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4

As Engrossed: H3/28/23

A Bill

HOUSE BILL 1615

5 By: Representatives Lundstrum, Bentley, C. Cooper, Crawford, Gazaway, Long, Milligan, Richmond,
6 Underwood, Unger, Watson
7 By: Senators G. Stubblefield, A. Clark
8

For An Act To Be Entitled

9
10 AN ACT TO CREATE THE CONSCIENCE PROTECTION ACT; TO
11 AMEND THE RELIGIOUS FREEDOM RESTORATION ACT; AND FOR
12 OTHER PURPOSES.
13
14

Subtitle

15
16 TO CREATE THE CONSCIENCE PROTECTION ACT;
17 AND TO AMEND THE RELIGIOUS FREEDOM
18 RESTORATION ACT.
19
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 SECTION 1. DO NOT CODIFY. Title.

24 This act shall be known and may be cited as the "Conscience Protection
25 Act".
26

27 SECTION 2. Arkansas Code § 16-123-403 is amended to read as follows:
28 16-123-403. Definitions.

29 As used in this subchapter:

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

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

36 ~~(2)(3)(A)~~ "Exercise of religion" means ~~religious exercise~~ the



1 practice or observance of religion.

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

5 ~~(3)~~(4) "Government" includes a branch, department, agency,
6 instrumentality, political subdivision, official, or other person acting
7 under color of state law or using any instrumentality of the state to enforce
8 a law, regulation, rule, or policy of the government; and

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

12 ~~(4)~~(6) "State law" includes without limitation a law of a
13 political subdivision, an ordinance, rule, regulation, or policy, whether
14 statutory or otherwise, or other action by the state or any political
15 subdivision of the state or by any public official authorized by law in the
16 state; and

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

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

25
26 SECTION 3. Arkansas Code § 16-123-404 is amended to read as follows:

27 16-123-404. Free exercise of religion protected.

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

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

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

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

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

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

15
16 SECTION 4. Arkansas Code § 16-123-406, concerning interpretation under
17 the Religious Freedom Restoration Act, is amended to add an additional
18 subsection to read as follows:

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

22
23 SECTION 5. Arkansas Code Title 16, Chapter, 123, is amended to add an
24 additional subchapter to read as follows:

25 Subchapter 5. Religious Nondiscrimination.

26
27 16-123-501. Legislative intent.

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

31
32 16-123-502. Definitions.

33 As used in this subchapter:

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

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

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

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

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

12 (D) Withhold, reduce, exclude, terminate, materially alter
13 the terms or conditions of, or otherwise make unavailable or deny any
14 entitlement or benefit under a state benefit program from or to a person;

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

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

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

26 (2) "State government" means:

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

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

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

34 (3) "Person" means:

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

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

3 (B) A religious organization;

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

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

11 (4) "Religious organization" means:

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

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

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

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

24
25 16-123-503. Religious discrimination prohibited.

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

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

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

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

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

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

10
11 16-123-504. Remedies.

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

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

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

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

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

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

34
35 16-123-505. Rules of construction.

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

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

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

7 (2) This subchapter does not:

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

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

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

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

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

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

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

29
30 */s/Lundstrum*

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33 **APPROVED: 4/12/23**