

ADOPTED

Representative Tanner of the 9th offers the following amendment:

1 *Amend the Senate substitute to HB 757 by deleting all matter from line 1 through the end and*
2 *replacing it with the following:*

3 To protect religious freedoms; to provide for defenses and relief related thereto; to amend
4 Chapter 3 of Title 19 of the Official Code of Georgia Annotated, relating to marriage
5 generally, so as to provide that religious officials shall not be required to perform marriage
6 ceremonies, perform rites, or administer sacraments in violation of their legal right to free
7 exercise of religion; to provide that no individual shall be required to attend the
8 solemnization of a marriage, performance of rites, or administration of sacraments in
9 violation of their legal right to free exercise of religion; to amend Chapter 1 of Title 10 of the
10 Official Code of Georgia Annotated, relating to selling and other trade practices, so as to
11 change certain provisions relating to days of rest for employees of business and industry; to
12 protect property owners which are faith based organizations against infringement of religious
13 freedom; to protect certain providers of services against infringement of religious freedom;
14 to amend Chapter 1 of Title 34 of the Official Code of Georgia Annotated, relating to labor
15 and industrial relations generally, so as to provide that faith based organizations shall not be
16 required to hire or retain certain persons as employees; to amend Title 50 of the Official
17 Code of Georgia Annotated, relating to state government, so as to provide for the
18 preservation of religious freedom; to provide for the granting of relief; to provide for waiver
19 of sovereign immunity under certain circumstances; to provide for definitions; to provide for
20 ante litem notices; to provide a short title; to provide for related matters; to provide for an
21 effective date; to repeal conflicting laws; and for other purposes.

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

23 **SECTION 1.**

24 This Act shall be known and may be cited as the "Free Exercise Protection Act."

25 **SECTION 2.**

26 Chapter 3 of Title 19 of the Official Code of Georgia Annotated, relating to marriage
27 generally, is amended by adding a new Code section to read as follows:

28 "19-3-11.

29 (a) As used in this Code section, the term 'government' means the state or any political
30 subdivision of the state or public instrumentality or public corporate body created by or
31 under authority of state law.

32 (b) All individuals who are ministers of the gospel or clerics or religious practitioners
33 ordained or authorized to solemnize marriages, perform rites, or administer sacraments
34 according to the usages of the denomination shall be free to solemnize any marriage,
35 perform any rite, or administer any sacrament or to decline to do the same, in their
36 discretion, in the exercise of their rights to free exercise of religion under the Constitution
37 of this state or of the United States.

38 (c)(1) A refusal by an ordained or authorized individual pursuant to subsection (b) of this
39 Code section shall not give rise to a civil claim or cause of action against such individual
40 or result in any state action to penalize, withhold benefits from, or discriminate against
41 such individual based on such refusal.

42 (2) A refusal by an ordained or authorized individual pursuant to subsection (b) of this
43 Code section shall not be grounds to:

44 (A) Alter in any way state tax treatment of an exemption from taxation for such
45 individual under state law;

46 (B) Cause any tax, penalty, or payment to be assessed against such individual or deny,
47 delay, or revoke an exemption from taxation for such individual under state law; or

48 (C) Disallow a deduction for state tax purposes of any charitable contribution made by
49 such individual.

50 (d) All individuals shall be free to attend or not attend, at their discretion, the
51 solemnization of any marriage, performance of any rite, or administration of any sacrament
52 in the exercise of their rights to free exercise of religion under the Constitution of this state
53 or of the United States.

54 (e) An individual may assert a violation of this Code section by a government as a claim
55 or defense in a judicial, agency, or other proceeding and obtain a declaratory judgment or
56 injunctive relief in a court of competent jurisdiction.

57 (f) When an aggrieved individual prevails in an action pursuant to this Code section, the
58 court may award reasonable attorney's fees and court costs.

59 (g) No individual having a claim against a government under this Code section shall bring
60 any such action without first giving notice of the claim to such government, in writing, by
61 certified mail or statutory overnight delivery, at least 30 days prior to filing such action,
62 setting forth the particular prohibited action alleged to have been taken by the government
63 against such individual."

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SECTION 3.

Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to selling and other trade practices, is amended by revising Code Section 10-1-573, relating to day of rest for employees of business and industry, as follows:

"10-1-573.

(a) Any business or industry which operates on either of the two rest days (Saturday or Sunday) and employs those whose habitual day of worship has been chosen by the employer as a day of work shall make all reasonable accommodations to the religious, social, and physical needs of such employees so that those employees may enjoy the same benefits as employees in other occupations.

