

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

A Bill

HOUSE BILL 1211

5 By: Representatives Bentley, Barker, Brown, Cloud, Evans, Furman, Gazaway, Lundstrum, McClure,
6 Milligan, Pilkington, Ray, Rye, B. Smith, Underwood

7 By: Senators K. Hammer, Beckham, T. Garner, Gilmore, Hester, Hill, Irvin, B. Johnson, D. Sullivan
8

For An Act To Be Entitled

9
10 AN ACT TO REQUIRE THAT RELIGIOUS ORGANIZATIONS ARE
11 PROTECTED DURING AN EMERGENCY; TO DECLARE AN
12 EMERGENCY; AND FOR OTHER PURPOSES.
13
14

Subtitle

15
16 TO REQUIRE THAT RELIGIOUS ORGANIZATIONS
17 ARE PROTECTED DURING AN EMERGENCY; TO
18 DECLARE AN EMERGENCY.
19
20

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

23 SECTION 1. DO NOT CODIFY. LEGISLATIVE INTENT.

24 The General Assembly finds that:

25 (1) Religion provides extensive benefits to the country by
26 meeting the spiritual needs of the populace and by supporting vital social
27 needs, including without limitation social services, health care, and
28 economic activity;

29 (2) Religion contributes one trillion two hundred billion
30 dollars (\$1,200,000,000,000) annually to the nation's economy and society,
31 including without limitation charitable activities, health care, educational
32 services, volunteer activities to assist the poor and individuals struggling
33 with addiction or mental illness, and job training programs;

34 (3) In the article "The Socio-economic Contribution of Religion
35 to American Society: An Empirical Analysis", researchers found that
36 "Congregations, businesses inspired by faith, faith-based charities and



1 institutions not only build communities and families but also strengthen our
2 economy in every town and city of the country.";

3 (4) "[E]ven in a pandemic, the Constitution cannot be put away
4 and forgotten. The restrictions..., by effectively barring many from
5 attending religious services, strike at the very heart of the First
6 Amendment's guarantee of religious liberty." Roman Catholic Diocese v.
7 Cuomo, 2020 U.S. LEXIS 5708, 208 L. Ed. 2d 206, S. Ct. , 2020 WL
8 6948354 (per curiam);

9 (5) "The only explanation for treating religious places
10 differently seems to be a judgment that what happens there just isn't as
11 'essential' as what happens in secular spaces...That is exactly the kind of
12 discrimination the First Amendment forbids." Id. (Gorsuch, J., concurring);

13 (6) "The Constitution forbids laws that prohibit the free
14 exercise of religion. That guarantee protects not just the right to be a
15 religious person, holding beliefs inwardly and secretly; it also protects the
16 right to act on those beliefs outwardly and publicly." Espinoza v. Montana
17 Department of Revenue, 140 S. Ct. 2246, 2276 (2020) (Gorsuch, J., concurring);

18 (7) The United States Supreme Court has "long recognized the
19 importance of protecting religious actions, not just religious status." Id.;

20 (8) "[T]he First Amendment protects the 'freedom to act' as well
21 as the 'freedom to believe.'" Id. (quoting Cantwell v. Connecticut, 310 U.S.
22 296, 303 (1940));

23 (9) The Free Exercise Clause of the First Amendment of the United
24 States Constitution "protect[s] religious observers against unequal treatment"
25 under the law. Church of the Lukumi Babalu Aye v. City of Hialeah, 508 U.S.
26 520, 542 (1993) (quoting Hobbie v. Unemployment Appeals Comm'n of Fla., 480
27 U.S. 136, 148 (Stevens, J., concurring));

28 (10) "What benefits the government decides to give, whether
29 meager or munificent, it must give without discrimination against religious
30 conduct." Espinoza at 2277 (Gorsuch, J., concurring);

31 (11) "Where the state conditions receipt of an important benefit
32 upon conduct proscribed by a religious faith, or where it denies such a
33 benefit because of conduct mandated by religious belief, thereby putting
34 substantial pressure on an adherent to modify his behavior and to violate his
35 beliefs, a burden upon religion exists." Thomas v. Review Bd. of Ind.
36 Employment Security Div., 450 U.S. 707, 717-18 (1981);

