

IN THE SENATE

SENATE BILL NO. 1129

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO ACTIONS IN PARTICULAR CASES; AMENDING TITLE 6, IDAHO CODE, BY THE
2 ADDITION OF A NEW CHAPTER 37, TITLE 6, IDAHO CODE, TO PROVIDE LEGISLA-
3 TIVE INTENT, TO DEFINE TERMS, TO PROVIDE FOR A CAUSE OF ACTION FOR DEPRI-
4 VATION OF RELIGIOUS LIBERTY OR FREEDOM OF SPEECH BY A GOVERNMENTAL EN-
5 TITY, TO PROVIDE FOR ATTORNEY'S FEES AND COSTS, AND TO PROVIDE FOR A LIM-
6 ITATION ON DAMAGES; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFEC-
7 TIVE DATE.
8

9 Be It Enacted by the Legislature of the State of Idaho:

10 SECTION 1. That Title 6, Idaho Code, be, and the same is hereby amended
11 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
12 ter 37, Title 6, Idaho Code, and to read as follows:

13 CHAPTER 37

14 DEPRIVATION OF RELIGIOUS LIBERTY OR FREEDOM OF SPEECH BY A GOVERNMENTAL
15 ENTITY

16 6-3701. LEGISLATIVE INTENT. The legislature hereby finds, deter-
17 mines, and declares that while section 4, article I of the constitution of
18 the state of Idaho provides for the guarantee of religious liberty and sec-
19 tion 9, article I of the constitution of the state of Idaho provides for the
20 guarantee of freedom of speech, current law does not provide a mechanism to
21 enforce these rights against governmental entities.

22 6-3702. DEFINITIONS. In addition to the terms defined in chapter 9,
23 title 6, Idaho Code, which shall apply to this chapter, "substantially bur-
24 den" means to inhibit or curtail religiously motivated practices.

25 6-3703. DEPRIVATION OF RELIGIOUS LIBERTY OR FREEDOM OF SPEECH -- RE-
26 DRESS. (1) Except as provided in subsection (2) of this section, any govern-
27 mental entity or employee who subjects, or causes to be subjected, any citi-
28 zen of this state or other person within the jurisdiction thereof to the de-
29 privation of any rights, privileges, or immunities secured by section 4, ar-
30 ticle I of the constitution of the state of Idaho, providing for the guar-
31 antee of religious liberty, or section 9, article I of the constitution of
32 the state of Idaho, providing for the guarantee of freedom of speech, shall
33 be liable to such injured person in a civil action or other proper proceed-
34 ing for redress brought by such injured person, as provided in the Idaho tort
35 claims act, chapter 9, title 6, Idaho Code, and in this chapter.

36 (2) Any governmental entity or employee may substantially burden a
37 person's exercise of religion only if the governmental entity or employee
38 demonstrates that application of the burden to the person is both:

39 (a) Essential to further a compelling governmental interest; and

1 (b) The least restrictive means of furthering such compelling govern-
2 mental interest.

3 (3) The provisions contained in this chapter shall be in addition to
4 any other provision of chapter 9, title 6, Idaho Code, or any other federal
5 or state law and shall not be interpreted as denying any person the right of
6 seeking other proper remedies provided thereunder.

7 (4) Nothing in this section shall prevent a governing board from adopt-
8 ing reasonable policies and rules to regulate conduct at public meetings and
9 public hearings, including but not limited to a person's free exercise of
10 speech or religiously motivated practices within the context of the public
11 meeting or public hearing.

12 6-3704. AWARD OF ATTORNEY'S FEES AND COSTS. In any action or proceed-
13 ing to enforce a provision of section 4 or section 9, article I of the consti-
14 tution of the state of Idaho pursuant to this chapter, the court, in its dis-
15 cretion, may allow the prevailing party to pay reasonable attorney's fees up
16 to twenty-five thousand dollars (\$25,000) as part of the costs, except that
17 in any action brought against a judicial officer for an act or omission taken
18 in such officer's judicial capacity, such officer shall not be held liable
19 for any costs, including attorney's fees, unless such action was clearly in
20 excess of such officer's jurisdiction. In no case shall the award of such at-
21 torney's fees or any combination or total of such awards, together with other
22 costs and money judgment or judgments for damages exceed, in the aggregate,
23 the limitations on liability fixed by section 6-926, Idaho Code.

24 6-3705. LIMITATION ON DAMAGES. In no action seeking recovery of dam-
25 ages under section 4 or section 9, article I of the constitution of the state
26 of Idaho pursuant to this chapter, shall a judgment for noneconomic damages
27 be entered for a claimant exceeding the maximum amount of twenty thousand
28 dollars (\$20,000).

29 SECTION 2. An emergency existing therefor, which emergency is hereby
30 declared to exist, this act shall be in full force and effect on and after
31 July 1, 2025.