

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

HOUSE BILL 2596

AN ACT

AMENDING SECTIONS 4-207 AND 41-1493, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 9, ARTICLE 9, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1493.03; RELATING TO THE FREE EXERCISE OF RELIGION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 4-207, Arizona Revised Statutes, is amended to
3 read:

4 4-207. Restrictions on licensing premises near school or church
5 buildings; definitions

6 A. A retailer's license shall not be issued for any premises which
7 are, at the time the license application is received by the director, within
8 three hundred horizontal feet of a church, within three hundred horizontal
9 feet of a public or private school building with kindergarten programs or any
10 of grades one through twelve or within three hundred horizontal feet of a
11 fenced recreational area adjacent to such school building. This section does
12 not prohibit the renewal of a valid license issued pursuant to this title if,
13 on the date that the original application for the license is filed, the
14 premises were not within three hundred horizontal feet of a church, within
15 three hundred horizontal feet of a public or private school building with
16 kindergarten programs or any of grades one through twelve or within three
17 hundred horizontal feet of a fenced recreational area adjacent to such school
18 building.

19 B. Subsection A of this section does not apply to a:

- 20 1. Restaurant issued a license pursuant to section 4-205.02.
- 21 2. Special event license issued pursuant to section 4-203.02.
- 22 3. Hotel-motel issued a license pursuant to section 4-205.01.
- 23 4. Government license issued pursuant to section 4-205.03.
- 24 5. Fenced playing area of a golf course issued a license pursuant to
25 this article.

26 C. Notwithstanding subsection A of this section:

27 1. A spirituous liquor license which is validly issued and which is,
28 on the date an application for a transfer is filed, within three hundred
29 horizontal feet of a church, within three hundred horizontal feet of a public
30 or private school building with kindergarten programs or any of grades one
31 through twelve or within three hundred horizontal feet of a fenced
32 recreational area adjacent to such school building may be transferred person
33 to person pursuant to sections 4-201, 4-202 and 4-203 and remains in full
34 force until the license is terminated in any manner, unless renewed pursuant
35 to section 4-209, subsection A.

36 2. A person may be issued a spirituous liquor license pursuant to
37 sections 4-201, 4-202 and 4-203 of the same class for premises which have a
38 nontransferable spirituous liquor license validly issued if the premises are,
39 on the date an application for such license is filed, within three hundred
40 horizontal feet of a church, within three hundred horizontal feet of a public
41 or private school building with kindergarten programs or any of grades one
42 through twelve or within three hundred horizontal feet of a fenced
43 recreational area adjacent to such school building and the license remains in
44 full force until the license is terminated in any manner, unless renewed
45 pursuant to section 4-209, subsection A.

1 3. A person may be issued a liquor store license pursuant to sections
2 4-201, 4-202, 4-203 and 4-206.01 for premises which have a beer and wine
3 store license validly issued if the premises, on the date an application for
4 such license is filed, are within three hundred horizontal feet of a church,
5 within three hundred horizontal feet of a public or private school building
6 with kindergarten programs or any of grades one through twelve or within
7 three hundred horizontal feet of a fenced recreational area adjacent to such
8 school building and the license remains in full force until the license is
9 terminated in any manner, unless renewed pursuant to section 4-209,
10 subsection A.

11 4. THE GOVERNING BODY OF A CITY OR TOWN, ON A CASE-BY-CASE BASIS, MAY
12 APPROVE AN EXEMPTION FROM THE DISTANCE RESTRICTIONS PRESCRIBED IN THIS
13 SECTION FOR A CHURCH OR CHARTER SCHOOL THAT IS LOCATED IN AN AREA THAT IS
14 DESIGNATED AN ENTERTAINMENT DISTRICT BY THE GOVERNING BODY OF THAT CITY OR
15 TOWN. A CITY OR TOWN WITH A POPULATION OF AT LEAST FIVE HUNDRED THOUSAND
16 PERSONS MAY DESIGNATE NO MORE THAN THREE ENTERTAINMENT DISTRICTS WITHIN THE
17 BOUNDARIES OF THE CITY OR TOWN PURSUANT TO THIS PARAGRAPH. A CITY OR TOWN
18 WITH A POPULATION OF AT LEAST TWO HUNDRED THOUSAND PERSONS BUT LESS THAN FIVE
19 HUNDRED THOUSAND PERSONS MAY DESIGNATE NO MORE THAN TWO ENTERTAINMENT
20 DISTRICTS WITHIN THE BOUNDARIES OF THE CITY OR TOWN PURSUANT TO THIS
21 PARAGRAPH. A CITY OR TOWN WITH A POPULATION OF LESS THAN TWO HUNDRED
22 THOUSAND PERSONS MAY DESIGNATE NO MORE THAN ONE ENTERTAINMENT DISTRICT WITHIN
23 THE BOUNDARIES OF THE CITY OR TOWN PURSUANT TO THIS PARAGRAPH.

