

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

State of Arkansas
94th General Assembly
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As Engrossed: H3/28/23
A Bill

HOUSE BILL 1615

By: Representatives Lundstrum, Bentley, C. Cooper, Crawford, Gazaway, Long, Milligan, Richmond,
Underwood, Unger, Watson

By: Senators G. Stubblefield, A. Clark

For An Act To Be Entitled

AN ACT TO CREATE THE CONSCIENCE PROTECTION ACT; TO
AMEND THE RELIGIOUS FREEDOM RESTORATION ACT; AND FOR
OTHER PURPOSES.

Subtitle

TO CREATE THE CONSCIENCE PROTECTION ACT;
AND TO AMEND THE RELIGIOUS FREEDOM
RESTORATION ACT.

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

SECTION 1. DO NOT CODIFY. Title.

This act shall be known and may be cited as the "Conscience Protection Act".

SECTION 2. Arkansas Code § 16-123-403 is amended to read as follows:
16-123-403. Definitions.

As used in this subchapter:

(1) "Compelling governmental interest" means a governmental interest of the highest order as long-recognized in the history and traditions of this state, that is necessary to advance a vital interest and cannot otherwise be achieved without burdening the exercise of religion;

(2) "Demonstrates" means meets the burdens of going forward with the evidence and of persuasion;

~~(2)(3)(A)~~ "Exercise of religion" means religious exercise the



practice or observance of religion.

(B) "Exercise of religion" includes without limitation an action that is motivated by a sincerely held religious belief, whether or not the exercise is compulsory or central to a larger system of religious belief;

~~(3)~~(4) "Government" includes a branch, department, agency, instrumentality, political subdivision, official, or other person acting under color of state law or using any instrumentality of the state to enforce a law, regulation, rule, or policy of the government; and

(5) "Person" means an individual, association, partnership, corporation, church, religious institution, estate, trust, foundation, or other legal entity;

~~(4)~~(6) "State law" includes without limitation a law of a political subdivision, an ordinance, rule, regulation, or policy, whether statutory or otherwise, or other action by the state or any political subdivision of the state or by any public official authorized by law in the state; and

(7)(A) "Substantially burden" means any action that directly or indirectly constrains, inhibits, curtails, or denies the exercise of religion by any person or compels any action contrary to a person's exercise of religion.

(B) "Substantially burden" includes without limitation withholding benefits, assessing criminal, civil, or administrative penalties or damages, or exclusion from governmental programs or access to governmental facilities.

SECTION 3. Arkansas Code § 16-123-404 is amended to read as follows:

16-123-404. Free exercise of religion protected.

(a) A government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, ~~except that a government may substantially burden a person's exercise of religion only if it demonstrates~~ unless it is demonstrated that application of the burden to the person in this particular instance is:

(1) ~~In furtherance of~~ Essential to further a compelling governmental interest; and

(2) The least restrictive means of furthering that compelling governmental interest.

(b)(1) A person whose religious exercise has been burdened, or will be burdened, in violation of this section may assert that violation or impending violation as a claim or defense in a judicial or administrative proceeding, regardless of whether the government is a party to the proceeding, and obtain appropriate relief against a government, including declaratory relief, injunctive relief, compensatory damages, and reasonable attorneys' fees and costs.

(2) Standing to assert a claim or defense under this section is governed by the general rules of standing under statute, the Arkansas Rules of Criminal Procedure, the Arkansas Rules of Civil Procedure, or any court holding from the state's appellate courts.

(c) An action under this subchapter may be commenced and relief may be granted without regard to whether the person commencing the action has sought or exhausted all available administrative remedies.

SECTION 4. Arkansas Code § 16-123-406, concerning interpretation under the Religious Freedom Restoration Act, is amended to add an additional subsection to read as follows:

(d) This subchapter shall be construed in favor of a broad protection of free exercise of religious beliefs, to the maximum extent permitted by the Arkansas Constitution and the United States Constitution.

SECTION 5. Arkansas Code Title 16, Chapter, 123, is amended to add an additional subchapter to read as follows:

Subchapter 5. Religious Nondiscrimination.

16-123-501. Legislative intent.

It is the intent of the General Assembly to prohibit government discrimination against religious organizations based upon the religious organizations' religious identity or conduct.

16-123-502. Definitions.

