



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

**AMENDED**  
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 or other business organization.

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, statutory or otherwise, and whether the implementation or action is made by the government or nongovernmental persons. Excludes from the definition the requirements relating to professional or occupational licenses and appointments to government offices.
5. Requires a person who asserts a violation of their religious exercise to demonstrate all of the following:
  - a) that the person's action or refusal to act is motivated by a religious belief;
  - b) that the religious belief is sincerely held; and
  - c) that the state action substantially burdens the exercise of religious belief.
6. Allows a person asserting a claim or defense that their religious exercise is burdened to receive injunctive and declaratory relief.
7. 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.
8. Makes technical and conforming changes.
9. Becomes effective on the general effective date.

Amendments Adopted by Committee of the Whole

1. Outlines elements a person who asserts a violation of their religious exercise must establish.
2. Permits only injunctive and declaratory relief to be awarded rather than appropriate relief.
3. Alters the definitions of *person* and *state action*.

Prepared by Senate Research

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