24 D. For the purposes of this section:

25 1. "Church" means a building which is erected or converted for use as
26 a church, where services are regularly convened, which is used primarily for
27 religious worship and schooling and which a reasonable person would conclude
28 is a church by reason of design, signs or architectural or other features.

29 2. "ENTERTAINMENT DISTRICT" MEANS A SPECIFIC CONTIGUOUS AREA THAT IS
30 DESIGNATED AN ENTERTAINMENT DISTRICT BY A RESOLUTION ADOPTED BY THE GOVERNING
31 BODY OF A CITY OR TOWN, THAT CONSISTS OF NO MORE THAN ONE SQUARE MILE, THAT
32 IS NO LESS THAN ONE-EIGHTH OF A MILE IN WIDTH AND THAT CONTAINS A SIGNIFICANT
33 NUMBER OF ENTERTAINMENT, ARTISTIC AND CULTURAL VENUES, INCLUDING MUSIC HALLS,
34 CONCERT FACILITIES, THEATERS, ARENAS, STADIUMS, MUSEUMS, STUDIOS, GALLERIES,
35 RESTAURANTS, BARS AND OTHER RELATED FACILITIES.

36 Sec. 2. Section 41-1493, Arizona Revised Statutes, is amended to read:
37 41-1493. Definitions

38 In this article, unless the context otherwise requires:

39 1. "Demonstrates" means meets the burdens of going forward with the
40 evidence and of persuasion.

41 2. "Exercise of religion" means the ability to act or refusal to act
42 in a manner substantially motivated by a religious belief, whether or not the
43 exercise is compulsory or central to a larger system of religious belief.

44 3. "Government" includes this state and any agency or political
45 subdivision of this state.

1 4. "NONRELIGIOUS ASSEMBLY OR INSTITUTION" INCLUDES ALL MEMBERSHIP
2 ORGANIZATIONS, THEATERS, CULTURAL CENTERS, DANCE HALLS, FRATERNAL ORDERS,
3 AMPHITHEATERS AND PLACES OF PUBLIC ASSEMBLY REGARDLESS OF SIZE THAT A
4 GOVERNMENT OR POLITICAL SUBDIVISION ALLOWS TO MEET IN A ZONING DISTRICT BY
5 CODE OR ORDINANCE OR BY PRACTICE.

6 5. "PERSON" INCLUDES A RELIGIOUS ASSEMBLY OR INSTITUTION.

7 ~~4.~~ 6. "Political subdivision" includes any county, city, including a
8 charter city, town, school district, municipal corporation or special
9 district, any board, commission or agency of a county, city, including a
10 charter city, town, school district, municipal corporation or special
11 district or any other local public agency.

12 7. "RELIGION-NEUTRAL ZONING STANDARDS":

13 (a) MEANS NUMERICALLY DEFINABLE STANDARDS SUCH AS MAXIMUM OCCUPANCY
14 CODES, HEIGHT RESTRICTIONS, SETBACKS, FIRE CODES, PARKING SPACE REQUIREMENTS,
15 SEWER CAPACITY LIMITATIONS AND TRAFFIC CONGESTION LIMITATIONS.

16 (b) DOES NOT INCLUDE:

17 (i) SYNERGY WITH USES THAT A GOVERNMENT HOLDS AS MORE DESIRABLE.

