

1 State of Arkansas  
2 94th General Assembly  
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4

# 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

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

29 (1) Prohibit government discrimination against religious  
 30 organizations based upon the religious organizations' religious identity or  
 31 conduct;

32 (2) Ensure that faith-based adoption and foster-care providers  
 33 remain free to serve children in need and work with the state to find loving,  
 34 permanent homes for children;

35 (3) Prohibit the government from discriminating against certain  
 36 individuals and organizations because of their beliefs regarding marriage or

1 what it means to be female and male; and

2 (4) Ensure that individuals and organizations cannot be  
 3 compelled, either by the government or through a lawsuit initiated by a  
 4 private party, to engage in conduct that conflicts with their beliefs, or be  
 5 punished or discriminated against for declining to engage in conduct that  
 6 conflicts with their beliefs.

7  
 8 16-123-502. Definitions.

9 As used in this subchapter:

10 (1) “Adoption or foster care” or “adoption or foster-care  
 11 service” means social services provided to or on behalf of children,  
 12 including without limitation:

13 (A) Assisting abused or neglected children;

14 (B) Teaching children and parents occupational,  
 15 homemaking, and other domestic skills;

16 (C) Promoting foster parenting;

17 (D) Providing foster homes, residential care, group homes,  
 18 or temporary group shelters for children;

19 (E) Recruiting foster parents;

20 (F) Placing children in foster homes;

21 (G) Licensing or certifying foster homes;

22 (H) Promoting adoption or recruiting adoptive parents;

23 (I) Assisting adoptions or supporting adoptive families;

24 (J) Performing or assisting home studies;

25 (K) Assisting kinship guardianships or kinship caregivers;

26 (L) Providing family preservation services;

27 (M) Providing family support services; and

28 (N) Providing temporary family reunification services;

29 (2) “Belief about biological sex or marriage” means a belief  
 30 based on sincerely held religious or philosophical premises:

31 (A) Regarding the sex of two (2) individuals who may enter  
 32 into a marriage; or

33 (B) That male or man or female or woman refers exclusively  
 34 to an individual’s immutable biological sex as objectively determined by  
 35 anatomy and genetics at the time of birth;

36 (3) “Discriminatory action” means any action taken by state

1 government to:

2 (A) Alter in any way the tax treatment of, or cause any  
 3 tax, penalty, or payment to be assessed against, or deny, delay, revoke, or  
 4 otherwise make unavailable an exemption from taxation of any person;

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

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

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

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

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

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

28 (4) “State government” means:

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

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

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

36 (5) “License-seeking student” means an individual who is enrolled

1 in an educational institution in the state for the purpose of obtaining the  
 2 necessary educational requirements to engage in an occupation or profession  
 3 that is licensed, accredited, or certified by state government;

4 (6) "Occupational organization" means an entity of which an  
 5 individual or license-seeking student must be a member in order to engage in  
 6 a specified occupation or profession within the state, including an entity  
 7 for which exclusion from the entity would substantially impair an  
 8 individual's ability to engage in the occupation or profession;

9 (7) "Person" means:

10 (A) An individual, in his or her personal capacity  
 11 regardless of religious affiliation or lack thereof, or in his or her  
 12 capacity as a member, officer, owner, volunteer, employee, manager, religious  
 13 leader, clergy, or minister of any religious organization;

14 (B) A religious organization;

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

19 (D) Cooperatives, ventures, or enterprises comprised of  
 20 two (2) or more individuals or entities described in subdivision (7)  
 21 regardless of nonprofit or for-profit status;

22 (8) "Religious organization" means:

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

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

29 (C) An officer, owner, employee, manager, religious  
 30 leader, clergy, or minister of an entity or organization described in  
 31 subdivision (8); and

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

35  
 36 16-123-503. Religious discrimination prohibited.

