

Senate Bill 36

By: Senators Setzler of the 37th, Brass of the 6th, Anavitarte of the 31st, Williams of the 25th, Hickman of the 4th and others

AS PASSED SENATE

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 provide for the preservation of religious freedom; to provide for the granting of
3 relief; to provide for definitions; to provide for construction; to provide for statutory
4 interpretation; to provide for a short title; to provide for legislative findings and
5 determinations; to provide for an effective date; to repeal conflicting laws; and for other
6 purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 This Act shall be known and may be cited as the "Georgia Religious Freedom Restoration
10 Act."

11 **SECTION 2.**

12 The General Assembly finds and determines that:

13 (1) Whereas the framers of the United States Constitution and the people of this state,
14 recognizing free exercise of religion as an inalienable right, secured its protection in the

15 First Amendment to the United States Constitution and in Paragraphs III and IV of
16 Section I, Article I of the Constitution of this state, respectively;

17 (2) Whereas in *City of Boerne v. Flores*, 521 U.S. 507 (1997), the United States Supreme
18 Court held that the compelling interest test provided for in the federal Religious Freedom
19 Restoration Act, to protect the inalienable constitutional right of free exercise of religion,
20 must be adopted by a state through legislative act or court decision in order to apply to
21 state or local government action; and

22 (3) The General Assembly has determined that the following legislative act adopts the
23 same compelling interest test provided for in the federal Religious Freedom Restoration
24 Act in a manner that applies it to the actions of state and local governments in Georgia.

25 **SECTION 3.**

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

28 "CHAPTER 15A

29 50-15A-1.

30 (a) Government shall not substantially burden a person's exercise of religion even if the
31 burden results from a rule of general applicability, except as provided in subsection (b) of
32 this Code section.

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

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

36 (2) The least restrictive means of furthering such compelling governmental interest.

37 (c) A person whose religious exercise has been burdened in violation of this chapter may
38 assert the violation as a claim or defense in a judicial proceeding and obtain appropriate
39 relief against government.

40 50-15A-2.

41 As used in this chapter, the term:

42 (1) 'Demonstrates' means meets the burden of going forward with the evidence and of
43 persuasion.

44 (2) 'Exercise of religion' means any exercise of religion, whether or not compelled by,
45 or central to, a system of religious belief, including, but not limited to, the practice or
46 observance of religion under Paragraphs III and IV of Section I, Article I of the
47 Constitution of this state or the Free Exercise Clause of the First Amendment to the
48 Constitution of the United States.

49 (3) 'Government' includes any branch, department, agency, instrumentality, and official
50 or other person acting under color of law of this state, or any political subdivision of this
51 state as defined in Code Section 50-15-1.

52 50-15A-3.

53 In any action or proceeding to enforce a provision of this chapter, the court or tribunal may
54 allow the prevailing party, other than government, a reasonable attorney fee as part of
55 costs; provided, however, that, in any action brought against a judicial officer for an act or
56 omission taken in such officer's judicial capacity, such officer shall not be held liable for
57 any costs, including attorney's fees, unless such action was clearly in excess of such
58 officer's jurisdiction.

59 50-15A-4.
60 Nothing in this chapter shall be construed to affect, interpret, or in any way address that
61 portion of the First Amendment of the Constitution of the United States prohibiting laws
62 respecting the establishment of religion, referred to in this Code section as the
63 "Establishment Clause." Granting government funding, benefits, or exemptions, to the
64 extent permissible under the Establishment Clause, shall not constitute a violation of this
65 chapter. As used in this Code section, the term "granting," used with respect to government
66 funding, benefits, or exemptions, does not include the denial of government funding,
67 benefits, or exemptions."

68 **SECTION 4.**

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

71 **SECTION 5.**

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