

As Amended by House Committee

Session of 2011

HOUSE BILL No. 2260

By Committee on Judiciary

2-9

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 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:

14 ~~(A) Any penological rules and regulations which are established by a~~
15 ~~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~~ **abuse and neglect as defined by**
20 **state law.**

21 (2) "Compelling governmental interest" ~~shall not include~~ **includes**
22 **the** prohibition of a practice or policy of discrimination against individuals
23 in employment relations, in access to free and public accommodations or
24 in housing, ~~except~~ as set forth in K.S.A. 44-1001 et seq., and amendments
25 thereto, and the laws and constitution of the United States. **"Compelling**
26 **governmental interest" with respect to the prohibition of a practice or**
27 **policy of discrimination against individuals in employment relations,**
28 **in access to free and public accommodations or in housing shall not**
29 **include any additional prohibitions not set forth in K.S.A. 44-1001 et**
30 **seq., and amendments thereto, and the laws and constitution of the**
31 **United States.**

32 (c) "Exercise of religion" means the practice or observance of
33 religion under section 7 of the bill of rights of the constitution of the state
34 of Kansas and the **free exercise clause of the** first amendment to the
35 constitution of the United States and includes the right to act or refuse to
36 act in a manner substantially motivated by a sincerely-held religious ~~tenant~~

1 **tenet** or belief, whether or not the exercise is compulsory or a central part
2 or requirement of the person's religious ~~tenants tenets~~ or beliefs.

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

6 (e) "Government" includes the executive, legislative and judicial
7 branches and any and all agencies, boards, commissions, departments,
8 districts, authorities or other entities, subdivision or parts whatsoever of
9 state and local government as well as any person acting under color of law.

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

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

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

17 (2) is the least restrictive means of furthering that compelling
18 governmental interest.

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

23 (1) Injunctive relief;

24 (2) protective order;

25 (3) writ of mandamus or prohibition; **or**

26 (4) declaratory relief;

27 ~~(5) actual damages; or~~

28 ~~(6) costs and attorney fees determined by the court.~~

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

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

33 (1) Impair the fundamental right of every parent, **or create any new**
34 **right**, to control the care and custody of such parent's minor children,
35 including, but not limited to, control over education, discipline, religious
36 and moral instruction, health, medical care, welfare, place of habitation,
37 counseling and psychological and emotional well-being of such minor
38 children **as set forth in the laws and constitution of the state of Kansas**
39 **and of the United States;**

40 (2) authorize any relationship, marital or otherwise, that would
41 violate section ~~1516~~ of article 15 of the constitution of the state of Kansas;

42 (3) authorize the application or enforcement, in the courts of the state
43 of Kansas, of any law, rule, code or legal system other than the laws of the

1 state of Kansas and of the United States;

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

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

8 (b) **Except as provided in subsection (c),** this act applies to all
9 government action including, but not limited to, all state and local laws,
10 ordinances, rules, regulations and policies and to their implementation,
11 whether enacted or adopted before, on or after the effective date of this act.

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

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

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