

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

State of Arizona  
House of Representatives  
Fifty-fifth Legislature  
Second Regular Session  
2022

## **HB 2507**

Introduced by  
Representatives Toma: Biasiucci, Blackman, Bolick, Carroll, Fillmore,  
Finchem, Hoffman, Kavanagh, Nguyen, Pingerelli, Wilmeth, Senator  
Livingston

**AN ACT**

**AMENDING TITLE 41, CHAPTER 9, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 11; 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 11, to read:

4 ARTICLE 11. RELIGION IS ESSENTIAL

5 41-1495. Definitions

6 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 1. "DISCRIMINATORY ACT" MEANS ANY DIRECT OR INDIRECT ACT OR  
8 PRACTICE THAT ADVERSELY AFFECTS A RELIGIOUS ORGANIZATION, INCLUDING  
9 EXCLUSION, RESTRICTION, SEGREGATION, LIMITATION, REFUSAL OR DENIAL.

10 2. "RELIGIOUS ORGANIZATION" MEANS:

11 (a) A HOUSE OF WORSHIP.

12 (b) A RELIGIOUS GROUP, CORPORATION, ASSOCIATION, EDUCATIONAL  
13 INSTITUTION, MINISTRY, ORDER, SOCIETY OR SIMILAR ENTITY, REGARDLESS OF  
14 WHETHER IT IS INTEGRATED OR AFFILIATED WITH A CHURCH OR OTHER HOUSE OF  
15 WORSHIP.

16 (c) AN OFFICER, OWNER, MINISTER, MANAGER, RELIGIOUS LEADER,  
17 CLERGYPERSON OR EMPLOYEE OF AN ENTITY OR ORGANIZATION DESCRIBED IN THIS  
18 PARAGRAPH.

19 3. "RELIGIOUS SERVICES" MEANS A MEETING OR ASSEMBLY OF TWO OR MORE  
20 PERSONS ORGANIZED BY A RELIGIOUS ORGANIZATION FOR THE PURPOSE OF WORSHIP,  
21 TRAINING, PROVIDING EDUCATIONAL SERVICES, CONDUCTING RELIGIOUS RITUALS OR  
22 OTHER ACTIVITIES THAT ARE DEEMED NECESSARY BY THE RELIGIOUS ORGANIZATION  
23 FOR THE EXERCISE OF RELIGION.

24 4. "STATE GOVERNMENT" MEANS:

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

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

29 (c) ANY PERSON ACTING IN AN OFFICIAL CAPACITY.

30 (d) ANY PRIVATE PERSON SUING UNDER OR ATTEMPTING TO ENFORCE A LAW,  
31 RULE OR REGULATION ADOPTED BY THE STATE GOVERNMENT.

32 41-1495.01. Discriminatory action against religious  
33 organizations; prohibition

34 A. STATE GOVERNMENT MAY NOT TAKE ANY DISCRIMINATORY ACTION AGAINST  
35 A RELIGIOUS ORGANIZATION ON THE BASIS THAT THE ORGANIZATION:

36 1. IS RELIGIOUS.

37 2. OPERATES OR SEEKS TO OPERATE DURING A STATE OF EMERGENCY.

38 3. ENGAGES IN THE EXERCISE OF RELIGION AS PROTECTED UNDER THE FIRST  
39 AMENDMENT OF THE UNITED STATES CONSTITUTION.

40 B. DURING A STATE OF EMERGENCY, RELIGIOUS SERVICES ARE DECLARED  
41 ESSENTIAL SERVICES AND ARE DEEMED NECESSARY AND VITAL TO THE HEALTH AND  
42 WELFARE OF THE PUBLIC.

43 C. STATE GOVERNMENT SHALL ALLOW A RELIGIOUS ORGANIZATION TO  
44 CONTINUE TO OPERATE AND ENGAGE IN RELIGIOUS SERVICES DURING THE STATE OF  
45 EMERGENCY TO THE SAME OR GREATER EXTENT THAN STATE GOVERNMENT ALLOWS OTHER

1 ORGANIZATIONS OR BUSINESSES THAT PROVIDE ESSENTIAL SERVICES THAT ARE  
2 NECESSARY AND VITAL TO THE HEALTH AND WELFARE OF THE PUBLIC TO OPERATE.

3 D. THIS SECTION DOES NOT PROHIBIT STATE GOVERNMENT FROM REQUIRING  
4 RELIGIOUS ORGANIZATIONS TO COMPLY WITH NEUTRAL HEALTH, SAFETY OR OCCUPANCY  
5 REQUIREMENTS THAT ARE ISSUED BY THE STATE GOVERNMENT OR THE FEDERAL  
6 GOVERNMENT AND THAT APPLY TO ALL ORGANIZATIONS AND BUSINESSES THAT PROVIDE  
7 ESSENTIAL SERVICES. STATE GOVERNMENT MAY NOT ENFORCE ANY HEALTH, SAFETY OR  
8 OCCUPANCY REQUIREMENT THAT IMPOSES A SUBSTANTIAL BURDEN ON A RELIGIOUS  
9 SERVICE UNLESS STATE GOVERNMENT DEMONSTRATES THAT APPLYING THE BURDEN TO  
10 THE RELIGIOUS SERVICE IN THAT PARTICULAR INSTANCE IS ESSENTIAL TO FURTHER  
11 A COMPELLING GOVERNMENTAL INTEREST AND IS THE LEAST RESTRICTIVE MEANS OF  
12 FURTHERING THAT COMPELLING GOVERNMENTAL INTEREST.

