

HB99 INTRODUCED



1 HB99
2 1DRG3ZZ-1
3 By Representative Paschal
4 RFD: Judiciary
5 First Read: 06-Feb-24
6 PFD: 05-Feb-24



4 SYNOPSIS:

5 Existing law recognizes that a church,
6 synagogue, or other religious institution may function
7 during a state of emergency proclaimed under the
8 Alabama Emergency Management Act of 1955 if the
9 religious institution complies with any safety
10 precautions issued by state or local government to
11 prevent a threat such as a pandemic.

12 This bill would provide that a religious
13 institution may not be burdened with public safety
14 precautions that are more restrictive than those that
15 apply to a non-religious organization that provides
16 essential services to the public, and that any
17 precautions that substantially interfere with a
18 religious institution's activities must be the least
19 restrictive means to further a compelling governmental
20 interest.

21 This bill would further prohibit the state and
22 any local government from discriminating against a
23 religious institution for operating during a state of
24 emergency, and would provide that a religious
25 institution may petition a civil court to prevent or
26 halt the discriminatory action or to award money
27 damages for a violation.



HB99 INTRODUCED

A BILL

TO BE ENTITLED

AN ACT

Relating to religious freedom; to amend Sections 31-9-2, 31-9-3, and 31-9-25, Code of Alabama 1975; to add Section 31-9-26 to the Code of Alabama 1975; to further provide for the rights of religious organizations during a state of emergency proclaimed pursuant to the Emergency Management Act of 1955; to provide legislative findings regarding the free exercise of religion during a public health emergency; to specify that health and safety directives applied to religious institutions shall be no different than those applied to secular organizations that provide essential services; to recognize that health and safety measures that impose a substantial burden on religious institutions must be the least restrictive to advance a compelling governmental interest; to prohibit discrimination by the state and local governments against religious institutions; and to recognize a civil action by religious institutions against the state or local governments.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 31-9-2 and 31-9-3, Code of Alabama 1975, are amended to read as follows:

"§31-9-2

(a) Because of the existing and increasing possibility of the occurrence of disasters or emergencies of unprecedented



HB99 INTRODUCED

size and destructiveness resulting from enemy attack, sabotage, or other hostile action, or from fire, flood, earthquake, or other natural causes, and in order to ~~insure~~ensure that preparations of this state will be adequate to deal with such disasters or emergencies, and generally to provide for the common defense and to protect the public peace, health, and safety, and to preserve the lives and property of the people of the state, it is hereby found and declared to be necessary:

(1) To create a State Emergency Management Agency, and to authorize the creation of local organizations for emergency management in the political subdivisions of the state.

(2) To confer upon the Governor and upon the governing bodies of the political subdivisions of the state the emergency powers provided in this article.

(3) To provide for the rendering of mutual aid among the political subdivisions of the state, and with other states, and with the federal government with respect to the carrying out of emergency management functions.

(4) To authorize the establishment of such organizations and the taking of such steps as are necessary and appropriate to carry out the provisions of this article.

(b) It is further declared to be the purpose of this article and the policy of the state that all emergency management functions of this state be coordinated to the maximum extent with the comparable functions of the federal government including its various departments and agencies, of other states and localities and of private agencies of every



HB99 INTRODUCED

85 type, to the end that the most effective preparation and use
86 may be made of the nation's manpower, resources and facilities
87 for dealing with such disaster or emergency.

88 (c) It is further declared to be the purpose of this
89 article and policy of the State of Alabama to assist and
90 encourage emergency management and emergency preparedness
91 activities on the part of the political subdivisions of the
92 state by authorizing the State of Alabama to make grants, as
93 funds are appropriated for such specific purpose, to any
94 political subdivision of the state in amounts not to exceed
95 the amounts expended, or to be expended, for personnel and
96 administrative costs by such political subdivisions for
97 emergency management and emergency preparedness.

