

A BILL FOR AN ACT

RELATING TO RELIGIOUS FREEDOM.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 RELIGIOUS FREEDOM ACT :

6 § -1 Definitions. As used in this chapter, unless the
7 context requires otherwise:

8 "Free exercise of religion" means an act or refusal to act
9 that is substantially motivated by sincere religious belief. In
10 determining whether an act or refusal to act is substantially
11 motivated by sincere religious belief under this chapter, it is
12 not necessary to determine that the act or refusal to act is
13 motivated by a central part or central requirement of the
14 person's sincere religious belief.

15 "Government agency" means:

16 (1) The State or any of its political subdivisions; and

17 (2) Any agency of the State or any of its political

18 subdivisions, including a department, bureau, board,



1 commission, office, agency, council, or public
2 institution of higher education.

3 § -2 **Application.** (a) This chapter shall apply to any
4 ordinance, rule, order, decision, practice, or other exercise of
5 governmental authority.

6 (b) This chapter shall apply to any act of a government
7 agency, including the Hawaii civil rights commission, in the
8 exercise of governmental authority, in granting or refusing to
9 grant a government benefit to an individual.

10 (c) This chapter apply to each law of the State unless the
11 law is expressly made exempt from the application of this
12 chapter by reference to this chapter.

13 § -3 **Religious freedom protected.** (a) Subject to
14 subsection (b), a government agency shall not burden a person's
15 free exercise of religion.

16 (b) Subsection (a) shall not apply if the government
17 agency demonstrates that the application of the burden to the
18 person:

19 (1) Is in furtherance of a compelling governmental
20 interest; and

21 (2) Is the least restrictive means of furthering that
22 interest.



1 (c) A government agency that makes the demonstration
2 required by subsection (b) shall not be required to separately
3 prove that the remedy and penalty provisions of the law,
4 ordinance, rule, order, decision, practice, or other exercise of
5 governmental authority that imposes the substantial burden are
6 the least restrictive means to ensure compliance or to punish
7 the failure to comply.

8 (d) In determining whether an interest is a compelling
9 governmental interest under subsection (b), a court shall give
10 weight to the interpretation of "compelling interest" in federal
11 case law relating to the free exercise of religion clause of the
12 First Amendment of the United States Constitution.

13 § -4 **Defense.** A person whose free exercise of religion
14 has been burdened in violation of section -3 may assert that
15 violation as a defense in a judicial or administrative
16 proceeding without regard to whether the proceeding is brought
17 in the name of the State or by any other person.

18 § -5 **Remedies.** (a) Any person, other than a government
19 agency, who successfully asserts a claim or defense under this
20 chapter shall be entitled to recover:

21 (1) Declaratory relief under section 632-1;



1 (2) Injunctive relief to prevent the threatened violation
2 or continued violation;

3 (3) Compensatory damages for pecuniary and nonpecuniary
4 losses; and

5 (4) Reasonable attorney's fees, court costs, and other
6 reasonable expenses.

7 (b) Compensatory damages awarded under subsection (a)(3)
8 shall not exceed \$10,000 for each entire, distinct controversy,
9 without regard to the number of members or other persons within
10 a religious group who claim injury as a result of a government
11 agency's exercise of governmental authority. A claimant shall
12 be entitled to recover exemplary damages under this chapter.

13 (c) An action under this section shall be brought in
14 circuit court.

15 (d) A person shall not bring an action for damages or
16 declaratory or injunctive relief against an individual, other
17 than an action brought against an individual acting in the
18 individual's official capacity as an officer of a government
19 agency.

20 § -6 Notice; right to accommodate. (a) A person shall
21 not bring an action to assert a claim under this chapter unless,
22 sixty days before bringing the action, the person gives written



1 notice to the government agency by certified mail, return
2 receipt requested:

3 (1) That the person's free exercise of religion is
4 substantially burdened by an exercise of the
5 government agency's governmental authority;

6 (2) Of the particular act or refusal to act that is
7 burdened; and

8 (3) Of the manner in which the exercise of governmental
9 authority burdens the act or refusal to act.

10 (b) Notwithstanding subsection (a), a claimant, within the
11 sixty-day period established under subsection (a), may bring an
12 action for declaratory or injunctive relief and associated
13 attorney's fees, court costs, and other reasonable expenses, if
14 the:

15 (1) Exercise of governmental authority that threatens to
16 substantially burden the person's free exercise of
17 religion is imminent; and

18 (2) Person was not informed and did not otherwise have
19 knowledge of the exercise of the governmental
20 authority in time to reasonably provide the notice.



1 (c) A government agency that receives a notice under
2 subsection (a) may remedy the substantial burden on the person's
3 free exercise of religion.

4 (d) A remedy implemented by a government agency under this
5 section:

6 (1) May be designed to reasonably remove the substantial
7 burden on the person's free exercise of religion;

8 (2) Need not be implemented in a manner that results in an
9 exercise of governmental authority that is the least
10 restrictive means of furthering the governmental
11 interest, notwithstanding any other provision of this
12 chapter; and

13 (3) Shall be narrowly tailored to remove the particular
14 burden for which the remedy is implemented.

15 (e) A person with respect to whom a substantial burden on
16 the person's free exercise of religion has been cured by a
17 remedy implemented under this section shall not bring an action
18 under section -5.

19 § -7 **Three-year limitations period.** (a) An action to
20 assert a claim for damages under this chapter shall be filed not
21 later than three years after the date the person knew or should



1 have known of the burden upon the person's free exercise of
2 religion.

3 (b) Mailing notice under section -6 tolls the
4 limitations period established under this section until the
5 seventy-fifth day after the date on which the notice was mailed.

6 § -8 **Sovereign immunity waived.** (a) Subject to section
7 -6, the State waives and abolishes its sovereign immunity to
8 suit and from liability to the extent of liability created under
9 section -5, and a claimant may sue a government agency for
10 damages allowed under section -5.

11 (b) Notwithstanding subsection (a), this chapter shall not
12 waive or abolish sovereign immunity to suit and from liability
13 under the Eleventh Amendment to the United States Constitution.

14 § -9 **Effect on rights.** (a) This chapter shall not
15 authorize a government agency to burden a person's free exercise
16 of religion.

17 (b) The protection of religious freedom afforded by this
18 chapter is in addition to the protections provided under federal
19 law and the state and federal constitution."

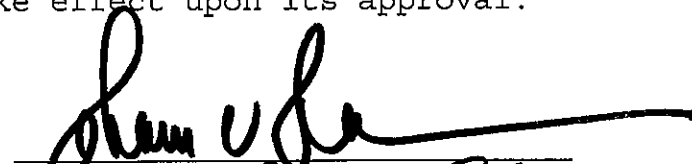
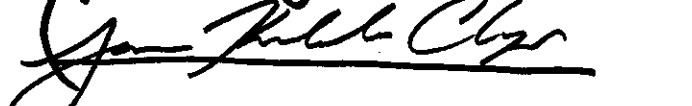

20 SECTION 2. This Act does not affect rights and duties that
21 matured, penalties that were incurred, and proceedings that were
22 begun before its effective date.



1 SECTION 3. This Act shall take effect upon its approval.

2

INTRODUCED BY:

JAN 23 2013



H.B. NO. 1196

Report Title:

Religious Freedom; Damages

Description:

Recognizes the burden upon religious freedom as a claim or a defense against government acts.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