(b) No business or industry shall be required by ordinance or resolution of any county, municipality, or consolidated government to operate on either of the two rest days (Saturday or Sunday)."

SECTION 4.

Said chapter is further amended by adding a new article to read as follows:

"ARTICLE 35

10-1-1000.

As used in this article, the term:

(1) 'Faith based organization' means a church, a religious school, an association or convention of churches, a convention mission agency, or an integrated auxiliary of a church or convention or association of churches, when such entity is qualified as an exempt religious organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

(2) 'Government' means the state or any political subdivision of the state or public instrumentality or public corporate body created by or under authority of state law.

10-1-1001.

(a) No faith based organization shall be required to rent, lease, or otherwise grant permission for property to be used by another person for an event which is objectionable to such faith based organization.

(b) No faith based organization shall be required to provide social, educational, or charitable services that violate such faith based organization's sincerely held religious belief as demonstrated by its practice, expression, or clearly articulated tenet of faith; provided,

96 however, that government may enforce the terms of a grant, contract, or other agreement
 97 voluntarily entered into by such faith based organization.

98 10-1-1002.

99 (a)(1) A refusal by a faith based organization pursuant to Code Section 10-1-1001 shall
 100 not give rise to a civil claim or cause of action against such faith based organization or
 101 an employee thereof or result in any state action to penalize, withhold benefits from, or
 102 discriminate against the faith based organization or employee based on such refusal.

103 (2) A refusal by a faith based organization pursuant to Code Section 10-1-1001 shall not
 104 be grounds to:

105 (A) Alter in any way state tax treatment of an exemption from taxation for such faith
 106 based organization under state law;

107 (B) Cause any tax, penalty, or payment to be assessed against such faith based
 108 organization or deny, delay, or revoke an exemption from taxation for such faith based
 109 organization under state law; or

110 (C) Disallow a deduction for state tax purposes of any charitable contribution made by
 111 or to such faith based organization.

112 (b) A faith based organization may assert a violation of this Code section by a government
 113 as a claim or defense in a judicial, agency, or other proceeding and obtain a declaratory
 114 judgment or injunctive relief in a court of competent jurisdiction.

115 (c) When an aggrieved faith based organization prevails in an action pursuant to this Code
 116 section, the court may award reasonable attorney's fees and court costs.

117 (d) No faith based organization having a claim against a government under this Code
 118 section shall bring any such action without first giving notice of the claim to such
 119 government, in writing, by certified mail or statutory overnight delivery, at least 30 days
 120 prior to filing such action, setting forth the particular prohibited action alleged to have been
 121 taken by the government against such faith based organization."

122 **SECTION 5.**

123 Chapter 1 of Title 34 of the Official Code of Georgia Annotated, relating to labor and
 124 industrial relations generally, is amended by adding a new Code section to read as follows:

125 "34-1-9.

126 (a) As used in this Code section, the term:

127 (1) 'Faith based organization' means a church, a religious school, an association or
 128 convention of churches, a convention mission agency, or an integrated auxiliary of a
 129 church or convention or association of churches, when such entity is qualified as an

130 exempt religious organization under Section 501(c)(3) of the Internal Revenue Code of
 131 1986, as amended.

132 (2) 'Government' means the state or any political subdivision of the state or public
 133 instrumentality or public corporate body created by or under authority of state law.

134 (b) Except as provided by the Constitution of this state or the United States or federal law,
 135 no faith based organization shall be required to hire or retain as an employee any person
 136 whose religious beliefs or practices or lack of either are not in accord with the faith based
 137 organization's sincerely held religious belief as demonstrated by practice, expression, or
 138 clearly articulated tenet of faith.

139 (c)(1) A refusal by a faith based organization to hire or retain a person pursuant to
 140 subsection (b) of this Code section shall not give rise to a civil claim or cause of action
 141 against such faith based organization or an employee thereof or result in any state action
 142 to penalize, withhold benefits from, or discriminate against the faith based organization
 143 or employee based on such refusal.

144 (2) A refusal by a faith based organization to hire or retain a person pursuant to
 145 subsection (b) of this Code section shall not be grounds to:

146 (A) Alter in any way state tax treatment of an exemption from taxation for such faith
 147 based organization under state law;

148 (B) Cause any tax, penalty, or payment to be assessed against such faith based
 149 organization or deny, delay, or revoke an exemption from taxation for such faith based
 150 organization under state law; or

151 (C) Disallow a deduction for state tax purposes of any charitable contribution made by
 152 or to such faith based organization.

