

REFERENCE TITLE: **religious services; essential services**

State of Arizona
House of Representatives
Fifty-fifth Legislature
First Regular Session
2021

HB 2648

Introduced by

Representatives Toma: Barton, Biasiucci, Blackman, Bolick, Bowers, Burges,
Carroll, Chaplik, Cobb, Cook, Dunn, Fillmore, Finchem, Grantham, Griffin,
Hoffman, John, Kaiser, Kavanagh, Nguyen, Nutt, Osborne, Parker, Payne,
Pingerelli, Roberts, Weninger, Wilmeth, Senators Barto, Boyer, Gray,
Livingston

AN ACT

**AMENDING TITLE 41, CHAPTER 9, ARIZONA REVISED STATUTES, BY ADDING ARTICLE
10; RELATING TO CIVIL RIGHTS.**

(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, Arizona Revised Statutes, is
3 amended by adding article 10, to read:

4 ARTICLE 10. RELIGION IS ESSENTIAL

5 41-1494. Definitions

6 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 1. "DISCRIMINATORY ACTION" MEANS ANY ACTION TAKEN BY STATE
8 GOVERNMENT TO:

9 (a) ALTER IN ANY WAY THE TAX TREATMENT OF, OR CAUSE ANY TAX,
10 PENALTY OR PAYMENT TO BE ASSESSED AGAINST A RELIGIOUS ORGANIZATION, OR
11 DENY, DELAY, REVOKE OR OTHERWISE MAKE UNAVAILABLE AN EXEMPTION FROM
12 TAXATION FOR A RELIGIOUS ORGANIZATION.

13 (b) DISALLOW, DENY OR OTHERWISE MAKE UNAVAILABLE A DEDUCTION FOR
14 STATE TAX PURPOSES OF ANY CHARITABLE CONTRIBUTION MADE TO OR BY A
15 RELIGIOUS ORGANIZATION.

16 (c) IMPOSE, LEVY OR ASSESS A MONETARY FINE, FEE, CIVIL OR CRIMINAL
17 PENALTY, DAMAGES AWARD OR INJUNCTION AGAINST A RELIGIOUS ORGANIZATION.

18 (d) WITHHOLD, REDUCE, EXCLUDE, TERMINATE, MATERIALLY ALTER THE
19 TERMS OR CONDITIONS OF, OR OTHERWISE MAKE UNAVAILABLE OR DENY ANY:

20 (i) STATE GRANT, CONTRACT, SUBCONTRACT, COOPERATIVE AGREEMENT,
21 GUARANTEE, LOAN, SCHOLARSHIP OR OTHER SIMILAR BENEFIT FROM OR TO A
22 RELIGIOUS ORGANIZATION.

23 (ii) ENTITLEMENT OR BENEFIT UNDER A STATE BENEFIT PROGRAM FROM OR
24 TO A RELIGIOUS ORGANIZATION.

25 (iii) LICENSE, CERTIFICATION, ACCREDITATION, RECOGNITION OR OTHER
26 SIMILAR BENEFIT, POSITION OR STATUS FROM OR TO ANY RELIGIOUS ORGANIZATION.

27 2. "RELIGIOUS ORGANIZATION" MEANS:

28 (a) A HOUSE OF WORSHIP, INCLUDING A CHURCH, SYNAGOGUE, SHRINE,
29 MOSQUE AND TEMPLE.

30 (b) A RELIGIOUS GROUP, CORPORATION, ASSOCIATION, EDUCATIONAL
31 INSTITUTION, MINISTRY, ORDER, SOCIETY OR SIMILAR ENTITY, REGARDLESS OF
32 WHETHER IT IS INTEGRATED OR AFFILIATED WITH A CHURCH OR OTHER HOUSE OF
33 WORSHIP.

