The following has special meaning:
green underline denotes added text
~~red struck out text denotes deleted text~~

Powered by State Net

2021 AR H 1211	**Author:** Bentley **Version:** Enacted **Version Date:** 02/10/2021

Act 94 of the Regular Session

State of Arkansas

93rd General Assembly

A Bill

Regular Session, 2021

HOUSE BILL 1211

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

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

For An Act To Be Entitled

AN ACT TO REQUIRE THAT RELIGIOUS ORGANIZATIONS ARE PROTECTED DURING AN EMERGENCY; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO REQUIRE THAT RELIGIOUS ORGANIZATIONS ARE PROTECTED DURING AN EMERGENCY; TO DECLARE AN EMERGENCY.

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

SECTION 1. DO NOT CODIFY. LEGISLATIVE INTENT. The General Assembly finds that:

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

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

(3) In the article "The Socio-economic Contribution of Religion to American Society: An Empirical Analysis", researchers found that "Congregations, businesses inspired by faith, faith-based charities and institutions not only build communities and families but also strengthen our economy in every town and city of the country.";

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

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

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

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

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

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

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

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

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

(13) "Government does not have carte blanche, even in a pandemic, to pick and choose which First Amendment rights are 'open' and which remain 'closed'." Id. at 181;

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

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

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

12-75-134. Religious organization — Disaster emergency.

(a) As used in this section:

(1) "Discriminatory action" means an action taken by the Governor to:

(A) Alter 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;

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

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

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

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

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

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

(2) "Governor" includes:

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

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

(3) “Religious organization” means:

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

(B) A religious group, corporation, association, educational institution, ministry, order, society, or similar entity, without regard to whether the entity 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 under this subdivision (a)(3); and

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

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

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

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

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

(A) Is religious;

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

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

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

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

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

(A) Declaratory relief;

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

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

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

(E) Any other appropriate relief.

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

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

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

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

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

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

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

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

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

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

20-7-141. Prevention of diseases — Religious organizations.

(a) As used in this section:

(1) "Discriminatory action" means an action taken by the State Board of Health to:

(A) Alter 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;

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

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

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

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

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

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

(2) "Religious organization" means:

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

(B) A religious group, corporation, association, educational institution, ministry, order, society, or similar entity, without regard to whether the entity 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 under this subdivision (a)(2); and

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

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

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

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

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

(A) Is religious;

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

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

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

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

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

(A) Declaratory relief;

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

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

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

(E) Any other appropriate relief.

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

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

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

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

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

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

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

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

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

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

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

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

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

Copyright © 2021 State Net