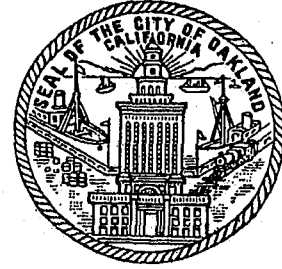


# CITY OF OAKLAND

## BILL ANALYSIS



2015 APR -1 PM 11:19

Date: April 1, 2015

Bill Number: Senate Bill 101 (Indiana)

Bill Author: Sen. Dennis Kruse, Sen. Scott Schneider, Sen. Brent Steele.

### DEPARTMENT INFORMATION

Contact: President Pro Tem Reid/Vice Mayor Kaplan

Department: City Council

Telephone: 238-7007/238-7008

FAX #

E-mail: [lreid@oaklandnet.com](mailto:lreid@oaklandnet.com)

[rkaplan@oaklandnet.com](mailto:rkaplan@oaklandnet.com)

### RECOMMENDED POSITION: OPPOSE

#### Summary of the Bill

Religious Freedom Restoration. Prohibits a governmental entity from substantially burdening a person's exercise of religion, even if the burden results from a rule of general applicability, unless the governmental entity can demonstrate that the burden: (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering the compelling governmental interest. Provides a procedure for remedying a violation. Specifies that the religious freedom law applies to the implementation or application of a law regardless of whether the state or any other governmental entity or official is a party to a proceeding implementing or applying the law. Prohibits an applicant, employee, or former employee from pursuing certain causes of action against a private employer

#### Positive Factors for Oakland

Opposing the new Indiana law, and any other similar law, which enables discrimination against oppressed persons and groups, including, but not limited to, opposing any law allowing discrimination against lesbian, gay, bisexual and transgender people, and against religious minorities. Affirming that the right of all to practice our own religions does not require allowing discrimination against others. Encouraging people, businesses and organizations to refrain from holding events or expanding in Indiana so long as this law is effective. Encouraging businesses, individuals, and organizations who seek to promote a fair and non-discriminatory environment to

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locate their conferences, business expansion, and other opportunities in the diverse and welcoming city of Oakland.

**Negative Factors for Oakland**

*N/A*

**PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:**

**Critical** (top priority for City lobbyist, city position required ASAP)

**Very Important** (priority for City lobbyist, city position necessary)

**Somewhat Important** (City position desirable if time and resources are available)

**Minimal or**  **None** (do not review with City Council, position not required)

**Known support:**

**Sen. Carlin Yoder,**  
**Sen. James Buck,**  
**Sen. Amanda Banks,**  
**Sen. Liz Brown,**  
**Sen. James Smith,**  
**Sen. James Tomes,**  
**Sen. Greg Walker,**  
**Sen. Brent Waltz,**  
**Sen. Mark Messmer,**  
**Sen. Jean Leising.**

Rep. Timothy Wesco,  
Rep. Jud McMillin,  
Rep. Don Lehe,  
Rep. Milo Smith,  
Rep. Bruce Borders,  
Rep. Dale DeVon,  
Rep. Timothy Harman,  
Rep. Robert Heaton,  
Rep. Chris Judy,  
Rep. Eric Allan Koch,  
Rep. Robert Morris,

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Rep. Alan Morrison,  
Rep. Mike Speedy,  
Rep. Jeffrey Thompson,  
Rep. Thomas Washburne,  
Rep. Matthew Lehman,  
Rep. David Frizzell,  
Rep. Randall Frye,  
Rep. Richard Hamm,  
Rep. Curt Nisly,  
Rep. Woody Burton,  
Rep. Anthony Cook,  
Rep. Doug Miller,  
Rep. Jim Lucas,  
Rep. Rhonda Rhoads.

**Known Opposition:**

Various Corporate Entities (Google, SalesForce, WalMart,).  
San Francisco Mayor Edwin M. Lee  
ACLU of Indiana  
Lambda Legal's Law and Policy Project  
Indiana Mayor Gregory Ballard  
Indiana-based employers Cummins, Salesforce and Eskenazi Health  
The National College Athletic Association

**Attach bill text and state/federal legislative committee analysis, if available.**

Respectfully Submitted,

\_\_\_\_\_  
Name  
Director, \_\_\_\_\_ Dept/Agency

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Approved for Forwarding to  
Rules Committee

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Office of City Administrator

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PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

## SENATE ENROLLED ACT No. 101

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AN ACT to amend the Indiana Code concerning civil procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 34-13-9 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]:

### **Chapter 9. Religious Freedom Restoration**

**Sec. 1. This chapter applies to all governmental entity statutes, ordinances, resolutions, executive or administrative orders, regulations, customs, and usages, including the implementation or application thereof, regardless of whether they were enacted, adopted, or initiated before, on, or after July 1, 2015.**

**Sec. 2. A governmental entity statute, ordinance, resolution, executive or administrative order, regulation, custom, or usage may not be construed to be exempt from the application of this chapter unless a state statute expressly exempts the statute, ordinance, resolution, executive or administrative order, regulation, custom, or usage from the application of this chapter by citation to this chapter.**

**Sec. 3. (a) The following definitions apply throughout this section:**

- (1) "Establishment Clause" refers to the part of the First Amendment of the Constitution of the United States or the Constitution of the State of Indiana prohibiting laws**



respecting the establishment of religion.

(2) "Granting", used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.

(b) This chapter may not be construed to affect, interpret, or in any way address the Establishment Clause.

(c) Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, does not constitute a violation of this chapter.

Sec. 4. As used in this chapter, "demonstrates" means meets the burdens of going forward with the evidence and of persuasion.