1 (12) “The First Amendment does not allow our leaders to decide
 2 which rights to honor and which to ignore.” Spell v. Edwards, 962 F.3d 175,
 3 183 (5th Cir. 2020) (Ho, J., concurring);

4 (13) “Government does not have carte blanche, even in a pandemic,
 5 to pick and choose which First Amendment rights are ‘open’ and which remain
 6 ‘closed’.” Id. at 181;

7 (14) Government officials may not prefer the transmission of
 8 secular views over religious ones. Rosenberger v. Rector & Visitors of Univ.
 9 of Va., 515 U.S. 819, 830-31 (1995); and

10 (15) The government may not permit “life-sustaining” operations
 11 to continue during a state of emergency without also permitting “soul-
 12 sustaining” operations such as religious services to continue, especially when
 13 the religious services “adhere to all the public health guidelines required of
 14 the other services.” Roberts v. Neace, 958 F.3d 409, 414 (6th Cir. 2020).

15
 16 SECTION 2. Arkansas Code Title 12, Chapter 75, Subchapter 1, is
 17 amended to add an additional section to read as follows:

18 12-75-134. Religious organization – Disaster emergency.

19 (a) As used in this section:

20 (1) “Discriminatory action” means an action taken by the Governor
 21 to:

22 (A) Alter the tax treatment of, or cause any tax, penalty,
 23 or payment to be assessed against, or deny, delay, revoke, or otherwise make
 24 unavailable an exemption from taxation;

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

28 (C) Impose, levy, or assess a monetary fine, fee, civil or
 29 criminal penalty, damages award, or injunction; or

30 (D) Withhold, reduce, exclude, terminate, materially alter
 31 the terms or conditions of, or otherwise make unavailable or deny any:

32 (i) State grant, contract, subcontract, cooperative
 33 agreement, guarantee, loan, scholarship, or other similar benefit from or to a
 34 religious organization;

35 (ii) Entitlement or benefit under a state benefit
 36 program from or to a religious organization; or

1 (iii) License, certification, accreditation,
2 recognition, or other similar benefit, position, or status from or to a
3 religious organization;

4 (2) "Governor" includes:

5 (A) A state governmental entity or official acting under
6 this subchapter; and

7 (B) A local governmental entity or official acting under
8 this subchapter;

9 (3) "Religious organization" means:

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

12 (B) A religious group, corporation, association,
13 educational institution, ministry, order, society, or similar entity, without
14 regard to whether the entity is integrated or affiliated with a house of
15 worship; or

16 (C) An officer, owner, employee, manager, religious leader,
17 clergy, or minister of an entity or organization under this subdivision
18 (a)(3); and

19 (4) "Religious service" means a meeting, gathering, or assembly
20 of two (2) or more persons organized by a religious organization for the
21 purpose of worship, teaching, training, providing educational services,
22 conducting religious rituals, or involving the exercising of the right to
23 practice religion.

24 (b)(1) The Governor shall not prohibit or limit a religious
25 organization from continuing to operate or engage in religious services during
26 a disaster emergency under this subchapter.

27 (2)(A) This section does not prevent the Governor from requiring
28 religious organizations to comply with neutral health, safety, or occupancy
29 requirements issued under state or federal law that are applicable to all
30 organizations and businesses.

31 (B) The Governor shall not enforce a health, safety, or
32 occupancy requirement under subdivision (b)(2)(A) of this section that
33 imposes a substantial burden on a religious organization unless the Governor
34 demonstrates that applying the requirement to the religious organization is
35 essential to further a compelling governmental interest and is the least
36 restrictive means of furthering the compelling governmental interest.

1 (3) The Governor shall not take discriminatory action under this
 2 subchapter against a religious organization wholly or partially on the basis
 3 that the religious organization:

4 (A) Is religious;

5 (B) Operates or seeks to operate during a disaster
 6 emergency under this subchapter; or

7 (C) Engages in the exercising of the right to practice
 8 religion protected by the First Amendment to the United States Constitution.