153 (d) A faith based organization may assert a violation of this Code section by a government
 154 as a claim or defense in a judicial, agency, or other proceeding and obtain a declaratory
 155 judgment or injunctive relief in a court of competent jurisdiction.

156 (e) When an aggrieved faith based organization prevails in an action pursuant to this Code
 157 section, the court may award reasonable attorney's fees and court costs.

158 (f) No faith based organization having a claim against a government under this Code
 159 section shall bring any such action without first giving notice of the claim to such
 160 government, in writing, by certified mail or statutory overnight delivery, at least 30 days
 161 prior to filing such action, setting forth the particular prohibited action alleged to have been
 162 taken by the government against such faith based organization."

163 **SECTION 6.**

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

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"CHAPTER 15A167 50-15A-1.168 As used in this chapter, the term:169 (1) 'Delinquent act' shall have the same meaning as provided for in Code Section
170 15-11-2.171 (2) 'Demonstrates' means meets the burdens of going forward with the evidence and of
172 persuasion.173 (3) 'Exercise of religion' means the exercise of religion pursuant to Paragraphs III and
174 IV of Section I, Article I of the Constitution of this state or the Free Exercise Clause of
175 the First Amendment to the Constitution of the United States.176 (4) 'Government' means the state or any political subdivision of the state or public
177 instrumentality or public corporate body created by or under authority of state law.178 (5) 'Penal institution' means any jail, correctional institution, or similar facility for the
179 detention of violators of state laws or local ordinances and any entity supervising such
180 violators placed on parole, probation, or other conditional release and any facility for the
181 restrictive custody of children and any entity supervising children who are not in
182 restrictive custody but who are accused of or adjudicated for a delinquent act.183 (6) 'Restrictive custody' shall have the same meaning as provided for in Code Section
184 15-11-2.185 50-15A-2.186 (a) Government shall not substantially burden a person's exercise of religion even if the
187 burden results from a law, rule, regulation, ordinance, or resolution of general applicability,
188 except as provided in subsection (b) of this Code section.189 (b) Government may substantially burden a person's exercise of religion only if it
190 demonstrates that application of the burden to the person is:191 (1) In furtherance of a compelling governmental interest; and192 (2) The least restrictive means of furthering that compelling governmental interest.193 (c) A person whose exercise of religion has been burdened in violation of this Code
194 section may assert that violation as a claim or defense in a judicial proceeding and obtain
195 a declaratory judgment or injunctive relief against a government.196 50-15A-3.197 In any action or proceeding to enforce a provision of this chapter, the court or tribunal may
198 allow the prevailing party, other than government, reasonable attorney's fees and court
199 costs.

200 50-15A-4.

201 No person having a claim under this chapter shall bring any action against government
 202 without first giving notice of the claim to such government, in writing, by certified mail or
 203 statutory overnight delivery, at least 30 days prior to filing such action, setting forth the
 204 particular discriminatory action alleged to have been taken by the government against such
 205 person.

206 50-15A-5.

207 (a) With respect to interactions which affect the rights or interests of third persons, this
 208 chapter shall be construed consistent with Article I, Section I, Paragraphs III and IV of the
 209 Constitution of Georgia and consistent with decisions of the Georgia Supreme Court made
 210 pursuant to said paragraphs.

211 (b) Nothing in this chapter shall be construed to:

212 (1) Permit invidious discrimination on any grounds prohibited by federal or state law;

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

217 (3) Create any rights by an employee against an employer, if such employer is not a
 218 government; or

219 (4) Afford any protection or relief to a public officer or employee who fails or refuses
 220 to perform his or her official duties; provided, however, that this paragraph shall not
 221 prohibit any person from holding any public office or trust on account of religious
 222 opinions, in accordance with Paragraph IV of Section I of Article I of the Constitution."

223 **SECTION 7.**

224 Said title is further amended by adding a new Code section to read as follows:

225 "50-21-38.

226 The defense of sovereign immunity is waived as to any claim, counterclaim, cross-claim,
 227 or third-party claim brought in the courts of this state by an aggrieved individual or faith
 228 based organization seeking a declaratory judgment, injunctive relief, or reasonable
 229 attorney's fees and court costs against the state as provided for in Code Section 19-3-11,
 230 Article 35 of Chapter 1 of Title 10, Code Section 34-1-9, or Chapter 15A of this title. In
 231 any such case, the applicable provisions of said Code sections, article, or chapter shall
 232 control to the extent of any conflict with the provisions of this article."

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SECTION 8.

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This Act shall become effective upon its approval by the Governor or upon its becoming law

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without such approval.

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SECTION 9.

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