
A BILL FOR AN ACT

RELATING TO RELIGIOUS FREEDOM.

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

1 SECTION 1. The right to free exercise of religion is
2 guaranteed by the First Amendment to the United States
3 Constitution and article I, section 4 of the Constitution of the
4 State of Hawaii. The legislature finds that there is a need for
5 greater protection of religious freedom in Hawaii.

6 The purpose of this Act is to enact Hawaii's own version of
7 the federal Religious Freedom Restoration Act, in order to
8 restore the compelling interest test previously applicable to
9 court cases arising from the free exercise of religion.

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

13 "CHAPTER

14 **HAWAII RELIGIOUS FREEDOM RESTORATION ACT**

15 § -1 Findings. (a) The legislature finds that:

16 (1) The authors of the Bill of Rights secured the free
17 exercise of religion as an inalienable right under the
18 First Amendment of the United States Constitution;



- 1 (2) The free exercise of religion is also guaranteed under
2 article I, section 4 of the Constitution of the State
3 of Hawaii;
- 4 (3) Laws intended to be neutral toward religion can be as
5 burdensome on a person's exercise of religion as laws
6 intended to interfere with the exercise of religion;
- 7 (4) Government should not substantially burden the
8 exercise of religion without compelling justification;
- 9 (5) The decision of the United States Supreme Court, in
10 Employment Division v. Smith, 494 U.S. 872 (1990),
11 virtually eliminated the requirement that the
12 government justify burdens on exercise of religion
13 imposed by laws neutral toward religion;
- 14 (6) The legal test articulated in the Smith case set forth
15 a narrow view of religious freedom protection and is
16 inconsistent with the purposes of this chapter;
- 17 (7) The compelling interest test, used by the United
18 States Supreme Court in the years prior to the Smith
19 case, is a more appropriate test, as it strikes a
20 sensible balance between religious liberty and
21 competing government interests;



- 1 (8) The United States Congress agreed with this position
2 and in 1993, with strong bipartisan support, enacted
3 the Religious Freedom Restoration Act (RFRA) to
4 prevent federal, state, and local governments from
5 substantially burdening a person's free exercise
6 rights unless the burden furthered a compelling
7 government interest and was the least restrictive
8 means of furthering that interest;
- 9 (9) The RFRA bill was sponsored by both Democrats and
10 Republicans (Senators Edward Kennedy and Orrin Hatch;
11 Representatives Charles Schumer and Christopher Cox),
12 and was supported by a broad spectrum of conservative
13 and liberal religious groups and public interest
14 organizations, as well as atheists;
- 15 (10) Congress passed the RFRA bill with 97 of 100 senators
16 voting in favor, and with a majority of
17 representatives voting in favor (at the time,
18 democrats constituted the majority the Senate, and
19 comprised 258 of the total 435 members of the House);
- 20 (11) President Bill Clinton signed RFRA into law in
21 November 1993; Vice-President Al Gore cited it as "one



1 of the most important steps to reaffirm religious
2 freedom in my lifetime.";

3 (12) Although the United States Supreme Court subsequently
4 ruled in City of Boerne v. Flores, 521 U.S. 507 (1997)
5 that Congress cannot require states to use the
6 compelling interest test in religious freedom cases,
7 individual states have the right to enact such
8 legislation on their own; and

9 (13) As of December 2013, seventeen states have enacted
10 their own versions of the Religious Freedom
11 Restoration Act. They are: Arizona, Connecticut,
12 Florida, Idaho, Illinois, Kansas, Kentucky, Louisiana,
13 Missouri, New Mexico, Oklahoma, Pennsylvania, Rhode
14 Island, South Carolina, Tennessee, Texas, and
15 Virginia.

16 (b) The legislature declares its intent that:

17 (1) It shall be the policy of the State that courts apply
18 the compelling interest test in cases arising from the
19 free exercise of religion; and

20 (2) This chapter shall provide a claim or defense to
21 persons whose exercise of religion is substantially



1 burdened or likely to be burdened by the State or its
2 political subdivisions.

