

HOUSE BILL No. 2203

By Representatives Kinzer, Alford, Boldra, Bradford, Brunk, Christmann, DeGraaf, Dove, Edwards, Esau, Ewy, Garber, Goico, Gonzalez, Grosserode, Hedke, Henry, Hermanson, Hildebrand, Howell, Huebert, Kahrs, Kelley, Macheers, Mast, McPherson, Meigs, Montgomery, O'Brien, Osterman, Pauls, Peck, Petty, Powell, Rhoades, Rubin, Ryckman Jr., Ryckman Sr., Schwab, Siegfried and Sutton

2-1

HB2203-Balloon-Becker1
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Office of Revisor of Statutes
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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) "Compelling governmental interest" includes, but is not limited
13 to, protecting the welfare of a child from abuse and neglect as defined by
14 state law.

15 (c) "Exercise of religion" means the practice or observance of religion
16 under section 7 of the bill of rights of the constitution of the state of
17 Kansas and the free exercise clause of the first amendment to the
18 constitution of the United States and includes the right to act or refuse to
19 act in a manner substantially motivated by a sincerely-held religious tenet
20 or belief, whether or not the exercise is compulsory or a central part or
21 requirement of the person's religious tenets or beliefs.

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

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

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

31 Sec. 2. (a) Government shall not substantially burden a person's civil
32 right to exercise of religion even if the burden results from a rule of

1 general applicability, unless such government demonstrates, by clear and
2 convincing evidence, that application of the burden to the person:

- 3 (1) Is in furtherance of a compelling governmental interest; and
- 4 (2) is the least restrictive means of furthering that compelling
5 governmental interest.

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

- 10 (1) Injunctive relief;
- 11 (2) protective order;
- 12 (3) writ of mandamus or prohibition;
- 13 (4) declaratory relief;
- 14 (5) actual damages; or

15 (d) costs and attorney fees determined by the court.
16 (e) Any person found by a court of competent jurisdiction to have
17 abused the protection of this act by making a fraudulent claim may be
18 enjoined from filing further claims under this act without leave of court.

19 Sec. 3. In determining whether a compelling governmental interest is
20 sufficient to justify a substantial burden on a person's exercise of religion
21 pursuant to section 2, and amendments thereto, only those interests of the
22 highest order and not otherwise served can overbalance the fundamental
23 right to the exercise of religion preserved by this act. In order to prevail
24 under the standard established pursuant to subsection (a) of section 2, and
25 amendments thereto, the government shall demonstrate that such standard
26 is satisfied through application of the asserted violation of this act to the
27 particular claimant whose sincere exercise of religion has been burdened.
28 The religious liberty interest protected by this act is an independent liberty
29 that occupies a preferred position, and no encroachments upon this liberty
30 shall be permitted, whether direct or indirect, unless required by clear and
31 compelling governmental interests of the highest order.

32 Sec. 4. (a) Nothing in this act shall be construed to:

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

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

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

(c) A person whose exercise of religion has been
burdened in violation of this act, shall not bring an
action to assert such violation as a claim under this
act later than one year after the date such person
knew or should have known of such violation.