98 (d) It is further declared to be the policy of the
99 state that emergency management should place the least
100 restrictive burden possible on religious worship and
101 activities during a state of emergency. This policy is based
102 on the following legislative findings:

103 (1) That the free exercise of religion is an
104 inalienable right guaranteed by Amendment I of the United
105 States Constitution and Sections 3.01 and 3.02 of the
106 Constitution of Alabama of 2022.

107 (2) That during the COVID-19 pandemic, some states and
108 localities imposed overbroad restrictions on religious worship
109 and activities which undermined social well-being and deprived
110 many isolated and vulnerable individuals of needed pastoral
111 care and assistance.

112 (3) That the freedom to gather for worship, to provide



HB99 INTRODUCED

fellowship, and to benevolently serve others out of religious motivations confer essential services on our society that cannot be quantified, such that the free exercise of religion during a state of emergency is necessary to the public health and welfare."

"§31-9-3

As used in this article, these terms shall have the following meanings:

(1) EMERGENCY MANAGEMENT. The preparation for and the carrying out of all emergency functions, other than functions for which military forces or other federal agencies are primarily responsible, to prevent, minimize, and repair injury and damage resulting from disasters caused by enemy attack, sabotage, or other hostile action, or by fire, flood, earthquake, or other natural cause. These functions include, without limitation, public safety services including, fire-fighting services; police services; medical and health services; rescue, engineering, and air raid warning services; communications; radiological, chemical, and other special weapons of defense; evacuation of persons from stricken areas; emergency welfare services (civilian war aid); emergency transportation; plant protection; temporary restoration of public utility services; and other functions related to civilian protection, together with all other activities necessary or incidental to the preparation for and carrying out of the foregoing functions.

(2) LOCAL ORGANIZATION. The organization of local emergency management forces designed principally for operation



HB99 INTRODUCED

141 within their own community but capable of moving to other
142 areas.

143 (3) POLITICAL SUBDIVISION. Any county or municipality
144 created pursuant to law.

145 (4) RELIGIOUS INSTITUTION. A house of worship,
146 including a church, synagogue, shrine, mosque, or temple, and
147 any ministry, mission, or monastic community, or a nonprofit
148 organization with a religious identity that has the primary
149 function of providing spiritual or material assistance to the
150 public.

151 ~~(4)~~ (5) STATE OF EMERGENCY. When the Governor duly
152 proclaims the existence of conditions of disaster or of
153 extreme peril to the safety of persons and property within the
154 state caused by fire, flood, storm, epidemic, technological
155 failure or accident, riot, drought, sudden and severe energy
156 shortage, plant or animal infestation or disease, earthquake,
157 explosion, terrorism, or man-made disaster, or other
158 conditions, other than conditions resulting from a labor
159 controversy or conditions causing a state of war emergency,
160 which, by reason of their magnitude, are or are likely to be
161 beyond the control of the services, personnel, equipment, and
162 facilities of any single county, city and county, or city, and
163 require the combined forces of a mutual aid region or regions
164 to combat, or energy shortage requires extraordinary measures
165 beyond the authority vested in the Alabama Public Service
166 Commission.

167 (6) STATE PUBLIC HEALTH EMERGENCY. An occurrence or
168 imminent threat of an illness or health condition that does



HB99 INTRODUCED

all of the following:

a. Is believed to be caused by any of the following:

1. Bioterrorism.

2. The appearance of a novel or previously controlled or eradicated infectious agent or biological toxin.

3. A natural disaster.

4. A chemical attack or accidental release.

5. A nuclear or radiological attack or accident.

b. Poses a high probability of any of the following harms:

1. A large number of deaths in the affected population.

2. A large number of serious or long-term disabilities in the affected population.

3. Widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population.

~~(6)~~ (7) STATE TECHNOLOGICAL EMERGENCY. An emergency caused by a technological failure or accident, including, but not limited to, an explosion, transportation accident, radiological accident, or chemical or other hazardous material incident."

