

House Substitute for SENATE BILL No. 142

By Committee on Judiciary

3-16

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

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

12 (b) (1) "Compelling governmental interest" includes, but is not
13 limited to protecting the welfare of a child from abuse and neglect as
14 defined by state law.

15 (2) "Compelling governmental interest" includes the prohibition of a
16 practice or policy of discrimination against individuals in employment
17 relations, in access to free and public accommodations or in housing, as set
18 forth in K.S.A. 44-1001 *et seq.*, and amendments thereto, and the laws and
19 constitution of the United States. "Compelling governmental interest" with
20 respect to the prohibition of a practice or policy of discrimination against
21 individuals in employment relations, in access to free and public
22 accommodations or in housing shall not include any additional
23 prohibitions not 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 free exercise clause of the first amendment to the
28 constitution of the United States and includes the right to act or refuse to
29 act in a manner substantially motivated by a sincerely-held religious tenet
30 or belief, whether or not the exercise is compulsory or a central part or
31 requirement of the person's religious tenets 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,

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 law.

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

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

9 (1) Is in furtherance of a compelling governmental interest; and

10 (2) is the least restrictive means of furthering that compelling
11 governmental interest.

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

16 (1) Injunctive relief;

17 (2) protective order;

18 (3) writ of mandamus or prohibition; or

19 (4) declaratory relief.

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

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

24 (1) Impair the fundamental right of every parent, or create any new
25 right, to control the care and custody of such parent's minor children,
26 including, but not limited to, control over education, discipline, religious
27 and moral instruction, health, medical care, welfare, place of habitation,
28 counseling and psychological and emotional well-being of such minor
29 children as set forth in the laws and constitution of the state of Kansas and
30 of the United States;

31 (2) authorize any relationship, marital or otherwise, that would
32 violate section 16 of article 15 of the constitution of the state of Kansas;

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

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

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

42 (b) Except as provided in subsection (c), this act applies to all
43 government action including, but not limited to, all state and local laws,

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

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

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

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

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