18 (ii) THE ABILITY TO RAISE TAX REVENUES.

19 8. "SUITABLE ALTERNATE PROPERTY" MEANS A FINANCIALLY FEASIBLE PROPERTY
20 CONSIDERING THE PERSON'S REVENUE SOURCES AND OTHER FINANCIAL OBLIGATIONS WITH
21 RESPECT TO THE PERSON'S EXERCISE OF RELIGION AND WITH RELATION TO SPENDING
22 THAT IS IN THE SAME ZONING DISTRICT OR IN A CONTIGUOUS AREA THAT THE PERSON
23 FINDS ACCEPTABLE FOR CONDUCTING THE PERSON'S RELIGIOUS MISSION AND THAT IS
24 LARGE ENOUGH TO FULLY ACCOMMODATE THE CURRENT AND PROJECTED SEATING CAPACITY
25 REQUIREMENTS OF THE PERSON IN A MANNER THAT THE PERSON DEEMS SUITABLE FOR THE
26 PERSON'S RELIGIOUS MISSION.

27 9. "UNREASONABLE BURDEN" MEANS THAT A PERSON IS PREVENTED FROM USING
28 THE PERSON'S PROPERTY IN A MANNER THAT THE PERSON FINDS SATISFACTORY TO
29 FULFILL THE PERSON'S RELIGIOUS MISSION.

30 Sec. 3. Title 41, chapter 9, article 9, Arizona Revised Statutes, is
31 amended by adding section 41-1493.03, to read:

32 41-1493.03. Free exercise of religion; land use regulation

33 A. GOVERNMENT SHALL NOT IMPOSE OR IMPLEMENT A LAND USE REGULATION IN A
34 MANNER THAT IMPOSES AN UNREASONABLE BURDEN ON A PERSON'S EXERCISE OF
35 RELIGION, REGARDLESS OF A COMPELLING GOVERNMENTAL INTEREST, UNLESS THE
36 GOVERNMENT DEMONSTRATES ONE OF THE FOLLOWING:

37 1. THAT THE PERSON'S EXERCISE OF RELIGION AT A PARTICULAR LOCATION
38 VIOLATES RELIGION-NEUTRAL ZONING STANDARDS ENACTED INTO THE GOVERNMENT'S LAWS
39 AT THE TIME OF THE PERSON'S APPLICATION FOR A PERMIT.

40 2. THAT THE PERSON'S EXERCISE OF RELIGION AT A PARTICULAR LOCATION
41 WOULD BE HAZARDOUS DUE TO TOXIC USES IN ADJACENT PROPERTIES.

42 3. THE EXISTENCE OF A SUITABLE ALTERNATE PROPERTY THE PERSON COULD USE
43 FOR THE EXERCISE OF RELIGION.

1 B. GOVERNMENT SHALL NOT IMPOSE OR IMPLEMENT A LAND USE REGULATION IN A
2 MANNER THAT TREATS A RELIGIOUS ASSEMBLY OR INSTITUTION ON LESS THAN EQUAL
3 TERMS WITH A NONRELIGIOUS ASSEMBLY OR INSTITUTION, REGARDLESS OF A COMPELLING
4 GOVERNMENTAL INTEREST.

5 C. GOVERNMENT SHALL NOT IMPOSE OR IMPLEMENT A LAND USE REGULATION IN A
6 MANNER THAT DISCRIMINATES AGAINST AN ASSEMBLY OR INSTITUTION ON THE BASIS OF
7 RELIGION, REGARDLESS OF A COMPELLING GOVERNMENTAL INTEREST.

8 D. GOVERNMENT SHALL NOT IMPOSE OR IMPLEMENT A LAND USE REGULATION IN A
9 MANNER THAT COMPLETELY EXCLUDES A RELIGIOUS ASSEMBLY OR INSTITUTION FROM A
10 JURISDICTION OR UNREASONABLY LIMITS RELIGIOUS ASSEMBLIES, INSTITUTIONS OR
11 STRUCTURES WITHIN A JURISDICTION, REGARDLESS OF A COMPELLING GOVERNMENTAL
12 INTEREST.