

STATE OF OKLAHOMA

2nd Session of the 54th Legislature (2014)

SENATE BILL 1846

By: Treat

AS INTRODUCED

An Act relating to the Oklahoma Religious Freedom Act; stating legislative findings; stating purposes of act; amending 51 O.S. 2011, Sections 252 and 253, which relate to definitions and burden upon free exercise of religion; modifying definitions; authorizing certain action; authorizing certain relief; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 251.1 of Title 51, unless there is created a duplication in numbering, reads as follows:

A. The Legislature finds that:

1. The framers of the United States Constitution, recognizing free exercise of religion as an unalienable right, secured its protection in the First Amendment to the Constitution;

2. The framers of the Oklahoma Constitution, also recognizing free exercise of religion as an unalienable right, secured its protection in the Oklahoma Constitution;

1 3. Laws and other state action "neutral" toward religion may
2 burden exercise of religion as surely as laws intended to interfere
3 with religious exercise;

4 4. State action should not burden exercise of religion without
5 compelling justification;

6 5. Prior to 1990, laws and other state action burdening
7 exercise of religion had to be justified by compelling
8 justification;

9 6. In *Employment Division v. Smith*, 494 U.S. 872 (1990), the
10 Supreme Court significantly curtailed the requirement that laws and
11 other state action burdening the free exercise of religion be
12 justified by compelling justification;

13 7. *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*,
14 546 U.S. 418 (2006), indicates that legislative bodies may enact
15 statutory law for their jurisdictions requiring that laws and other
16 state action burdening the free exercise of religion be justified by
17 a compelling governmental interest. Many states have done so,
18 passing laws similar to this Act; and

19 8. The compelling interest test set forth in prior federal
20 court rulings and this act is a workable test for striking sensible
21 balances between religious liberty and competing governmental
22 interests.

23 B. The purposes of this Act are to:
24

1 1. Restore the compelling interest test and to guarantee its
2 application in all cases where the exercise of religion is burdened
3 by state action; and

4 2. Provide a claim or defense to a person or persons whose
5 exercise of religion is burdened by state action.

6 SECTION 2. AMENDATORY 51 O.S. 2011, Section 252, is
7 amended to read as follows:

8 Section 252. In this act:

9 1. "Demonstrates" means the burdens of going forward with the
10 evidence and of persuasion under the standard of clear and
11 convincing evidence are met;

12 2. "Exercise of religion" means the practice, observance and
13 exercise of religion under Article 1, Section 2, of the Constitution
14 of the State of Oklahoma, the Oklahoma Religious Freedom Act, and
15 the First Amendment to the Constitution of the United States. It
16 includes, but is not limited to, the ability to act or refuse to act
17 in a manner substantially motivated by one's sincerely held
18 religious belief, whether or not the exercise is compulsory or
19 central to a larger system of religious belief;

20 3. "Fraudulent claim" means a claim that is dishonest in fact
21 or that is made principally for a patently improper purpose, such as
22 to harass the opposing party;

23 4. "Frivolous claim" means a claim which lacks merit under
24 existing law and which cannot be supported by a good faith argument

1 for the extension, modification, or reversal of existing law or the
2 establishment of new law;

3 5. "Governmental entity" means any branch, department, agency,
4 or instrumentality of state government, or any official or other
5 person acting under color of state law, or any political subdivision
6 of this state;

7 6. "Prevails" means to obtain prevailing party status as
8 defined by courts construing the federal Civil Rights Attorney's
9 Fees Awards Act of 1976, 42 U.S.C. § 1988; and

10 7. "Substantially burden" means to ~~inhibit or curtail~~
11 ~~religiously motivated practice~~ directly or indirectly constrain,
12 inhibit, curtail or deny the exercise of religion by any person or
13 compel any action contrary to a person's exercise of religion and
14 includes, but is not limited to, withholding benefits, assessing
15 criminal, civil or administrative penalties or excluding from
16 governmental programs or access to governmental facilities.

17 SECTION 3. AMENDATORY 51 O.S. 2011, Section 253, is
18 amended to read as follows:

19 Section 253. A. Except as provided in subsection B of this
20 section, no governmental entity shall substantially burden a
21 person's free exercise of religion even if the burden results from a
22 rule of general applicability.

1 B. No governmental entity shall substantially burden a person's
2 free exercise of religion unless it demonstrates that application of
3 the burden to the person is:

4 1. Essential to further a compelling governmental interest; and

5 2. The least restrictive means of furthering that compelling
6 governmental interest.

7 C. A person whose exercise of religion has been substantially
8 burdened, or is likely to be substantially burdened, in violation of
9 this act may assert such violation or impending violation as a claim
10 or defense in a judicial proceeding, regardless of whether the state
11 or a political subdivision is a party to the proceeding. The person
12 asserting such a claim or defense may obtain appropriate relief,
13 including relief against the state or its political subdivisions.
14 Appropriate relief includes, but is not limited to, injunctive or
15 declaratory relief, compensatory damages and attorney fees and
16 costs.

17 SECTION 4. This act shall become effective November 1, 2014.

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