

Senate Engrossed House Bill
religious services; essential services

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

HOUSE BILL 2507

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. "CRIMINAL CONDUCT" MEANS ANY ACT, INCLUDING ALL PREPARATORY
8 OFFENSES, IN VIOLATION OF SECTION 13-1103, 13-1104, 13-1105, 13-1202,
9 13-1203, 13-1204, 13-1208, 13-1304, 13-1404, 13-1405, 13-1406, 13-1410,
10 13-1417, 13-2314.04, 13-2915, 13-2916, 13-2921, 13-2921.01, 13-3019,
11 13-3552, 13-3553, 13-3554, 13-3601 OR 13-3601.02.

12 2. "DISCRIMINATORY ACT" MEANS ANY DIRECT OR INDIRECT ACT OR
13 PRACTICE THAT ADVERSELY AFFECTS A RELIGIOUS ORGANIZATION, INCLUDING
14 EXCLUSION, RESTRICTION, SEGREGATION, LIMITATION, REFUSAL OR DENIAL.

15 3. "RELIGIOUS ORGANIZATION" MEANS:

16 (a) A HOUSE OF WORSHIP.

17 (b) A RELIGIOUS GROUP, CORPORATION, ASSOCIATION, EDUCATIONAL
18 INSTITUTION, MINISTRY, ORDER, SOCIETY OR SIMILAR ENTITY, REGARDLESS OF
19 WHETHER IT IS INTEGRATED OR AFFILIATED WITH A CHURCH OR OTHER HOUSE OF
20 WORSHIP.

21 (c) AN OFFICER, OWNER, MINISTER, MANAGER, RELIGIOUS LEADER,
22 CLERGYPERSON OR EMPLOYEE OF AN ENTITY OR ORGANIZATION DESCRIBED IN THIS
23 PARAGRAPH.

24 4. "RELIGIOUS SERVICES" MEANS A MEETING OR ASSEMBLY OF TWO OR MORE
25 PERSONS ORGANIZED BY A RELIGIOUS ORGANIZATION FOR THE PURPOSE OF WORSHIP,
26 TRAINING, PROVIDING EDUCATIONAL SERVICES, CONDUCTING RELIGIOUS RITUALS OR
27 OTHER ACTIVITIES THAT ARE DEEMED NECESSARY BY THE RELIGIOUS ORGANIZATION
28 FOR THE EXERCISE OF RELIGION.

29 5. "STATE GOVERNMENT" MEANS:

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

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

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

35 41-1495.01. Discriminatory action against religious
36 organizations: prohibition

37 A. STATE GOVERNMENT OR ANY PRIVATE PERSON WHO SUES UNDER OR
38 ATTEMPTS TO ENFORCE A LAW, RULE OR REGULATION THAT IS ADOPTED BY THIS
39 STATE OR A POLITICAL SUBDIVISION OF THIS STATE MAY NOT TAKE ANY
40 DISCRIMINATORY ACTION AGAINST A RELIGIOUS ORGANIZATION ON THE BASIS THAT
41 THE ORGANIZATION:

42 1. IS RELIGIOUS.

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

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

1 B. DURING A STATE OF EMERGENCY, RELIGIOUS SERVICES ARE DECLARED
2 ESSENTIAL SERVICES AND ARE DEEMED NECESSARY AND VITAL TO THE HEALTH AND
3 WELFARE OF THE PUBLIC.

4 C. STATE GOVERNMENT SHALL ALLOW A RELIGIOUS ORGANIZATION TO
5 CONTINUE TO OPERATE AND ENGAGE IN RELIGIOUS SERVICES DURING THE STATE OF
6 EMERGENCY TO THE SAME OR GREATER EXTENT THAN STATE GOVERNMENT ALLOWS OTHER
7 ORGANIZATIONS OR BUSINESSES THAT PROVIDE ESSENTIAL SERVICES THAT ARE
8 NECESSARY AND VITAL TO THE HEALTH AND WELFARE OF THE PUBLIC TO OPERATE.

