



**ARIZONA STATE SENATE**  
*Fifty-First Legislature, Second Regular Session*

FACT SHEET FOR S.B. 1062

exercise of religion; state action.

Purpose

Modifies the definition of *exercise of religion* and allows a person to assert a free exercise claim or defense in a judicial proceeding regardless of whether the government is a party to the proceeding.

Background

The First Amendment to the United States Constitution provides in relevant part that 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).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

1. Expands the definition of *exercise of religion* to specifically include both the practice and observance of religion.
2. Expands the definition of *person* to include any individual, association, partnership, corporation, church, estate, trust, foundation or other legal entity.

FACT SHEET

S.B. 1062

Page 2

3. Changes the terminology within the prohibition of burdening a person's exercise of religion to apply to *state action* instead of *government*.
4. Defines *state action* as any action by the government or the implementation or application of any law, including state and local laws, ordinances, rules, regulations and policies, whether statutory or otherwise, and whether the implementation or action is made or attempted to be made by the government or nongovernmental persons.
5. Specifies that a free exercise of religion claim or defense may be asserted in a judicial proceeding regardless of whether the government is a party to the proceeding.
6. Makes technical and conforming changes.
7. Becomes effective on the general effective date.

Prepared by Senate Research

January 14, 2014

SLL/ly