

# HOUSE BILL No. 2260

By Committee on Judiciary

2-9

Proposed Amendment to HB 2260  
For Committee on Judiciary  
Requested By: Department of Corrections  
February 20, 2012  
Prepared by: Office of Revisor of Statutes

1 AN ACT concerning civil procedure; relating to exercise of religion.

2  
3 *Be it enacted by the Legislature of the State of Kansas:*

4 Section 1. As used in the Kansas preservation of religious freedom  
5 act:

6 (a) "Burden" means any government action that directly or  
7 indirectly constrains, inhibits, curtails or denies the exercise of religion by  
8 any person or compels any action contrary to a person's exercise of  
9 religion, and includes, but is not limited to, withholding benefits,  
10 assessing criminal, civil or administrative penalties, or exclusion from  
11 government programs or access to government facilities.

12 (b) (1) "Compelling governmental interest" includes, but is not  
13 limited to:

14 (A) ~~Any penological rules and regulations which are established by~~  
15 ~~a jail or correctional institution to protect the safety and security of~~  
16 ~~incarcerated persons, staff or visitors or to maintain good order and~~  
17 ~~discipline in any jail or correctional institution; and~~  
18 (B) protecting the welfare of a child from all forms of cruelty,  
19 neglect, degradation and inhumanity.

20 (2) "Compelling governmental interest" shall not include prohibition  
21 of a practice or policy of discrimination against individuals in  
22 employment relations, in access to free and public accommodations or in  
23 housing, except as set forth in K.S.A. 44-1001 et seq., and amendments  
24 thereto, and the laws and constitution of the United States.

25 (c) "Exercise of religion" means the practice or observance of  
26 religion under section 7 of the bill of rights of the constitution of the state  
27 of Kansas and the first amendment to the constitution of the United States  
28 and includes the right to act or refuse to act in a manner substantially  
29 motivated by a sincerely-held religious tenant or belief, whether or not  
30 the exercise is compulsory or a central part or requirement of the person's  
31 religious tenants or beliefs.

32 (d) "Fraudulent claim" means a claim that is dishonest in fact or that  
33 is made principally for a patently improper purpose, such as to harass the  
34 opposing party.

35 (e) "Government" includes the executive, legislative and judicial  
36 branches and any and all agencies, boards, commissions, departments,

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1 districts, authorities or other entities, subdivision or parts whatsoever of  
2 state and local government as well as any person acting under color of  
3 law.

4 (f) "Person" means any legal person or entity under the laws of the  
5 state of Kansas and the laws of the United States.

6 Sec. 2. (a) Government shall not substantially burden a person's  
7 exercise of religion even if the burden results from a rule of general  
8 applicability, unless such government demonstrates, by clear and  
9 convincing evidence, that application of the burden to the person:

10 (1) Is in furtherance of a compelling governmental interest; and  
11 (2) is the least restrictive means of furthering that compelling  
12 governmental interest.

13 (b) A person whose exercise of religion has been burdened, or is  
14 substantially likely to be burdened, in violation of this act, may assert  
15 such violation as a claim or defense in a judicial proceeding. A court may  
16 grant appropriate relief as may be necessary including:

- 17 (1) Injunctive relief;
- 18 (2) protective order;
- 19 (3) writ of mandamus or prohibition;
- 20 (4) declaratory relief;
- 21 (5) actual damages; or
- 22 (6) costs and attorney fees determined by the court.

23 (c) Any person found by a court of competent jurisdiction to have  
24 abused the protection of this act by making a fraudulent claim may be  
25 enjoined from filing further claims under this act without leave of court.

26 Sec. 3. (a) Nothing in this act shall be construed to:

27 (1) Impair the fundamental right of every parent to control the care  
28 and custody of such parent's minor children, including, but not limited to,  
29 control over education, discipline, religious and moral instruction, health,  
30 medical care, welfare, place of habitation, counseling and psychological  
31 and emotional well-being of such minor children;

32 (2) authorize any relationship, marital or otherwise, that would  
33 violate section 15 of article 15 of the constitution of the state of Kansas;

34 (3) authorize the application or enforcement, in the courts of the  
35 state of Kansas, of any law, rule, code or legal system other than the laws  
36 of the state of Kansas and of the United States;

37 (4) limit any religious organization from receiving any funding or  
38 other assistance from a government, or of any person to receive  
39 government funding for a religious activity to the extent permitted by the  
40 laws and constitution of the state of Kansas and of the United States; or

41 (5) protect actions or decisions to end the life of any child, born or  
42 unborn.

43 (b) This act applies to all government action including, but not

1 limited to, all state and local laws, ordinances, rules, regulations and  
2 policies and to their implementation, whether enacted or adopted before,  
3 on or after the effective date of this act.

4 Sec. 4. Sections 1 through 3, and amendments thereto, shall be  
5 known as and may be cited as the Kansas preservation of religious  
6 freedom act.

7 Sec. 5. This act shall take effect and be in force from and after its  
8 publication in the statute book.

(c) This act shall not apply to penological rules and regulations, conditions or policies established by a jail, correctional institution or juvenile detention facility or an entity supervising offenders in the community that are reasonably related to the safety and security of incarcerated persons, staff, visitors, supervised offenders or the public, or to maintenance of good order and discipline in any jail, correctional institution or juvenile detention facility.