

As Amended by House Committee

Session of 2013

HOUSE BILL No. 2203

By Representatives Kinzer, Alford, Boldra, Bradford, Brunk, Christmann, DeGraaf, Dove, Edwards, Esau, Ewy, Garber, Goico, Gonzalez, Grosserode, Hedke, Henry, Hermanson, Hildabrand, 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

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

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Be it enacted by the Legislature of the State of Kansas:

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

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

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

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

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

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

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Sec. 2. (a) Government shall not substantially burden a person's civil right to exercise of religion even if the burden results from a rule of general applicability, unless such government demonstrates, by clear and

1 convincing evidence, that application of the burden to the person:

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

3 (2) is the least restrictive means of furthering that compelling
4 governmental interest.

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

9 (1) Injunctive relief;

10 (2) protective order;

11 (3) writ of mandamus or prohibition;

12 (4) declaratory relief;

13 (5) actual damages; or

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

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

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

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

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

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

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

43 (4) limit any religious organization from receiving any funding or

1 other assistance from a government, or of any person to receive
2 government funding for a religious activity to the extent permitted by the
3 laws and constitution of the state of Kansas and of the United States; or

4 (5) protect actions or decisions to end the life of any **person or** child,
5 born or unborn.

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

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

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

20 Sec. 6. This act shall take effect and be in force from and after its
21 publication in the statute book.