



HOUSE OF REPRESENTATIVES

SB 1062 / HB 2153

exercise of religion; state action.

Sponsors: Senators Yarbrough: Barto, Worsley

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| W/D | Committee on Judiciary |
| DPA | Committee on Government |
| DPA | Caucus and COW |
| X | As Transmitted to Governor |

OVERVIEW

HB 2153 revises the definition of *exercise of religion* and *person* and extends the prohibition on substantially burdening a person's exercise of religion to applications of the law by nongovernmental persons.

HISTORY

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. The latter portion of the provision is known as the Free Exercise Clause. In 1990, Congress passed the Religious Freedom Restoration Act (RFRA), which instructed courts to apply strict scrutiny when government substantially burdens a person's exercise of religion, even if the burden results from a law of general applicability. However, the United States Supreme Court has since held that the federal RFRA may not be extended to the states and local governments (*City of Boerne v. Flores*, 521 U.S. 507 (1997)).

In response to *City of Boerne v. Flores*, Arizona enacted state-level protection from the government substantially burdening the free exercise of religion using the strict scrutiny compelling interest test (Laws 1999, Chapter 332). Accordingly, government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person is both in furtherance of a compelling governmental interest and the least restrictive means of furthering that compelling governmental interest (A.R.S. § 41-1493.01). *Exercise of religion* is defined as the ability to act or refusal to act in a manner substantially motivated by a religious belief, whether or not the exercise is compulsory or central to a larger system of religious belief (A.R.S. § 41-1493).

PROVISIONS

- Expands the definition of *exercise of religion* by including the practice and observance of religion.
- Expands the definition of *person* to include any individual, association, partnership, corporation, church, or other business entity.
- Modifies, from government to state action, the prohibition on burdening a person's exercise of religion, except under certain circumstances.
- Clarifies that the government or a nongovernmental person enforcing state action must demonstrate that the application of the burden to the person's exercise of religion is in furtherance of a compelling governmental interest and is the least restrictive means of furthering the compelling governmental interest.

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- Maintains that a person whose religious exercise is burdened in violation of this Act may assert that violation as a claim or defense in a judicial proceeding and specifies that this applies regardless of whether the government is a party to the proceeding.
- Stipulates that a person that asserts a violation of this Act must establish the following:
 - The person's action or refusal to act is motivated by a religious belief;
 - The person's religious belief is sincerely held; and
 - The state action substantially burdens the exercise of the person's religious beliefs.
- Allows a person asserting a claim or defense in a judicial proceeding, whose religious exercise is burdened, to receive injunctive and declaratory relief.
- Prescribes the definition of *state action* to include government action and the application of any law by a nongovernmental person and specifies that the requirements in statute relating to professional or occupational licenses and appointments to government offices are not included in the definition of *state action*.
- Makes technical and conforming changes.