34 (c) AN OFFICER, OWNER, EMPLOYEE, MANAGER, RELIGIOUS LEADER,
35 CLERGYPERSON OR MINISTER OF AN ENTITY OR ORGANIZATION DESCRIBED IN THIS
36 PARAGRAPH.

37 3. "RELIGIOUS SERVICES" MEANS A MEETING, GATHERING OR ASSEMBLY OF
38 TWO OR MORE PERSONS ORGANIZED BY A RELIGIOUS ORGANIZATION FOR THE PURPOSE
39 OF WORSHIP, TEACHING, TRAINING, PROVIDING EDUCATIONAL SERVICES, CONDUCTING
40 RELIGIOUS RITUALS OR OTHER ACTIVITIES THAT ARE DEEMED NECESSARY BY THE
41 RELIGIOUS ORGANIZATION FOR THE EXERCISE OF RELIGION.

42 4. "STATE GOVERNMENT" MEANS:

43 (a) THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE.

1 (b) ANY AGENCY OF THIS STATE OR A POLITICAL SUBDIVISION OF THIS
2 STATE, INCLUDING A DEPARTMENT, BUREAU, BOARD, COMMISSION, COUNCIL, COURT
3 OR PUBLIC INSTITUTION OF HIGHER EDUCATION.

4 (c) ANY PERSON ACTING UNDER COLOR OF STATE LAW.

5 (d) ANY PRIVATE PERSON SUING UNDER OR ATTEMPTING TO ENFORCE A LAW,
6 RULE OR REGULATION ADOPTED BY THIS STATE OR A POLITICAL SUBDIVISION OF
7 THIS STATE.

8 5. "STATE OF EMERGENCY" HAS THE SAME MEANING PRESCRIBED IN SECTION
9 26-301.

10 41-1494.01. Religious services; essential service

11 A. DURING A STATE OF EMERGENCY, RELIGIOUS SERVICES ARE DECLARED AN
12 ESSENTIAL SERVICE AND ARE DEEMED NECESSARY AND VITAL TO THE HEALTH AND
13 WELFARE OF THE PUBLIC.

14 B. STATE GOVERNMENT SHALL ALLOW A RELIGIOUS ORGANIZATION TO
15 CONTINUE OPERATING AND TO ENGAGE IN RELIGIOUS SERVICES DURING A STATE OF
16 EMERGENCY TO THE SAME OR GREATER EXTENT THAN OTHER ORGANIZATIONS OR
17 BUSINESSES THAT PROVIDE ESSENTIAL SERVICES AND THAT ARE NECESSARY AND
18 VITAL TO THE HEALTH AND WELFARE OF THE PUBLIC ARE ALLOWED TO OPERATE.

19 C. THIS SECTION DOES NOT PROHIBIT STATE GOVERNMENT FROM REQUIRING
20 RELIGIOUS ORGANIZATIONS TO COMPLY WITH NEUTRAL HEALTH, SAFETY OR OCCUPANCY
21 REQUIREMENTS THAT ARE ISSUED BY STATE GOVERNMENT OR THE FEDERAL GOVERNMENT
22 AND THAT APPLY TO ALL ORGANIZATIONS AND BUSINESSES THAT PROVIDE ESSENTIAL
23 SERVICES. STATE GOVERNMENT MAY NOT ENFORCE ANY HEALTH, SAFETY OR OCCUPANCY
24 REQUIREMENT THAT IMPOSES A SUBSTANTIAL BURDEN ON A RELIGIOUS SERVICE
25 UNLESS STATE GOVERNMENT DEMONSTRATES THAT APPLYING THE BURDEN TO THE
26 RELIGIOUS SERVICE IN THAT PARTICULAR INSTANCE IS ESSENTIAL TO FURTHER A
27 COMPELLING GOVERNMENTAL INTEREST AND IS THE LEAST RESTRICTIVE MEANS OF
28 FURTHERING THAT COMPELLING GOVERNMENTAL INTEREST.