9 (c)(1) A religious organization may assert a violation of this section
 10 as a claim against the Governor in a judicial or administrative proceeding or
 11 as a defense in a judicial or administrative proceeding.

12 (2) An action under this section may be commenced and relief may
 13 be granted in a judicial proceeding without regard to whether the religious
 14 organization commencing the action has sought or exhausted all administrative
 15 remedies.

16 (3) A religious organization that successfully asserts a claim or
 17 defense under this section may recover:

18 (A) Declaratory relief;

19 (B) Injunctive relief to prevent or remedy a violation or
 20 the effect of a violation of this section;

21 (C) Compensatory damages for pecuniary and non-pecuniary
 22 losses;

23 (D) Reasonable attorney’s fees and costs; and

24 (E) Any other appropriate relief.

25 (d) Sovereign, governmental, and qualified immunities to suit and from
 26 liability are waived and abolished to the extent allowed under law.

27 (e) This section shall be construed in favor of a broad protection of
 28 free exercise of religion.

29 (f)(1) The protection of free exercise of religion afforded under this
 30 section is in addition to the protections provided under federal law, state
 31 law, the United States Constitution, and the Arkansas Constitution.

32 (2) This section does not preempt or repeal any state or local
 33 law that is equally or more protective of free exercise of religion.

34 (3) This section does not narrow the meaning or application of
 35 any state or local law protecting the free exercise of religion.

36 (g)(1) This section applies to and in cases of conflict supersedes any

1 statute that infringes upon the free exercise of religion protected by this
 2 section, unless a conflicting statute is expressly made exempt from the
 3 application of this section.

4 (2) This section applies to and in cases of conflict supersedes
 5 any ordinance, rule, regulation, order, opinion, decision, practice, or other
 6 exercise of the Governor’s authority that infringes upon the free exercise of
 7 religion protected under this section.

8 (h) If a provision or application of this section is held to be
 9 invalid under law, the remainder and the application of the section is not
 10 affected.

11 (i) A religious organization shall bring an action to assert a claim
 12 under this section no later than two (2) years after the date the religious
 13 organization knew or should have known that a discriminatory action or other
 14 violation of this section was taken against the religious organization.

15
 16 SECTION 3. Arkansas Code Title 20, Chapter 7, Subchapter 1, is amended
 17 to add an additional section to read as follows:

18 20-7-141. Prevention of diseases – Religious organizations.

19 (a) As used in this section:

20 (1) “Discriminatory action” means an action taken by the State
 21 Board of Health to:

22 (A) Alter the tax treatment of, or cause any tax, penalty,
 23 or payment to be assessed against, or deny, delay, revoke, or otherwise make
 24 unavailable an exemption from taxation;

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

28 (C) Impose, levy, or assess a monetary fine, fee, civil or
 29 criminal penalty, damages award, or injunction; or

30 (D) Withhold, reduce, exclude, terminate, materially alter
 31 the terms or conditions of, or otherwise make unavailable or deny any:

32 (i) State grant, contract, subcontract, cooperative
 33 agreement, guarantee, loan, scholarship, or other similar benefit from or to a
 34 religious organization;

35 (ii) Entitlement or benefit under a state benefit
 36 program from or to a religious organization; or

1 (iii) License, certification, accreditation,
2 recognition, or other similar benefit, position, or status from or to a
3 religious organization;

4 (2) "Religious organization" means:

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

7 (B) A religious group, corporation, association,
8 educational institution, ministry, order, society, or similar entity, without
9 regard to whether the entity is integrated or affiliated with a house of
10 worship; or

11 (C) An officer, owner, employee, manager, religious leader,
12 clergy, or minister of an entity or organization under this subdivision
13 (a)(2); and

14 (3) "Religious service" means a meeting, gathering, or assembly
15 of two (2) or more persons organized by a religious organization for the
16 purpose of worship, teaching, training, providing educational services,
17 conducting religious rituals, or involving the exercising of the right to
18 practice religion.

19 (b)(1) The board shall not prohibit or limit a religious organization
20 from continuing to operate or engage in religious services during a disaster
21 emergency under the Arkansas Emergency Services Act of 1973, § 12-75-101 et
22 seq.