13 41-1495.02. Enforceability

14 A. A RELIGIOUS ORGANIZATION MAY ASSERT A VIOLATION OF THIS ARTICLE  
15 AS A CLAIM AGAINST STATE GOVERNMENT IN ANY JUDICIAL OR ADMINISTRATIVE  
16 PROCEEDING OR AS A DEFENSE IN ANY JUDICIAL OR ADMINISTRATIVE PROCEEDING  
17 WITHOUT REGARD TO WHETHER THE PROCEEDING IS BROUGHT BY OR IN THE NAME OF  
18 STATE GOVERNMENT, ANY PRIVATE PERSON OR ANY OTHER PARTY. NOTWITHSTANDING  
19 ANY OTHER LAW, AN ACTION UNDER THIS ARTICLE MAY BE COMMENCED AND RELIEF  
20 MAY BE GRANTED, IN A COURT OF THIS STATE WITHOUT REGARD TO WHETHER THE  
21 RELIGIOUS ORGANIZATION COMMENCING THE ACTION HAS SOUGHT OR EXHAUSTED  
22 ADMINISTRATIVE REMEDIES.

23 B. A RELIGIOUS ORGANIZATION THAT SUCCESSFULLY ASSERTS A CLAIM OR  
24 DEFENSE UNDER THIS ARTICLE AGAINST STATE GOVERNMENT MAY RECOVER:

- 25 1. DECLARATORY RELIEF.
- 26 2. INJUNCTIVE RELIEF.
- 27 3. COMPENSATORY DAMAGES.
- 28 4. REASONABLE ATTORNEY FEES AND COSTS.
- 29 5. ANY OTHER APPROPRIATE RELIEF.

30 C. A RELIGIOUS ORGANIZATION THAT SUCCESSFULLY ASSERTS A CLAIM OR  
31 DEFENSE UNDER THIS ARTICLE AGAINST A PRIVATE PERSON NOT ACTING IN AN  
32 OFFICIAL CAPACITY MAY ONLY RECOVER DECLARATORY RELIEF AND INJUNCTIVE  
33 RELIEF.

34 D. SOVEREIGN AND GOVERNMENTAL IMMUNITIES TO SUIT AND FROM LIABILITY  
35 ARE WAIVED AND ABOLISHED TO THE EXTENT OF LIABILITY ESTABLISHED BY THIS  
36 ARTICLE, AND A RELIGIOUS ORGANIZATION MAY SUE STATE GOVERNMENT, EXCEPT  
37 STATE COURTS, FOR DAMAGES ALLOWED BY SUBSECTION B OF THIS SECTION.

38 41-1495.03. Rules of construction

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

41 B. THE PROTECTION OF THE FREE EXERCISE OF RELIGION AFFORDED BY THIS  
42 ARTICLE IS IN ADDITION TO THE PROTECTIONS PROVIDED UNDER FEDERAL LAW,  
43 STATE LAW AND THE CONSTITUTIONS OF THE UNITED STATES AND ARIZONA. THIS  
44 ARTICLE DOES NOT PREEMPT OR REPEAL ANY STATE OR LOCAL LAW THAT IS EQUALLY  
45 OR MORE PROTECTIVE OF THE FREE EXERCISE OF RELIGION. THIS ARTICLE DOES NOT

1 NARROW THE MEANING OR APPLICATION OF ANY STATE OR LOCAL LAW PROTECTING THE  
2 FREE EXERCISE OF RELIGION.

3 C. THIS ARTICLE APPLIES TO ALL STATE AND LOCAL LAWS AND ORDINANCES  
4 AND THE IMPLEMENTATION OF THOSE LAWS AND ORDINANCES, WHETHER STATUTORY OR  
5 OTHERWISE AND WHETHER ADOPTED BEFORE OR AFTER THE EFFECTIVE DATE OF THIS  
6 SECTION. STATE LAWS ENACTED AFTER THE EFFECTIVE DATE OF THIS SECTION ARE  
7 SUBJECT TO THIS ARTICLE UNLESS THE LAW EXPLICITLY EXCLUDES APPLICATION BY  
8 REFERENCE TO THIS ARTICLE.

9 D. IF ANY PROVISION OF THIS ARTICLE OR ANY APPLICATION OF THE  
10 PROVISION TO ANY PARTICULAR PERSON OR CIRCUMSTANCE IS HELD TO BE INVALID  
11 UNDER LAW, THE REMAINDER OF THIS ARTICLE AND THE APPLICATION OF ITS  
12 PROVISIONS TO ANY OTHER PERSON OR CIRCUMSTANCE MAY NOT BE AFFECTED.

13 Sec. 2. Legislative findings

14 The Legislature finds:

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

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

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

33 4. The United States Supreme Court has "long recognized the  
34 importance of protecting religious actions, not just religious status."  
35 Id. "[T]he First Amendment protects the 'freedom to act' as well as the  
36 'freedom to believe.'" Id. (quoting Cantwell v. Connecticut, 310 U.S. 296,  
37 303 (1940)).

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

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

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

7           8. "The First Amendment does not allow our leaders to decide which  
8 rights to honor and which to ignore." Spell v. Edwards, 962 F.3d 175, 183  
9 (5th Cir. 2020) (Ho, J., concurring).

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

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

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

21          12. The government may not permit "life-sustaining" operations to  
22 continue during a state of emergency without also permitting  
23 "soul-sustaining" operations such as religious services to continue,  
24 especially when the religious services "adhere to all the public health  
25 guidelines required of the other services." Roberts v. Neace, 958 F.3d  
26 409, 414 (6th Cir. 2020).

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

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

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

42           (c) "[S]o long as the CDC guidelines are followed, there is no  
43 scientific or medical reason to prohibit religious services but not  
44 prohibit other activities or gatherings, nor is there any scientific or

1 medical reason to allow certain activities or gatherings while not  
2 allowing religious services." Id. ¶ 33.

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