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

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

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

12           (b) The state government shall not take any discriminatory action  
13 against a religious organization that advertises, provides, or facilitates  
14 adoption or foster care, wholly or partially on the basis that the religious  
15 organization has provided or declined to provide any adoption or foster-care  
16 service, or related service, based upon or in a manner consistent with a  
17 sincerely held religious belief unless it is demonstrated that the action  
18 against the religious organization in this particular instance is:

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

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

22           (c)(1) The state government shall not take any discriminatory action  
23 against a person to whom the state grants custody of a foster or adoptive  
24 child, or who seeks from the state custody of a foster or adoptive child,  
25 wholly or partially on the basis that the person guides, instructs, or raises  
26 a child, or intends to guide, instruct, or raise a child, based upon or in a  
27 manner consistent with a sincerely held religious belief unless it is  
28 demonstrated that the action against the person in this particular instance  
29 is:

30                   (A) Essential to further a compelling governmental  
31 interest; and

32                   (B) The least restrictive means of furthering that  
33 compelling governmental interest.

34                   (2) The state government may consider whether a person shares  
35 the same religion or faith tradition as a foster or adoptive child when  
36 considering placement of the foster or adoptive child in order to prioritize

1 placement with a person of the same religion or faith tradition.

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

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

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

11  
 12 16-123-504. Degrees, accreditation, licensure, and certification.

13 (a) The state government shall consider accredited, licensed, or  
 14 certified any person that would otherwise be accredited, licensed, or  
 15 certified, respectively, for any purposes under state law but for a  
 16 determination against the person wholly or partially on the basis that the  
 17 person believes, maintains policies and procedures, or acts in accordance  
 18 with, a sincerely held religious belief, including a belief about biological  
 19 sex or marriage unless it is demonstrated that refusal of consideration of  
 20 the accreditation, license, or certification of the person in this particular  
 21 instance is:

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

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

25 (b) The state government shall not revoke, decline to renew, or  
 26 decline to grant a college or graduate degree, license, accreditation, or  
 27 certification to a person based upon the inability of the person to assist or  
 28 provide professional services to a client or potential client in pursuit of  
 29 goals, outcomes, or behaviors that conflict with a sincerely held religious  
 30 belief held by the person unless it is demonstrated that the revocation,  
 31 declining to renew or grant a college or graduate degree, license,  
 32 accreditation, or certification of that person in this particular instance  
 33 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        (c) As a condition of obtaining or maintaining a college or graduate  
 2 degree, license, accreditation, or certification to engage in certain  
 3 occupations or professions, the state government shall not require a person  
 4 to be a member of any occupational organization that requires its members to  
 5 assist or provide professional services to a client or potential client in  
 6 pursuit of goals, outcomes, or behaviors that conflict with a sincerely held  
 7 religious belief held by the person unless it is demonstrated that the  
 8 requirement that the person be a member of the occupational organization in  
 9 this particular instance is:

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

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

13        (d) An educational institution within the state shall not require a  
 14 license-seeking student to assist or provide services to a client or  
 15 potential client in pursuit of goals, outcomes, or behaviors that conflict  
 16 with the student’s sincerely held religious belief unless it is demonstrated  
 17 that the requirement that the person assist or provide services in this  
 18 particular instance is:

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

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

22        (e) A person’s inability to assist or provide professional services to  
 23 a client or potential client in pursuit of goals, outcomes, or behaviors that  
 24 conflict with the person’s sincerely held religious belief, except for those  
 25 professional healthcare services that are governed under § 17-80-501 et seq.,  
 26 shall not be the basis for a:

27                (1) Hearing or action by a state government entity or  
 28 educational institution:

29                (2) Civil cause of action; or

30                (3) Criminal prosecution.

31        (f) This section does not limit any other rights or protections  
 32 afforded to a person or a license-seeking student under the Arkansas  
 33 Constitution and the United States Constitution, state law, or state  
 34 regulatory authority.

35  
 36        16-123-505. Beliefs regarding biological sex and marriage.