29 41-1494.02. Protections against government discrimination

30 STATE GOVERNMENT MAY NOT TAKE ANY DISCRIMINATORY ACTION AGAINST A
31 RELIGIOUS ORGANIZATION WHOLLY OR PARTIALLY ON THE BASIS THAT THE
32 ORGANIZATION:

- 33 1. IS RELIGIOUS.
- 34 2. OPERATES OR SEEKS TO OPERATE DURING A STATE OF EMERGENCY.
- 35 3. ENGAGES IN THE EXERCISE OF RELIGION AS PROTECTED UNDER THE FIRST
36 AMENDMENT OF THE UNITED STATES CONSTITUTION.

37 41-1494.03. Claim or defense against state action

38 A. A RELIGIOUS ORGANIZATION MAY ASSERT A VIOLATION OF THIS ARTICLE
39 AS A CLAIM AGAINST STATE GOVERNMENT IN ANY JUDICIAL OR ADMINISTRATIVE
40 PROCEEDING OR AS A DEFENSE IN ANY JUDICIAL OR ADMINISTRATIVE PROCEEDING
41 WITHOUT REGARD TO WHETHER THE PROCEEDING IS BROUGHT BY OR IN THE NAME OF
42 STATE GOVERNMENT, ANY PRIVATE PERSON OR ANY OTHER PARTY.

43 B. NOTWITHSTANDING ANY OTHER LAW, AN ACTION UNDER THIS ARTICLE MAY
44 BE COMMENCED, AND RELIEF MAY BE GRANTED, IN A COURT OF THIS STATE WITHOUT

1 REGARD TO WHETHER THE RELIGIOUS ORGANIZATION COMMENCING THE ACTION HAS
2 SOUGHT OR EXHAUSTED ADMINISTRATIVE REMEDIES.

3 41-1494.04. Remedies

4 A. A RELIGIOUS ORGANIZATION THAT SUCCESSFULLY ASSERTS A CLAIM OR
5 DEFENSE UNDER THIS ARTICLE AGAINST STATE GOVERNMENT MAY RECOVER:

6 1. DECLARATORY RELIEF.

7 2. INJUNCTIVE RELIEF TO PREVENT OR REMEDY A VIOLATION OF THIS
8 ARTICLE OR THE EFFECTS OF SUCH A VIOLATION.

9 3. COMPENSATORY DAMAGES FOR PECUNIARY AND NONPECUNIARY LOSSES.

10 4. REASONABLE ATTORNEY FEES AND COSTS.

11 5. ANY OTHER APPROPRIATE RELIEF.

12 B. A RELIGIOUS ORGANIZATION THAT SUCCESSFULLY ASSERTS A CLAIM OR
13 DEFENSE UNDER THIS ARTICLE AGAINST A PRIVATE PERSON NOT ACTING UNDER COLOR
14 OF STATE LAW MAY ONLY RECOVER DECLARATORY RELIEF AND INJUNCTIVE RELIEF.

15 41-1494.05. Immunity waived

16 SOVEREIGN, GOVERNMENTAL AND QUALIFIED IMMUNITIES TO SUIT AND FROM
17 LIABILITY ARE WAIVED AND ABOLISHED TO THE EXTENT OF LIABILITY ESTABLISHED
18 BY THIS ARTICLE, AND A RELIGIOUS ORGANIZATION MAY SUE STATE GOVERNMENT,
19 EXCEPT STATE COURTS, FOR DAMAGES ALLOWED BY SECTION 41-1494.04.