Sec. 5. As used in this chapter, "exercise of religion" includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.

Sec. 6. As used in this chapter, "governmental entity" includes the whole or any part of a branch, department, agency, instrumentality, official, or other individual or entity acting under color of law of any of the following:

- (1) State government.
- (2) A political subdivision (as defined in IC 36-1-2-13).
- (3) An instrumentality of a governmental entity described in subdivision (1) or (2), including a state educational institution, a body politic, a body corporate and politic, or any other similar entity established by law.

Sec. 7. As used in this chapter, "person" includes the following:

- (1) An individual.
- (2) An organization, a religious society, a church, a body of communicants, or a group organized and operated primarily for religious purposes.
- (3) A partnership, a limited liability company, a corporation, a company, a firm, a society, a joint-stock company, an unincorporated association, or another entity that:
  - (A) may sue and be sued; and
  - (B) exercises practices that are compelled or limited by a system of religious belief held by:
    - (i) an individual; or
    - (ii) the individuals;

who have control and substantial ownership of the entity, regardless of whether the entity is organized and operated for profit or nonprofit purposes.

Sec. 8. (a) Except as provided in subsection (b), a governmental entity may not substantially burden a person's exercise of religion,



even if the burden results from a rule of general applicability.

(b) A governmental entity may substantially burden a person's exercise of religion only if the governmental entity demonstrates that application of the burden to the person:

- (1) is in furtherance of a compelling governmental interest; and
- (2) is the least restrictive means of furthering that compelling governmental interest.

Sec. 9. A person whose exercise of religion has been substantially burdened, or is likely to be substantially burdened, by a violation of this chapter may assert the violation or impending violation as a claim or defense in a judicial or administrative proceeding, regardless of whether the state or any other governmental entity is a party to the proceeding. If the relevant governmental entity is not a party to the proceeding, the governmental entity has an unconditional right to intervene in order to respond to the person's invocation of this chapter.

Sec. 10. (a) If a court or other tribunal in which a violation of this chapter is asserted in conformity with section 9 of this chapter determines that:

- (1) the person's exercise of religion has been substantially burdened, or is likely to be substantially burdened; and
- (2) the governmental entity imposing the burden has not demonstrated that application of the burden to the person:
  - (A) is in furtherance of a compelling governmental interest; and
  - (B) is the least restrictive means of furthering that compelling governmental interest;

the court or other tribunal shall allow a defense against any party and shall grant appropriate relief against the governmental entity.

(b) Relief against the governmental entity may include any of the following:

- (1) Declaratory relief or an injunction or mandate that prevents, restrains, corrects, or abates the violation of this chapter.
- (2) Compensatory damages.

(c) In the appropriate case, the court or other tribunal also may award all or part of the costs of litigation, including reasonable attorney's fees, to a person that prevails against the governmental entity under this chapter.

Sec. 11. This chapter is not intended to, and shall not be construed or interpreted to, create a claim or private cause of



**action against any private employer by any applicant, employee, or former employee.**





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**DRAFT**

Oakland City Attorney's Office

OAKLAND CITY COUNCIL

Resolution No. \_\_\_\_\_ C.M.S.  
INTRODUCED PRESIDENT PRO TEM REID  
VICE MAYOR KAPLAN

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**Resolution Opposing Senate Bill 101 (Kruse, Schneider, Steele) Religious Freedom Restoration Act in the State of Indiana as Approved by Governor Mike Pence (Indiana)**

**WHEREAS**, Senate Bill 101 (Kruse, Schneider, Steele) in the State of Indiana prohibits a governmental entity from substantially burdening a person's exercise of religion, even if the burden results from a rule of general applicability, unless the governmental entity can demonstrate that the burden, and;

**WHEREAS**, Senate Bill 101 (Kruse, Schneider, Steele) in the State of Indiana is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering the compelling governmental interest, and specifies that the religious freedom law applies to the implementation or application of a law, regardless of whether the state or any other governmental entity or official is a party to a proceeding implementing or applying the law, and, Senate Bill 101 (Kruse, Schneider, Steele) in the State of Indiana, prohibits an applicant, employee, or former employee from pursuing certain causes of action against a private employer, and

**WHEREAS**, Senate Bill 101 (Kruse, Schneider, Steele) in the State of Indiana, has caused many businesses, from Angie's List to Apple, to voice their disappointment with the passing of the bill, and that so many more people have called for a boycott of Indiana as a response, and the governors of Connecticut and Washington both announced that they would be cutting state-funded travel to Indiana, and

**WHEREAS**, Opposing the new Indiana law, and any other similar law, which enables discrimination against oppressed persons and groups, including, but not limited to, opposing any law allowing discrimination against lesbian, gay, bisexual and transgender people, and against religious minorities, and affirming that the right of all to practice our own religions, does not require allowing discrimination against others, in the true spirit of leadership and direction, so be it

**RESOLVED:** That the Council of the City of Oakland proclaims its opposition for Senate Bill 101 (Kruse, Schneider, Steele) in the State of Indiana, and authorizes the City Administrator to instruct the Legislative Lobbyist for the City to oppose the passage of Senate Bill 101.

IN COUNCIL, OAKLAND, CALIFORNIA, PASSED BY THE FOLLOWING VOTE:  
BROOKS, GALLO, KAPLAN, REID, KALB, CAMPBELL- WASHINGTON, GUILLEN, AND  
PRESIDENT GIBSON MCELHANEY

NOES  
AYES  
ABSTAIN

ATTEST:

\_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council of  
the City of Oakland, California