action
67 alleged to have been taken by the government against such person.

68 (g) In any claim for damages brought under the provisions of this chapter, no person shall
69 recover a sum exceeding the maximum amount allowable under paragraph (1) of
70 subsection (b) of Code Section 50-21-29 for a loss arising from a single occurrence. The
71 existence of this cap on liability shall not be disclosed or suggested to the jury during the
72 trial of any action brought under this chapter.

73 50-15A-3.

74 For purposes of this chapter, government shall consider accredited, licensed, or certified
75 any person who would have been accredited, licensed, or certified by a nongovernmental
76 agency but for a determination by the agency against such person wholly or partially on the
77 basis that the person believes, speaks, or acts in accordance with a sincerely held religious
78 belief or moral conviction that marriage is or should be recognized as the union of one man
79 and one woman or that sexual relations are properly reserved to such a marriage.

80 50-15A-4.

81 (a) This chapter shall be construed in favor of a broad protection of free exercise of
82 religious beliefs and moral convictions to the maximum extent permitted by the terms of
83 this chapter, the United States Constitution, and the Constitution of this state.

84 (b) Nothing in this chapter shall be construed to narrow the meaning or application of any
85 other law of this state protecting free exercise of religious beliefs or moral convictions.

86 (c) Any other provisions of this chapter notwithstanding, nothing in this chapter shall be
87 applied to afford any protection or relief to a public officer or employee who fails or
88 refuses to perform his or her official duties."

89 **SECTION 3.**

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

92 "50-21-38.

93 The defense of sovereign immunity is waived as to any claim, counterclaim, cross-claim,
94 or third-party claim brought in the courts of this state by an aggrieved person seeking
95 special damages, a declaratory judgment, injunctive relief, or reasonable attorney's fees and
96 expenses of litigation against the state or any political subdivision thereof as provided for
97 in Chapter 15A of this title. In any such case, the applicable provisions of Chapter 15A of
98 this title shall control to the extent of any conflict with the provisions of this article."

99 **SECTION 4.**

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

102 **SECTION 5.**

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