20 41-1494.06. Rules of construction

21 A. THIS ARTICLE SHALL BE CONSTRUED IN FAVOR OF A BROAD PROTECTION
22 OF THE FREE EXERCISE OF RELIGION.

23 B. THE PROTECTION OF THE FREE EXERCISE OF RELIGION AFFORDED BY THIS
24 ARTICLE IS IN ADDITION TO THE PROTECTIONS PROVIDED UNDER FEDERAL LAW,
25 STATE LAW AND THE CONSTITUTIONS OF THE UNITED STATES AND ARIZONA. THIS
26 ARTICLE DOES NOT PREEMPT OR REPEAL ANY STATE OR LOCAL LAW THAT IS EQUALLY
27 OR MORE PROTECTIVE OF THE FREE EXERCISE OF RELIGION. THIS ARTICLE DOES NOT
28 NARROW THE MEANING OR APPLICATION OF ANY STATE OR LOCAL LAW PROTECTING THE
29 FREE EXERCISE OF RELIGION.

30 C. THIS ARTICLE APPLIES TO, AND IN CASES OF CONFLICT SUPERSEDES,
31 ALL STATE STATUTES THAT IMPINGE ON THE FREE EXERCISE OF RELIGION, UNLESS A
32 CONFLICTING STATUTE IS EXPRESSLY MADE EXEMPT FROM THE APPLICATION OF THIS
33 ARTICLE. THIS ARTICLE ALSO APPLIES TO, AND IN CASES OF CONFLICT
34 SUPERSEDES, ANY ORDINANCE, RULE, ORDER, OPINION, DECISION, PRACTICE OR
35 OTHER EXERCISE OF STATE GOVERNMENT'S AUTHORITY THAT IMPINGES ON THE FREE
36 EXERCISE OF RELIGION.

37 D. IF ANY PROVISION OF THIS ARTICLE OR ANY APPLICATION OF THE
38 PROVISION TO ANY PARTICULAR PERSON OR CIRCUMSTANCE IS HELD TO BE INVALID
39 UNDER LAW, THE REMAINDER OF THIS ARTICLE AND THE APPLICATION OF ITS
40 PROVISIONS TO ANY OTHER PERSON OR CIRCUMSTANCE MAY NOT BE AFFECTED.

41 41-1494.07. Time limit

42 A RELIGIOUS ORGANIZATION MUST BRING AN ACTION TO ASSERT A CLAIM
43 UNDER THIS ARTICLE NOT LATER THAN TWO YEARS AFTER THE DATE THAT THE PERSON
44 KNEW OR SHOULD HAVE KNOWN THAT A DISCRIMINATORY ACTION OR OTHER VIOLATION
45 OF THIS ARTICLE WAS TAKEN AGAINST THAT RELIGIOUS ORGANIZATION.

1 Sec. 2. Legislative findings

2 The Legislature finds:

3 1. Religion provides extensive benefits to our country both in
4 meeting the spiritual needs of our populace and also in supporting social
5 services, health care and economic activity.

6 2. Religion contributes \$1.2 trillion annually to the nation's
7 economy and society. This includes charitable activities, health care,
8 educational services and millions of volunteer hours in programs that help
9 the poor, help individuals struggling with addiction or mental illness and
10 provide job training. "Congregations, businesses inspired by faith, faith-
11 based charities and institutions not only build communities and families
12 but also strengthen our economy in every town and city of the country."
13 Brian J. Grim & Melissa E. Grim, The Socio-economic Contribution of
14 Religion to American Society: An Empirical Analysis, 12 *Interdisc. J. of*
15 *Res. On Religion* (2016).

16 3. "The Constitution forbids laws that prohibit the free exercise
17 of religion. That guarantee protects not just the right to be a religious
18 person, holding beliefs inwardly and secretly; it also protects the right
19 to act on those beliefs outwardly and publicly." Espinoza v. Montana Dep't
20 of Revenue, 140 S. Ct. 2246, 2276 (2020) (Gorsuch, J., concurring).

21 4. The United States Supreme Court has "long recognized the
22 importance of protecting religious actions, not just religious status."
23 Id. "[T]he First Amendment protects the 'freedom to act' as well as the
24 'freedom to believe.'" Id. (quoting *Cantwell v. Connecticut*, 310 U.S. 296,
25 303 (1940)).

