

House Bill 757 (AS PASSED HOUSE AND SENATE)

By: Representatives Tanner of the 9th, Nix of the 69th, Battles of the 15th, Powell of the 171st, Hatchett of the 150th, and others

A BILL TO BE ENTITLED
AN ACT

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

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

21 **SECTION 1.**

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

23 **SECTION 2.**

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

26 "19-3-11.

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

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

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

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

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

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

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

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

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

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

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

62 **SECTION 3.**

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

66 "10-1-573.

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

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

75 **SECTION 4.**

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

77 "ARTICLE 35

78 10-1-1000.

79 As used in this article, the term:

80 (1) 'Faith based organization' means a church, a religious school, an association or
 81 convention of churches, a convention mission agency, or an integrated auxiliary of a
 82 church or convention or association of churches, when such entity is qualified as an
 83 exempt religious organization under Section 501(c)(3) of the Internal Revenue Code of
 84 1986, as amended.

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

87 10-1-1001.

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

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

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

96 10-1-1002.

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

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

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

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

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

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

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

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

120 **SECTION 5.**

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

123 "34-1-9.

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

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

128 exempt religious organization under Section 501(c)(3) of the Internal Revenue Code of
 129 1986, as amended.

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

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

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

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

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

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

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

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

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

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

161 **SECTION 6.**

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

164 "CHAPTER 15A

165 50-15A-1.

166 As used in this chapter, the term:

167 (1) 'Delinquent act' shall have the same meaning as provided for in Code Section
 168 15-11-2.

169 (2) 'Demonstrates' means meets the burdens of going forward with the evidence and of
 170 persuasion.

171 (3) 'Exercise of religion' means the exercise of religion pursuant to Paragraphs III and
 172 IV of Section I, Article I of the Constitution of this state or the Free Exercise Clause of
 173 the First Amendment to the Constitution of the United States.

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

176 (5) 'Penal institution' means any jail, correctional institution, or similar facility for the
 177 detention of violators of state laws or local ordinances and any entity supervising such
 178 violators placed on parole, probation, or other conditional release and any facility for the
 179 restrictive custody of children and any entity supervising children who are not in
 180 restrictive custody but who are accused of or adjudicated for a delinquent act.

181 (6) 'Restrictive custody' shall have the same meaning as provided for in Code Section
 182 15-11-2.

183 50-15A-2.

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

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

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

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

191 (c) A person whose exercise of religion has been burdened in violation of this Code
 192 section may assert that violation as a claim or defense in a judicial proceeding and obtain
 193 a declaratory judgment or injunctive relief against a government.

194 50-15A-3.

195 In any action or proceeding to enforce a provision of this chapter, the court or tribunal may
 196 allow the prevailing party, other than government, reasonable attorney's fees and court
 197 costs.

198 50-15A-4.

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

204 50-15A-5.

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

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

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

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

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

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

221 **SECTION 7.**

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

223 "50-21-38.

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

231 **SECTION 8.**

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

234 **SECTION 9.**

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