23 (2)(A) This section does not prevent the board from requiring
24 religious organizations to comply with neutral health, safety, or occupancy
25 requirements issued under state or federal law that are applicable to all
26 organizations and businesses.

27 (B) The board shall not enforce a health, safety, or
28 occupancy requirement under subdivision (b)(2)(A) of this section that
29 imposes a substantial burden on a religious organization unless the board
30 demonstrates that applying the requirement to the religious organization is
31 essential to further a compelling governmental interest and is the least
32 restrictive means of furthering the compelling governmental interest.

33 (3) The board shall not take discriminatory action under this
34 subchapter against a religious organization wholly or partially on the basis
35 that the religious organization:

36 (A) Is religious;

1 (B) Operates or seeks to operate during a disaster
2 emergency; or

3 (C) Engages in the exercising of the right to practice
4 religion protected by the First Amendment to the United States Constitution.

5 (c)(1) A religious organization may assert a violation of this section
6 as a claim against the board in a judicial or administrative proceeding or as
7 a defense in a judicial or administrative proceeding.

8 (2) An action under this section may be commenced and relief may
9 be granted in a judicial proceeding without regard to whether the religious
10 organization commencing the action has sought or exhausted all administrative
11 remedies.

12 (3) A religious organization that successfully asserts a claim or
13 defense under this section may recover:

14 (A) Declaratory relief;

15 (B) Injunctive relief to prevent or remedy a violation or
16 the effect of a violation of this section;

17 (C) Compensatory damages for pecuniary and non-pecuniary
18 losses;

19 (D) Reasonable attorney's fees and costs; and

20 (E) Any other appropriate relief.

21 (d) Sovereign, governmental, and qualified immunities to suit and from
22 liability are waived and abolished to the extent allowed under law.

23 (e) This section shall be construed in favor of a broad protection of
24 free exercise of religion.

25 (f)(1) The protection of free exercise of religion afforded under this
26 section is in addition to the protections provided under federal law, state
27 law, the United States Constitution, and the Arkansas Constitution.

28 (2) This section does not preempt or repeal any state or local
29 law that is equally or more protective of free exercise of religion.

30 (3) This section does not narrow the meaning or application of
31 any state or local law protecting the free exercise of religion.

32 (g)(1) This section applies to and in cases of conflict supersedes any
33 statute that infringes upon the free exercise of religion protected by this
34 section, unless a conflicting statute is expressly made exempt from the
35 application of this section.

36 (2) This section applies to and in cases of conflict supersedes

1 any ordinance, rule, regulation, order, opinion, decision, practice, or other
2 exercise of the board's authority that infringes upon the free exercise of
3 religion protected under this section.

4 (h) If a provision or application of this section is held to be
5 invalid under law, the remainder and the application of the section is not
6 affected.

7 (i) A religious organization shall bring an action to assert a claim
8 under this section no later than two (2) years after the date the religious
9 organization knew or should have known that a discriminatory action or other
10 violation of this section was taken against the religious organization.

11
12 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the
13 General Assembly of the State of Arkansas that the coronavirus 2019 (COVID-
14 19) pandemic and response of the executive branch to the coronavirus 2019
15 (COVID-19) pandemic have highlighted the need to address the constitutional
16 rights of the citizens of Arkansas, particularly the right to the free
17 exercise of religion; that this act prohibits government interference with
18 the free exercise of religion during a disaster emergency such as the current
19 pandemic; and that this act is immediately necessary to ensure the protection
20 of the constitutional rights of Arkansans to freely exercise religion.
21 Therefore, an emergency is declared to exist, and this act being immediately
22 necessary for the preservation of the public peace, health, and safety shall
23 become effective on:

24 (1) The date of its approval by the Governor;

25 (2) If the bill is neither approved nor vetoed by the Governor,
26 the expiration of the period of time during which the Governor may veto the
27 bill; or

28 (3) If the bill is vetoed by the Governor and the veto is
29 overridden, the date the last house overrides the veto.

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32 **APPROVED: BECAME LAW ON 2/11/21 WITHOUT THE GOVERNOR'S SIGNATURE.**
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