

State of Arizona  
Senate  
Fiftieth Legislature  
Second Regular Session  
2012

# SENATE BILL 1365

AN ACT

AMENDING TITLE 41, CHAPTER 9, ARTICLE 9, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1493.04; AMENDING SECTION 41-3751, ARIZONA REVISED STATUTES; 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. Title 41, chapter 9, article 9, Arizona Revised Statutes,  
3 is amended by adding section 41-1493.04, to read:

4 41-1493.04. Free exercise of religion; professional or  
5 occupational license; certificate or  
6 registration; appointments to governmental  
7 offices; definition

8 A. GOVERNMENT SHALL NOT DENY, REVOKE OR SUSPEND A PERSON'S  
9 PROFESSIONAL OR OCCUPATIONAL LICENSE, CERTIFICATE OR REGISTRATION FOR ANY OF  
10 THE FOLLOWING AND THE FOLLOWING ARE NOT UNPROFESSIONAL CONDUCT:

11 1. DECLINING TO PROVIDE OR PARTICIPATE IN PROVIDING ANY SERVICE THAT  
12 VIOLATES THE PERSON'S SINCERELY HELD RELIGIOUS BELIEFS EXCEPT PERFORMING THE  
13 DUTIES OF A PEACE OFFICER.

14 2. REFUSING TO AFFIRM A STATEMENT OR OATH THAT IS CONTRARY TO THE  
15 PERSON'S SINCERELY HELD RELIGIOUS BELIEFS.

16 3. EXPRESSING SINCERELY HELD RELIGIOUS BELIEFS IN ANY CONTEXT,  
17 INCLUDING A PROFESSIONAL CONTEXT AS LONG AS THE SERVICES PROVIDED OTHERWISE  
18 MEET THE CURRENT STANDARD OF CARE OR PRACTICE FOR THE PROFESSION.

19 4. PROVIDING FAITH-BASED SERVICES THAT OTHERWISE MEET THE CURRENT  
20 STANDARD OF CARE OR PRACTICE FOR THE PROFESSION.

21 5. MAKING BUSINESS RELATED DECISIONS IN ACCORDANCE WITH SINCERELY HELD  
22 RELIGIOUS BELIEFS SUCH AS:

23 (a) EMPLOYMENT DECISIONS, UNLESS OTHERWISE PROHIBITED BY STATE OR  
24 FEDERAL LAW.

25 (b) CLIENT SELECTION DECISIONS.

26 (c) FINANCIAL DECISIONS.

27 B. GOVERNMENT SHALL NOT DENY A PERSON AN APPOINTMENT TO PUBLIC OFFICE  
28 OR A POSITION ON A BOARD, COMMISSION OR COMMITTEE BASED ON THE PERSON'S  
29 EXERCISE OF RELIGION.

30 C. THIS SECTION IS NOT A DEFENSE TO AND DOES NOT AUTHORIZE ANY PERSON  
31 TO ENGAGE IN SEXUAL MISCONDUCT OR ANY CRIMINAL CONDUCT.

32 D. THIS SECTION DOES NOT AUTHORIZE ANY PERSON TO ENGAGE IN CONDUCT  
33 THAT IS PROHIBITED UNDER THE CONSTITUTION OF THE UNITED STATES OR OF THIS  
34 STATE OR SECTION 15-535.

35 E. THIS SECTION DOES NOT AUTHORIZE ANY PERSON TO ENGAGE IN CONDUCT  
36 THAT VIOLATES THE EMERGENCY MEDICAL TREATMENT AND ACTIVE LABOR ACT (P.L.  
37 99-272; 100 STAT. 164; 42 UNITED STATES CODE SECTION 1395DD) OR THE RELIGIOUS  
38 LAND USE AND INSTITUTIONALIZED PERSONS ACT (P.L. 106-274; 114 STAT. 803; 42  
39 UNITED STATES CODE SECTION 2000CC-1) AS OF THE EFFECTIVE DATE OF THIS  
40 SECTION.

41 F. FOR THE PURPOSES OF THIS SECTION, "GOVERNMENT" INCLUDES ALL COURTS  
42 AND ADMINISTRATIVE BODIES OR ENTITIES UNDER THE JURISDICTION OF THE ARIZONA  
43 SUPREME COURT.

1           Sec. 2. Section 41-3751, Arizona Revised Statutes, is amended to read:  
2           41-3751. Contracts for goods and services: religious  
3                                 organizations; definitions

4           A. Notwithstanding any other law or executive order, and in accordance  
5 with this section, all public bodies shall contract for goods and services  
6 provided pursuant to title 8, 36 or 46 or title 31, chapter 2, article 6  
7 without discrimination against religious organizations, **INCLUDING**  
8 **DISCRIMINATION BECAUSE OF THEIR RELIGIOUS BELIEFS OR EXERCISE OF RELIGION** and  
9 shall provide beneficiaries of assistance under the programs established by  
10 law with certificates, vouchers or other forms of disbursement that are  
11 redeemable with these organizations that are awarded a contract. The public  
12 bodies may use any state, federal, local or other monies available for these  
13 purposes.

