

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

A Bill

HOUSE BILL 2232

5 By: Representative Ballinger
6

For An Act To Be Entitled

8 AN ACT TO CREATE THE GOVERNMENT NONDISCRIMINATION ACT
9 OF 2017; CONCERNING RELIGIOUS LIBERTY; AND FOR OTHER
10 PURPOSES.
11

Subtitle

12
13
14 TO CREATE THE GOVERNMENT
15 NONDISCRIMINATION ACT OF 2017; AND
16 CONCERNING RELIGIOUS LIBERTY.
17

18
19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 SECTION 1. DO NOT CODIFY. Legislative findings.

22 The General Assembly finds the following:

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

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

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

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



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

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

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

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

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

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

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

25
26 SECTION 2. Arkansas Code Title 16, Chapter 123, is amended to add an
27 additional subchapter to read as follows:

28 Subchapter 5 – Government Nondiscrimination Act

29
30 16-123-501. Title.

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

33
34 16-123-502. Definitions.

35 As used in this subchapter:

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

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

3 (B) "Person" does not mean a:

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

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

8 (a) Visitation;

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

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

13 (2) "State" means a:

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

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

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

21 (3) "State benefit program" means:

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

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

26
 27 16-123-503. Protection of the free exercise of religious beliefs and
 28 moral convictions.

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

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

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

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

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

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

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

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

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

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

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

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

1 described in subsection (a) of this section.

2
3 16-123-504. Judicial relief.

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

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

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

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

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

19
20 16-123-505. Rules of construction.

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

25 (b) This subchapter does not:

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

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

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