1           (a) The state government shall not take any discriminatory action  
2 against:

3           (1) A religious organization wholly or partially on the basis  
4 that the religious organization:

5                   (A) Solemnizes or declines to solemnize any marriage, or  
6 provides or declines to provide services, accommodations, facilities, goods,  
7 or privileges for a purpose related to the solemnization, formation,  
8 celebration, or recognition of any marriage, based upon or in a manner  
9 consistent with a belief about biological sex or marriage;

10                   (B) Makes any employment-related decision, including the  
11 decision whether or not to hire, terminate, or discipline an individual whose  
12 conduct or religious beliefs are inconsistent with those of the religious  
13 organization, based upon or in a manner consistent with a belief about  
14 biological sex or marriage; or

15                   (C) Makes any decision concerning the sale, rental,  
16 occupancy of, or terms and conditions of occupying a dwelling or other  
17 housing under its control based upon or in a manner consistent with a belief  
18 about biological sex or marriage;

19           (2) A person wholly or partially on the basis that the person  
20 has provided or declined to provide the following services, accommodations,  
21 facilities, goods, or privileges for a purpose related to the solemnization,  
22 formation, celebration, or recognition of any marriage, based upon or in a  
23 manner consistent with a belief about biological sex or marriage:

24                   (A) Photography, poetry, videography, disc-jockey  
25 services, wedding planning, printing, web design, graphic design, publishing,  
26 counseling, or similar marriage-related goods or services; or

27                   (B) Floral arrangements, dress making, cake or pastry  
28 artistry, assembly hall or other wedding-venue rentals, car or other vehicle  
29 service rentals, jewelry sales and services, or similar marriage-related  
30 services, accommodations, facilities, or goods;

31           (3) A person wholly or partially on the basis that the person  
32 maintains separate dress codes, restrooms, spas, baths, showers, dressing  
33 rooms, locker rooms, or other intimate facilities or settings based on  
34 biological sex; or

35           (4) A state government employee wholly or partially on the basis  
36 that the state government employee lawfully speaks or engages in expressive

1 conduct based upon or in a manner consistent with a belief about biological  
2 sex or marriage if the state government employee's speech or expressive  
3 conduct occurs:

4 (A) In the workplace consistent with the time, place,  
5 manner, and frequency of any other expression of a religious, political, or  
6 moral belief or conviction allowed; or

7 (B) Outside the workplace in the employee's personal  
8 capacity and outside the course of performing work duties.

9 (b) A person employed or acting on behalf of the state government who  
10 has authority to:

11 (1)(A) Authorize or license marriages, including without  
12 limitation clerks, registers of deeds, or their deputies, may seek recusal  
13 from authorizing or licensing lawful marriages based upon or in a manner  
14 consistent with a belief about biological sex or marriage.

15 (B) A person making a recusal request under subdivision  
16 (b)(1)(A) of this section shall provide prior written notice to the state  
17 government, and the state government shall not take any discriminatory action  
18 against that person wholly or partially on the basis of such recusal; or

19 (2)(A) Perform or solemnize marriages, including without  
20 limitation to judges, magistrates, justices of the peace, or their deputies,  
21 may seek recusal from performing or solemnizing lawful marriages based upon  
22 or in a manner consistent with a belief about biological sex or marriage.

23 (B) Any person making a recusal request under subdivision  
24 (b)(2)(A) of this section shall provide prior written notice to the state  
25 government, and the state government shall not take any discriminatory action  
26 against that person wholly or partially on the basis of the recusal.

27 (c) If a person requests a recusal under subsection (b) of this  
28 section, the state government shall take all necessary steps to ensure that  
29 the:

30 (1) Authorization and licensing of any legally valid marriage is  
31 not impeded or substantially delayed as a result of the recusal; and

32 (2) Performance or solemnization of any legally valid marriage  
33 is not impeded or substantially delayed as a result of the recusal.

34  
35 16-123-506. Remedies.

36 (a) A person may assert a violation of this subchapter as a claim

1 against the state government in any judicial or administrative proceeding or  
2 as a defense in any judicial or administrative proceeding without regard to  
3 whether the judicial or administrative proceeding is brought by or in the  
4 name of the state government, any private person, or any other party.

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

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

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

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

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

22  
23 16-123-507. Rules of construction.

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

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

31 (2) This subchapter does not:

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

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

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

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

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

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

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

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