

State of Arizona  
Senate  
Forty-fourth Legislature  
First Regular Session  
1999

# SENATE BILL 1056

## AN ACT

AMENDING TITLE 41, CHAPTER 9, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 9;  
RELATING TO RELIGIOUS FREE EXERCISE.

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 41, chapter 9, Arizona Revised Statutes, is amended  
3 by adding article 9, to read:

### 4 ARTICLE 9. FREE EXERCISE OF RELIGION

#### 5 41-1493. Definitions

6 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 1. "DEMONSTRATES" MEANS MEETS THE BURDENS OF GOING FORWARD WITH THE  
8 EVIDENCE AND OF PERSUASION.

9 2. "EXERCISE OF RELIGION" MEANS THE ABILITY TO ACT OR REFUSAL TO ACT  
10 IN A MANNER SUBSTANTIALLY MOTIVATED BY A RELIGIOUS BELIEF, WHETHER OR NOT THE  
11 EXERCISE IS COMPULSORY OR CENTRAL TO A LARGER SYSTEM OF RELIGIOUS BELIEF.

12 3. "GOVERNMENT" INCLUDES THIS STATE AND ANY AGENCY OR POLITICAL  
13 SUBDIVISION OF THIS STATE.

14 4. "POLITICAL SUBDIVISION" INCLUDES ANY COUNTY, CITY, INCLUDING A  
15 CHARTER CITY, TOWN, SCHOOL DISTRICT, MUNICIPAL CORPORATION OR SPECIAL  
16 DISTRICT, ANY BOARD, COMMISSION OR AGENCY OF A COUNTY, CITY, INCLUDING A  
17 CHARTER CITY, TOWN, SCHOOL DISTRICT, MUNICIPAL CORPORATION OR SPECIAL  
18 DISTRICT OR ANY OTHER LOCAL PUBLIC AGENCY.

#### 19 41-1493.01. Free exercise of religion protected

20 A. FREE EXERCISE OF RELIGION IS A FUNDAMENTAL RIGHT THAT APPLIES IN  
21 THIS STATE EVEN IF LAWS, RULES OR OTHER GOVERNMENT ACTIONS ARE FACIALLY  
22 NEUTRAL.

23 B. EXCEPT AS PROVIDED IN SUBSECTION C, GOVERNMENT SHALL NOT  
24 SUBSTANTIALLY BURDEN A PERSON'S EXERCISE OF RELIGION EVEN IF THE BURDEN  
25 RESULTS FROM A RULE OF GENERAL APPLICABILITY.

26 C. GOVERNMENT MAY SUBSTANTIALLY BURDEN A PERSON'S EXERCISE OF RELIGION  
27 ONLY IF IT DEMONSTRATES THAT APPLICATION OF THE BURDEN TO THE PERSON IS BOTH:

1           1. IN FURTHERANCE OF A COMPELLING GOVERNMENTAL INTEREST.

2           2. THE LEAST RESTRICTIVE MEANS OF FURTHERING THAT COMPELLING  
3 GOVERNMENTAL INTEREST.

4           D. A PERSON WHOSE RELIGIOUS EXERCISE IS BURDENED IN VIOLATION OF THIS  
5 SECTION MAY ASSERT THAT VIOLATION AS A CLAIM OR DEFENSE IN A JUDICIAL  
6 PROCEEDING AND OBTAIN APPROPRIATE RELIEF AGAINST A GOVERNMENT. A PARTY WHO  
7 PREVAILS IN ANY ACTION TO ENFORCE THIS ARTICLE AGAINST A GOVERNMENT SHALL  
8 RECOVER ATTORNEY FEES AND COSTS.

9           E. IN THIS SECTION, THE TERM SUBSTANTIALLY BURDEN IS INTENDED SOLELY  
10 TO ENSURE THAT THIS ARTICLE IS NOT TRIGGERED BY TRIVIAL, TECHNICAL OR DE  
11 MINIMIS INFRACTIONS.

12           41-1493.02. Applicability

13           A. THIS ARTICLE APPLIES TO ALL STATE AND LOCAL LAWS AND ORDINANCES AND  
14 THE IMPLEMENTATION OF THOSE LAWS AND ORDINANCES, WHETHER STATUTORY OR  
15 OTHERWISE, AND WHETHER ADOPTED BEFORE OR AFTER THE EFFECTIVE DATE OF THIS  
16 ARTICLE.

17           B. STATE LAWS THAT ARE ADOPTED AFTER THE EFFECTIVE DATE OF THIS  
18 ARTICLE ARE SUBJECT TO THIS ARTICLE UNLESS THE LAW EXPLICITLY EXCLUDES  
19 APPLICATION BY REFERENCE TO THIS ARTICLE.

20           C. THIS ARTICLE SHALL NOT BE CONSTRUED TO AUTHORIZE ANY GOVERNMENT TO  
21 BURDEN ANY RELIGIOUS BELIEF.

22           Sec. 2. Legislative findings and intent

23           A. The legislature finds that:

24           1. The Constitution of Arizona recognizes the free exercise of  
25 religion.

26           2. Laws that are facially neutral toward religion, as well as laws  
27 intended to interfere with religious exercise, may burden religious exercise.

28           3. Governments should not substantially burden religious exercise  
29 without compelling justification.

30           4. This state has independent authority to protect the free exercise  
31 of religion by principles that are separate from, complementary to and more  
32 expansive than the first amendment of the United States Constitution.

33           5. Under its police power, the legislature may establish statutory  
34 protections that codify and supplement rights guaranteed by the Constitution  
35 of Arizona.

36           6. The compelling interest test, as set forth in the federal cases of  
37 Wisconsin v. Yoder, 406 U.S. 205 (1972) and Sherbert v. Verner, 374 U.S. 398  
38 (1963), is a workable test for striking sensible balances between religious  
39 liberty and competing government interests.

40           Sec. 3. Severability

41           If a provision of this act or its application to any person or  
42 circumstance is held invalid, the invalidity does not affect other provisions  
43 or applications of the act that can be given effect without the invalid  
44 provision or application, and to this end the provisions of this act are  
45 severable.