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

19 41-1495.02. Enforceability

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

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

- 31 1. DECLARATORY RELIEF.
- 32 2. INJUNCTIVE RELIEF.
- 33 3. COMPENSATORY DAMAGES.
- 34 4. REASONABLE ATTORNEY FEES AND COSTS.
- 35 5. ANY OTHER APPROPRIATE RELIEF.

36 C. A RELIGIOUS ORGANIZATION THAT SUCCESSFULLY ASSERTS A CLAIM OR
37 DEFENSE UNDER THIS ARTICLE AGAINST A PRIVATE PERSON NOT ACTING IN AN
38 OFFICIAL CAPACITY MAY ONLY RECOVER DECLARATORY RELIEF AND INJUNCTIVE
39 RELIEF.

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

1 41-1495.03. Rules of construction

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

4 B. THE PROTECTION OF THE FREE EXERCISE OF RELIGION AFFORDED BY THIS
5 ARTICLE IS IN ADDITION TO THE PROTECTIONS PROVIDED UNDER FEDERAL LAW,
6 STATE LAW AND THE CONSTITUTIONS OF THE UNITED STATES AND ARIZONA. THIS
7 ARTICLE DOES NOT PREEMPT OR REPEAL ANY STATE OR LOCAL LAW THAT IS EQUALLY
8 OR MORE PROTECTIVE OF THE FREE EXERCISE OF RELIGION. THIS ARTICLE DOES NOT
9 NARROW THE MEANING OR APPLICATION OF ANY STATE OR LOCAL LAW PROTECTING THE
10 FREE EXERCISE OF RELIGION.

11 C. THIS ARTICLE APPLIES TO ALL STATE AND LOCAL LAWS AND ORDINANCES
12 AND THE IMPLEMENTATION OF THOSE LAWS AND ORDINANCES, WHETHER STATUTORY OR
13 OTHERWISE AND WHETHER ADOPTED BEFORE OR AFTER THE EFFECTIVE DATE OF THIS
14 SECTION. STATE LAWS ENACTED AFTER THE EFFECTIVE DATE OF THIS SECTION ARE
15 SUBJECT TO THIS ARTICLE UNLESS THE LAW EXPLICITLY EXCLUDES APPLICATION BY
16 REFERENCE TO THIS ARTICLE.

17 D. IF ANY PROVISION OF THIS ARTICLE OR ANY APPLICATION OF THE
18 PROVISION TO ANY PARTICULAR PERSON OR CIRCUMSTANCE IS HELD TO BE INVALID
19 UNDER LAW, THE REMAINDER OF THIS ARTICLE AND THE APPLICATION OF ITS
20 PROVISIONS TO ANY OTHER PERSON OR CIRCUMSTANCE MAY NOT BE AFFECTED.

21 41-1495.04. Applicability

22 THIS ARTICLE DOES NOT APPLY TO A CASE BASED ON CRIMINAL CONDUCT OR
23 TO A TORT ACTION BROUGHT BY A VICTIM OF SUCH CRIMINAL CONDUCT AGAINST A
24 RELIGIOUS ORGANIZATION OR AN EMPLOYEE OR VOLUNTEER OF A RELIGIOUS
25 ORGANIZATION, INCLUDING AN ACTION BROUGHT PURSUANT TO SECTION 12-514.

26 Sec. 2. Legislative findings

27 The Legislature finds:

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

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

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

1 4. The United States Supreme Court has "long recognized the
2 importance of protecting religious actions, not just religious status."
3 Id. "[T]he First Amendment protects the 'freedom to act' as well as the
4 'freedom to believe.'" Id. (quoting Cantwell v. Connecticut, 310 U.S. 296,
5 303 (1940)).

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

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

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

19 8. "The First Amendment does not allow our leaders to decide which
20 rights to honor and which to ignore." Spell v. Edwards, 962 F.3d 175, 183
21 (5th Cir. 2020) (Ho, J., concurring).

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

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

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

33 12. The government may not permit "life-sustaining" operations to
34 continue during a state of emergency without also permitting
35 "soul-sustaining" operations such as religious services to continue,
36 especially when the religious services "adhere to all the public health
37 guidelines required of the other services." Roberts v. Neace, 958 F.3d
38 409, 414 (6th Cir. 2020).

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

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

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

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

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