

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
91st General Assembly  
Regular Session, 2017

# A Bill

HOUSE BILL 2232

By: Representative Ballinger

## For An Act To Be Entitled

AN ACT TO CREATE THE GOVERNMENT NONDISCRIMINATION ACT  
OF 2017; CONCERNING RELIGIOUS LIBERTY; AND FOR OTHER  
PURPOSES.

### Subtitle

TO CREATE THE GOVERNMENT  
NONDISCRIMINATION ACT OF 2017; AND  
CONCERNING RELIGIOUS LIBERTY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. Legislative findings.

The General Assembly finds the following:

(1) Leading legal scholars concur that conflicts between same-sex marriage and religious liberty are real and should be addressed through legislation;

(2) Arkansas citizens hold a wide range of reasonable views on the issue of same-sex marriage and maintaining the state's commitment to religious freedom when faced with these good-faith differences of opinion is vital;

(3)(A) The United States has a long and honorable history of respecting and accommodating the religious liberty of its people, dating from before the American Revolution to the present.

(B) For example, laws have protected the right of Quakers and other pacifists to serve the nation as noncombatants in times of war, the right of Jews and other observers of the Sabbath to dedicate their time to God and family instead of work on the Sabbath, and the right of religious



organizations to provide charitable services to the public consistent with their beliefs by hiring individuals who share the same beliefs;

(4)(A) Protecting religious freedom from government intrusion is a government interest of the highest order.

(B) Legislation advances this interest by remedying, deterring, and preventing government interference with religious exercise in a way that complements the protections mandated by the state and federal constitutions;

(5)(A) Protecting the religious freedom of faith-based charities and educational institutions serves Arkansas's compelling interest in providing essential social services to the poor and educational opportunities to the next generation.

(B) This is also consistent with Arkansas's long tradition of cooperating with religious organizations when providing these critical services;

(6) Laws and government actions that protect the free exercise of religious beliefs and moral convictions about marriage will encourage private citizens and institutions to demonstrate tolerance for those beliefs and convictions and therefore contribute to a more respectful, diverse, and peaceful society; and

(7) In a pluralistic society, in which people of good faith hold more than one view of marriage, it is possible for the government to recognize same-sex marriage without forcing persons with sincerely held religious beliefs or moral convictions to conform.

SECTION 2. Arkansas Code Title 16, Chapter 123, is amended to add an additional subchapter to read as follows:

Subchapter 5 – Government Nondiscrimination Act

16-123-501. Title.

This subchapter may be cited as the "Government Nondiscrimination Act of 2017".

16-123-502. Definitions.

As used in this subchapter:

(1)(A) "Person" means any individual or any corporation,

company, sole proprietorship, partnership, society, club, organization, or association.

(B) "Person" does not mean a:

(i) State employee acting within the scope and duty of his or her employment; or

(ii) A hospital, clinic, hospice, nursing home, or other medical or residential custodial facility with respect to:

(a) Visitation;

(b) Recognition of a designated representative for health care decision making; or

(c) Refusal to provide emergency medical treatment necessary to cure an illness or injury;

(2) "State" means a:

(A) Department, commission, board, agency, or agent of the state;

(B) Political subdivision of the state or a department, commission, board, agency, or agent of a political subdivision of the state; and

(C) Individual or entity acting under color of state law; and

(3) "State benefit program" means:

(A) A program administered or funded by the state or by an agent on behalf of the state; or

(B) Providing funds, cash, payments, grants, contracts, loans, or in-kind assistance.

16-123-503. Protection of the free exercise of religious beliefs and moral convictions.

(a) Notwithstanding any statute, rule, regulation, or court order to the contrary, the state shall not take any discriminatory action against a person, wholly or partially, on the basis that the person believes, speaks, or acts in accordance with a sincerely held religious belief or moral conviction that:

(1) Marriage is or should be recognized as the union of one (1) man and one (1) woman; or

(2) The terms "male" and "female", or "man" and "woman", refer

to a person's immutable biological sex as objectively determined by anatomy and genetics by time of birth.

(b) As used in subsection (a) of this section, "discriminatory action" means an action taken by the state to:

(1)(A) Alter the state tax treatment of, or cause a tax, penalty, or payment to be assessed against, or deny, delay, revoke, or otherwise make unavailable an exemption from taxation of a person described under subsection (a) of this section.

(B) To the extent that the state relies on a determination of an agency or commission of the United States Government when deciding the state's tax treatment of a person, the basis for the United States Government's determination shall be imputed to the state;

(2) Disallow, deny, or otherwise make unavailable a deduction for state tax purposes of any charitable contribution made to or by a person described under subsection (a) of this section;

(3) Withhold, reduce, exclude, terminate, materially alter the terms or conditions of, or otherwise make unavailable or deny a state grant, contract, subcontract, cooperative agreement, guarantee, loan, scholarship, license, certification, accreditation, employment, or other similar benefit, position, or status from or to a person described under subsection (a) of this section;

(4) Withhold, reduce, exclude, terminate, materially alter the terms or conditions of, or otherwise make unavailable or deny any entitlement or benefit under a state benefit program, including admission to, equal treatment in, or eligibility for a degree from an educational program, from or to a person described under subsection (a) of this section; or

(5) Withhold, reduce, exclude, terminate or otherwise make unavailable or deny access or an entitlement to state property, facilities, educational institutions, speech fora, including traditional, limited, and nonpublic fora, or charitable fundraising campaigns from or to a person described under subsection (a) of this section.

(c) The state shall consider accredited, licensed, or certified a person that would otherwise be accredited, licensed, or certified for any purposes under state law but for a determination against the person, wholly or partially, on the basis that the person believes, speaks, or acts in accordance with a sincerely held religious belief or moral conviction

described in subsection (a) of this section.

16-123-504. Judicial relief.

(a)(1) A person may assert a violation of this subchapter as a claim or defense in a judicial or administrative proceeding and obtain injunctive relief, declaratory relief, or any other appropriate nonmonetary relief.

(2) Standing to assert a claim or defense under this section is governed by the general rules of standing under the laws of the state.

(b) Notwithstanding any other provision of law, an action under this section may be commenced and relief may be granted in a court having jurisdiction without regard to whether the person commencing the action has sought or exhausted available administrative remedies.

(c) In an action or proceeding to enforce a provision of this subchapter, a prevailing party who establishes a violation of this subchapter is entitled to recover reasonable attorneys' fees and costs.

(d) This section does not deny, impair, or otherwise affect a right or authority of the Attorney General or the state, acting under any law other than this section, to institute or intervene in any proceeding.

16-123-505. Rules of construction.

(a) The protection of free exercise of religious beliefs and moral convictions afforded under this subchapter are in addition to the protections provided under the Arkansas Constitution, the United States Constitution, federal law, or state law.

(b) This subchapter does not:

(1) Preempt or repeal a state or local law that is equally or more protective of free exercise of religious beliefs or moral convictions;

(2) Narrow the meaning or application of any state or local law protecting free exercise of religious beliefs or moral convictions; or

(3) Prevent the state from providing, either directly or through an individual or entity not seeking protection under this subchapter, a benefit or service authorized under state law.