26 5. The Free Exercise Clause of the United States Constitution
27 guarantees religious believers, at a bare minimum, equal treatment under
28 the law. Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508
29 U.S. 520, 542 (1993).

30 6. "What benefits the government decides to give, whether meager or
31 munificent, it must give without discrimination against religious
32 conduct." Espinoza, 140 S. Ct. at 2277.

33 7. The government violates the Free Exercise Clause whenever it
34 "conditions receipt of an important benefit upon conduct proscribed by a
35 religious faith, or . . . denies such benefit because of conduct mandated
36 by a religious belief, thereby putting substantial pressure on an adherent
37 to modify his behavior to violate his beliefs." Thomas v. Review Bd. of
38 Ind. Employment Security Div., 450 U.S. 707, 717-18 (1981).

39 8. "The First Amendment does not allow our leaders to decide which
40 rights to honor and which to ignore." Spell v. Edwards, 962 F.3d 175, 183
41 (5th Cir. 2020) (Ho, J., concurring).

42 9. "Government does not have carte blanche, even in a pandemic, to
43 pick and choose which First Amendment rights are 'open' and which remain
44 'closed.'" Id. At 181.

1 10. Government officials may not "afford a greater degree of
2 protection to commercial than to noncommercial speech," Metromedia, Inc.
3 v. City of San Diego, 453 U.S. 490, 513 (1981) (plurality opinion), or
4 prefer the transmission of secular views over religious ones, Rosenberger
5 v. Rector & Visitors of Univ. of Va., 515 U.S. 819, 830-31 (1995).

6 11. The government may not "devalue[] religious reasons for
7 [congregating] by judging them to be of lesser import than nonreligious
8 reasons." Church of the Lukumi Bablu Aye, 508 U.S. at 537.

9 12. The government may not permit "life-sustaining" operations to
10 continue during a state of emergency without also permitting
11 "soul-sustaining" operations such as religious services to continue,
12 especially when the religious services "adhere to all the public health
13 guidelines required of the other services." Roberts v. Neace, 958 F.3d
14 409, 414 (6th Cir. 2020).

15 13. Dr. Timothy P. Flanigan, Professor of Medicine at the Warren
16 Alpert Medical School of Brown University, provided sworn testimony in
17 federal court that religious services pose no greater threat to public
18 health than other gatherings where CDC guidelines are followed. Flanigan
19 Expert Decl., Calvary Chapel Dayton Valley v. Sisolak, No. 3:20-cv-00303,
20 Dkt. 38-31 (D. Nev. June 6, 2020). Dr. Flanigan concluded:

21 (a) "There is no scientific or medical reason that a religious
22 service that follows the guidelines issued by the CDC would pose a more
23 significant risk of spreading SARS-CoV-2 than gatherings or interactions
24 at other establishments or institutions." Id. ¶ 27.

25 (b) "[T]here is no scientific or medical reason that people could
26 not follow the CDC guidance just as carefully in a religious setting as
27 they could in a non-religious setting. In fact, my experience has been
28 that individuals in religious settings are observant of the rules
29 established by their houses of worship." Id. ¶ 32.

30 (c) "[S]o long as the CDC guidelines are followed, there is no
31 scientific or medical reason to prohibit religious services but not
32 prohibit other activities or gatherings, nor is there any scientific or
33 medical reason to allow certain activities or gatherings while not
34 allowing religious services." Id. ¶ 33.

35 (d) "[S]o long as the CDC guidelines are followed, there is no
36 scientific or medical reason to limit the number of persons at a religious
37 gathering while not imposing the same restrictions on shopping malls, big
38 box stores, restaurants or bars, gyms or fitness centers, barbershops or
39 hair salons, movie theaters, museums, water parks, offices, workplace
40 meetings, gambling casinos, factories, supermarkets, farmer's markets,
41 retail stores, demonstrations, or other places where individuals interact,
42 gather, or share space." Id. ¶ 34.