As used in this subchapter:

(1) "Discriminatory action" means any action taken by state government to:

(A) Alter in any way the tax treatment of, or cause any

tax, penalty, or payment to be assessed against, or deny, delay, revoke, or otherwise make unavailable an exemption from taxation of any person;

(B) Disallow, deny, or otherwise make unavailable a deduction for state tax purposes of any charitable contribution made to or by any person;

(C) Withhold, reduce, exclude, terminate, materially alter the terms or conditions of, or otherwise make unavailable, including by inserting contractual provisions that contradict a person's sincerely held religious beliefs, or deny any state grant, contract, subcontract, cooperative agreement, guarantee, loan, scholarship, or other similar benefit from or to such person;

(D) 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 from or to a person;

(E) Impose, levy, or assess a monetary fine, fee, penalty, damages award, or injunction upon a person;

(F) Withhold, reduce, exclude, terminate, materially alter the terms or conditions of, or otherwise make unavailable or deny any license, certification, accreditation, custody award or agreement, diploma, grade, recognition, or other similar benefit, position, or status from or to any person; or

(G) Refuse to hire or promote, force to resign, fire, demote, sanction, discipline, adversely alter the terms or conditions of employment, or retaliate or take other adverse employment action against a person employed or commissioned by state government;

(2) "State government" means:

(A) The state or a political subdivision of the state;

(B) An agency of the state or of a political subdivision of the state, including without limitation a department, bureau, board, commission, council, court, or public institution of higher education; and

(C) Any person acting under color of state law or using any government instrumentality to enforce a law, regulation, rule, or policy of government;

(3) "Person" means:

(A) An individual, in his or her personal capacity regardless of religious affiliation or lack thereof, or in his or her

capacity as a member, officer, owner, volunteer, employee, manager, religious leader, clergy, or minister of any religious organization;

(B) A religious organization;

(C) A sole proprietorship, partnership, trust, closely held corporation, or other closely held entity operating with a sincerely held religious belief, including a belief about biological sex or marriage;
or

(D) Cooperatives, ventures, or enterprises comprised of two (2) or more individuals or entities described in *this subdivision* (3) regardless of nonprofit or for-profit status;

(4) "Religious organization" means:

(A) A house of worship, including without limitation a church, synagogue, shrine, mosque, or temple;

(B) A religious group, corporation, association, school or educational institution, ministry, order, society, or similar entity, regardless of whether it is integrated or affiliated with a house of worship;
or

(C) An officer, owner, employee, manager, religious leader, clergy, or minister of an entity or organization described in *this subdivision* (4) and

(5) "State benefit program" means any program administered, controlled, or funded by the state government, that provides cash, payments, grants, contracts, loans, or in-kind assistance.

16-123-503. Religious discrimination prohibited.

(a) The state government shall not take any discriminatory action against a religious organization on the basis of the religious identity or status of the religious organization, including the religious organization maintaining policies and procedures in accordance with a sincerely held religious belief, or the religious organization engaging in religious conduct protected by the First Amendment to the United States Constitution or the Arkansas Constitution unless it is demonstrated that the action against the religious organization in this particular instance is:

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

(2) The least restrictive means of furthering that compelling governmental interest.

(b) The state government shall consider any person for a contract, grant, or agreement that would otherwise be considered for a contract, grant, or agreement but for a determination against the person wholly or partially on the basis that the person maintains policies and procedures, or acts in accordance with, a sincerely held religious belief unless refusal of consideration of the person in this particular instance is:

- (1) Essential to further a compelling governmental interest; and
- (2) The least restrictive means of furthering that compelling governmental interest.

16-123-504. Remedies.

(a) A person may assert a violation of this subchapter as a claim against the state government in any judicial or administrative proceeding or as a defense in any judicial or administrative proceeding without regard to whether the judicial or administrative proceeding is brought by or in the name of the state government, any private person, or any other party.

(b) An action under this subchapter may be commenced, and relief may be granted, in a court of the state without regard to whether the person commencing the action has sought or exhausted available administrative remedies.

(c)(1) A person who successfully asserts a claim or defense under this subchapter may recover declaratory relief, injunctive relief, reasonable attorneys' fees and costs, and any other appropriate relief.

(2) Only declaratory relief and injunctive relief shall be available against a private person not acting under color of state law upon a successful assertion of a defense under this subchapter.

(d) A person may not bring an action to assert a claim under this subchapter later than two (2) years after the date that the person knew or should have known that a discriminatory action was taken against that person.

(e) For the provision of equitable relief, including reasonable attorney's fees and costs, sovereign, governmental, and qualified immunities to suit and from liability are waived and abolished to the extent of liability created by this subchapter.

16-123-505. Rules of construction.

(a) This subchapter shall be construed in favor of a broad protection

of free exercise of religious beliefs, to the maximum extent permitted by the Arkansas Constitution and the United States Constitution.

(b)(1) The protection of free exercise of religious beliefs and moral convictions afforded by this subchapter are in addition to the protections provided under federal law, state law, the Arkansas Constitution, and the United States Constitution.

(2) This subchapter does not:

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

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

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

(c) This subchapter applies to, and in cases of conflict supersedes, each:

(1) Statute of the state that impinges upon the free exercise of religious beliefs protected by this subchapter, unless a conflicting statute is expressly made exempt from the application of this subchapter; and

(2) Any ordinance, rule, regulation, order, opinion, decision, practice, or other exercise of state government's authority that impinges upon the free exercise of religious beliefs protected by this subchapter.

(d) If any provision of this subchapter or any application of a provision of this subchapter to any particular person or circumstance is held to be invalid under law, the remainder of this subchapter and the application of this subchapter's provisions to any other person or circumstance shall not be affected.

/s/Lundstrum