14           B. The public bodies shall allow contracts with religious  
15 organizations to provide goods and services provided pursuant to title 8, 36  
16 or 46 or title 31, chapter 2, article 6 and to accept certificates, vouchers  
17 or other forms of disbursement under any program established on the same  
18 basis as any other nongovernmental provider without impairing the religious  
19 character of these organizations, and without diminishing the religious  
20 freedom of beneficiaries of assistance funded under these programs. The  
21 programs shall be implemented consistent with the first amendment of the  
22 United States Constitution. The public bodies shall not discriminate against  
23 an organization that is or applies to be a contractor to provide assistance  
24 or that accepts certificates, vouchers or other forms of disbursement on the  
25 basis that the organization has a religious character.

26           C. A religious organization with a contract described in this section  
27 shall retain its independence from federal, state and local governments,  
28 including the religious organization's control over the definition,  
29 development, practice and expression of its religious beliefs. Public bodies  
30 shall not require a religious organization to alter its form of internal  
31 governance or to remove religious art, icons, scripture or other symbols in  
32 order to be eligible to contract to provide assistance or to accept  
33 certificates, vouchers or other forms of disbursement funded under any  
34 program or public contract.

35           D. If a person who applies for or receives goods, services or  
36 disbursements objects to the religious character of the organization or  
37 institution from which the person receives or would receive assistance funded  
38 under any program, the public body shall provide the person, within a  
39 reasonable period of time after the date of the objection, with assistance  
40 from an alternative provider that is accessible to the person if an  
41 alternative provider is available and the value of which is not less than the  
42 value of assistance that the person would have received from the religious  
43 organization. Organizations shall provide notice to people receiving  
44 assistance of the right to object pursuant to this subsection.

1 E. A religious organization's exemption provided under section 702 of  
2 the civil rights act of 1964 (P.L. 88-352; 78 Stat. 255; 42 United States  
3 Code section 2000e-1a) regarding employment practices is not affected by its  
4 participation in or receipt of monies from programs described in this  
5 section. Nothing in this section allows religious organizations to  
6 discriminate in employment practices on the basis of race, age, color, sex or  
7 national origin.

8 F. Except as otherwise provided by law, a religious organization shall  
9 not discriminate against a person in regard to rendering assistance funded  
10 under any program described in this section on the basis of religion, a  
11 religious belief or refusal to participate in a religious practice, or on the  
12 basis of race, age, color, sex or national origin.

13 G. Except as provided in subsection H, any religious organization that  
14 contracts to provide goods, services or assistance funded under any program  
15 is subject to the same rules as other contractors to account in accordance  
16 with generally accepted auditing principles for the use of the monies  
17 provided under the program.

18 H. If a religious organization segregates public monies provided under  
19 these programs into separate accounts, only the programs funded by financial  
20 assistance provided with these monies are subject to financial and  
21 performance audits.

22 I. Appeals from the decisions of the head of a state agency, board or  
23 commission may be made to the director of the department of administration in  
24 accordance with the rules of procedure adopted by the director pursuant to  
25 chapter 23, article 9 of this title to resolve bid protests.

26 J. A RELIGIOUS ORGANIZATION WHOSE RIGHTS HAVE BEEN VIOLATED UNDER THIS  
27 SECTION MAY ASSERT THAT VIOLATION AS A CLAIM OR DEFENSE IN AN ADMINISTRATIVE  
28 PROCEEDING OR A JUDICIAL PROCEEDING ONCE ALL ADMINISTRATIVE REMEDIES HAVE  
29 BEEN EXHAUSTED AND OBTAIN APPROPRIATE RELIEF, INCLUDING INJUNCTIVE RELIEF AND  
30 COMPENSATORY DAMAGES. A RELIGIOUS ORGANIZATION THAT PREVAILS IN AN ACTION TO  
31 ENFORCE THIS SECTION MAY SEEK TO RECOVER ATTORNEY FEES AND COSTS PURSUANT TO  
32 SECTION 12-348.

33 ~~K.~~ K. No monies provided directly to institutions or organizations to  
34 provide services and administer programs under this section may be spent for  
35 sectarian worship, instruction or proselytization. This subsection does not  
36 apply to the contracting for the services of chaplains by a public body.

37 ~~K.~~ L. For the purposes of this section: ~~—~~

38 1. "EXERCISE OF RELIGION" HAS THE SAME MEANING PRESCRIBED IN SECTION  
39 41-1493.

40 2. "Public body" means state agencies, boards and commissions and  
41 political subdivisions of this state.