3 § -2 **Definitions.** As used in this chapter:

4 "Burden" means any government action that directly or
5 indirectly constrains, inhibits, curtails, or denies the
6 exercise of religion by any person or compels any action
7 contrary to a person's exercise of religion, and includes, but
8 is not limited to, withholding benefits, assessing criminal,
9 civil, or administrative penalties, or exclusion from government
10 programs or access to government facilities.

11 "Exercise of religion" means an act or refusal to act that
12 is substantially motivated by the person's sincerely held
13 religious belief, whether or not the religious exercise is
14 compulsory or central to a larger system of religious belief.

15 "Fraudulent claim" means a claim that is dishonest in fact
16 or that is made principally for a patently improper purpose,
17 such as to harass the opposing party.

18 "Person" means any legal person or entity under the laws of
19 the State of Hawaii and the laws of the United States.

20 "State" includes the executive, legislative, and judicial
21 branches, as well as agencies, boards, commissions, departments,
22 and other government entities of the State or its political



1 subdivisions, and any person acting under color of law of the
2 State or its political subdivisions.

3 § -3 **Free exercise of religion protected.** (a) The State
4 and its political subdivisions shall not substantially burden a
5 person's exercise of religion, even if the burden arises from a
6 law of general applicability, except as provided in subsection
7 (b).

8 (b) The State and its political subdivisions may
9 substantially burden a person's exercise of religion, but only
10 if it demonstrates that imposition of the burden on the person
11 is both:

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

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

16 § -4 **Judicial relief.** (a) A person whose exercise of
17 religion has been burdened or is substantially likely to be
18 burdened in violation of this chapter may assert that violation
19 as a claim or defense in a judicial proceeding. The court may
20 grant appropriate relief as may be necessary, including:

21 (1) Declaratory relief;



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 incurred in bringing the action.

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 the State's
11 exercise of governmental authority. A claimant is not entitled
12 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 a person acting under color of
18 law of the State or its political subdivisions.

19 (e) Any person found by the court to have abused the
20 protection of this chapter by making a fraudulent claim may be
21 enjoined from filing further claims under this chapter without
22 leave of court.



1 § -5 **Waiver of sovereign immunity.** Immunity from
2 liability of the State and its employees shall be waived for an
3 action brought pursuant to this chapter.

4 § -6 **Applicability; construction.** (a) This chapter
5 applies to all state and county laws, ordinances, and rules, as
6 well as their implementation, and whether adopted before or
7 after the enactment of this chapter.

8 (b) State law adopted after the date of the enactment of
9 this chapter is subject to this chapter unless such law
10 explicitly excludes such application by reference to this
11 chapter.

12 (c) Nothing in this chapter shall be construed to
13 authorize the State to burden any religious belief.

14 (d) Nothing in this chapter shall create any rights by an
15 employee against a private employer.

16 (e) Nothing in this chapter shall be construed to affect,
17 interpret, or in any way address that portion of article I,
18 section 4 of the Constitution of the State of Hawaii, or the
19 First Amendment to the United States Constitution, which
20 prohibit laws respecting the establishment of religion. This
21 chapter shall not be construed to permit any practice prohibited
22 by such provisions.



1 (f) The granting of government funding, benefits, or
 2 exemptions, to the extent permissible under the Constitution of
 3 the State of Hawaii, shall not constitute a violation of this
 4 chapter.

5 As used in this subsection, "granting" does not include the
 6 denial of government funding, benefits, or exemptions.

7 (g) The protection of the free exercise of religion
 8 granted under this chapter is in addition to the protections
 9 granted by federal law, the United States Constitution, and the
 10 Constitution of the State of Hawaii."

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

12

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H.B. NO. 1822

Report Title:

Religious Freedom; Compelling Interest Test

Description:

Establishes the Hawaii Religious Freedom Restoration Act. Prohibits the State and counties from enacting laws that substantially burden a person's free exercise of religion, unless the imposition of the burden furthers a compelling governmental interest and uses the least restrictive means to do so.

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