Section 2. Section 31-9-25, Code of Alabama 1975, is amended to read as follows:

"§31-9-25

(a) During the existence of a state of emergency declared pursuant to Section 31-9-8, a business entity or a ~~church, mosque, synagogue, or other bona fide~~ religious institution may continue or resume its business or religious



HB99 INTRODUCED

operations if the business entity or religious institution complies with all of the ~~safety precautions~~health and safety directives issued by the Governor, a state department or agency, or a county or municipal governing body or agency thereof under the authority of the Alabama Emergency Management Act of 1955, Article 1 of this chapter, to prevent a threat to the public caused by a pandemic, epidemic, or bioterrorism event, or the appearance of a novel or previously controlled or eradicated infectious agent or biological toxin.

(b) With respect to a religious institution, the safety precautions shall conform to the following standards:

(1) During a state of emergency, the Governor, a state department or agency, or a county or municipal governing body or agency thereof shall not prohibit or restrict a religious institution from holding worship services or conducting activities to any greater extent than the operations of other organizations or businesses that provide essential services necessary to the public health and welfare.

(2) The Governor, a state department or agency, or a county or municipal governing body or agency thereof may require a religious institution to comply with neutral health and safety directives imposed under a state of emergency that are applicable to all organizations or businesses that provide essential services. However, no health or safety directive may impose a substantial burden on the activities of a religious institution unless the burden is essential to further a compelling governmental interest and the directive is the least restrictive means of furthering the compelling



HB99 INTRODUCED

225 governmental interest.

226 ~~(b)~~ (c) Notwithstanding the existence of a state of
227 emergency declared pursuant to Section 31-9-8, the Alabama
228 State House may not be closed to the public while the
229 Legislature is in session.

230 ~~(e)~~ (d) If a provision of this section is inconsistent
231 with any proclamation, order, rule, or other directive adopted
232 under this article, this section shall prevail."

233 Section 3. Section 31-9-26 is added to the Code of
234 Alabama 1975, to read as follows:

235 §31-9-26

236 (a) The Governor, a state department or agency, or a
237 county or municipal governing body or agency of the same may
238 not under the color of law discriminate or retaliate against
239 any religious institution during a state of emergency or as
240 the result of a state of emergency that has expired.
241 Discrimination or retaliation includes, but is not limited to,
242 the following examples:

243 (1) Imposing health and safety directives on a
244 religious institution that are more restrictive than
245 directives imposed on a business entity or a secular
246 organization, event, or activity.

247 (2) Pursuing the denial or revocation of a religious
248 institution's tax exempt status.

249 (3) Disallowing the tax deductibility of donations or
250 gifts made to a religious institution.

251 (4) Imposing a criminal or a civil fine on a religious
252 institution, or on its clergy, staff, members, or attendees,



HB99 INTRODUCED

or on the beneficiaries of the religious institution's mission.

(5) Enjoining, interfering with, or restricting the worship services, distinctive practices or disciplines, or activities of a religious institution.

(6) Denying or revoking any license, certificate, or accreditation of any operation of a religious institution.

(7) Withholding, denying, or revoking any benefit to which the religious institution has a right under law or contract.

(b) Any discriminatory or retaliatory action in violation of this section may be asserted by a religious institution as grounds for the following:

(1) A defense or counterclaim in any judicial or administrative proceeding brought by the Governor, a state department or agency, or a county or municipal governing body or agency of the same, or a private person against the religious institution.

(2) A claim against the Governor or a state department or agency in a civil action brought by the religious institution in the Circuit Court of Montgomery County or as the grounds for a claim against a county or municipal governing body or agency of the same in the circuit court of the county in which the political subdivision is located.

(c) Remedies available to a religious institution under this section include all of the following:

(1) Declaratory relief.

(2) Injunctive relief.



HB99 INTRODUCED

281 (3) Compensatory damages, subject to a defense of
282 immunity from liability asserted on any constitutional,
283 statutory, or judicial grounds.

284 (4) Reasonable attorney fees and costs.

285 (d) Any civil action brought under this section by a
286 religious institution shall be brought no later than two years
287 after the date the religious institution knew or should have
288 known of the discriminatory or retaliatory action.

289 Section 4. This act shall become effective on October
290 1, 2024.