

1 AN ACT relating to restoring religious liberty.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔Section 1. KRS 446.350 is amended to read as follows:

4 (1) As used in this section:

5 (a) "Government" means the Commonwealth of Kentucky, its executive or  
6 judicial branch officials, any of its political subdivisions, any city, county,  
7 charter county government, consolidated local government, urban-county  
8 government, unified local government, metropolitan government, and any  
9 other government board or commission and includes:

10 1. Any administrative organization of the Commonwealth described in  
11 KRS 12.020;

12 2. Any person acting under color of state law; or

13 3. Any person who is threatening or attempting to enforce a law, rule,  
14 policy, or administrative regulation adopted by the Commonwealth or  
15 any of its political subdivisions; and

16 (b) "Substantially burden" means any action that directly or indirectly  
17 constrains, inhibits, curtails, or denies the sincere exercise of religion by  
18 any person or compels any action contrary to a person's sincere exercise of  
19 religion, including but not limited to:

20 1. Withholding benefits;

21 2. Assessing criminal, civil, or administrative penalties; or

22 3. Excluding from governmental programs or access to governmental  
23 facilities.

24 (2) Government shall not substantially burden a person's freedom of religion. The right  
25 to act or refuse to act in a manner motivated by a sincerely held religious belief may  
26 not be substantially burdened unless the government proves by clear and  
27 convincing evidence that it has a compelling governmental interest in infringing the

1 specific act or refusal to act and has used the least restrictive means to further that  
2 interest. ~~[ A "burden" shall include indirect burdens such as withholding benefits,  
3 assessing penalties, or an exclusion from programs or access to facilities.]~~

4 (3) Except as provided in subsection (5) of this section, a person other than a  
5 sentenced inmate of a correctional facility, whose sincere religious exercise has  
6 been substantially burdened in violation of this section may assert that violation  
7 as a claim or defense in a judicial or administrative proceeding, regardless of  
8 whether the Commonwealth or any of its political subdivisions is a party to the  
9 proceeding, and obtain appropriate relief including relief against the  
10 Commonwealth or its political subdivisions. Appropriate relief shall include but is  
11 not limited to:

12 (a) Injunctive relief;

13 (b) Declaratory relief;

14 (c) Compensatory damages;

15 (d) Costs;

16 (e) Expert witness fees; and

17 (f) Attorney's fees.

18 (4) (a) A sentenced inmate of a correctional facility whose sincere religious  
19 exercise has been substantially burdened in violation of this section may  
20 assert that violation as a claim or defense in a judicial or administrative  
21 proceeding, regardless of whether the Commonwealth or any of its political  
22 subdivisions is a party to the proceeding, and obtain appropriate relief that  
23 shall be limited to injunctive relief and declaratory relief, provided the  
24 inmate first sends written notice of an intent to bring suit under this section  
25 to the Attorney General of Kentucky at least thirty (30) days prior to the  
26 filing of any lawsuit, and the Attorney General elects not to issue an opinion  
27 under this section as provided under paragraph (b) of this subsection.

- 1        (b) In the event of an inmate complaint, the Attorney General may elect to issue  
2        an opinion on whether or not a violation of this statute occurred and shall  
3        provide notice to the inmate of an intention to issue an opinion.
- 4        (c) If the Attorney General provides notice of his or her intent to issue an  
5        opinion, the opinion shall be issued within forty-five (45) days of receipt of  
6        the inmate's complaint finding a violation or a determination that there was  
7        no violation.
- 8        (d) Upon the issuance of an opinion finding there was a violation, the Attorney  
9        General shall direct the remedial measures to be taken by the officials who  
10       are responsible for the violation further directing that the corrective action  
11       shall be implemented within fourteen (14) days of the issuance of the  
12       opinion.
- 13       (e) Failure to implement the corrective action as provided under paragraph (d)  
14       of this subsection shall be subject to enforcement by the Attorney General  
15       or the aggrieved inmate as provided under paragraph (f) of this subsection.
- 16       (f) Any sentenced inmate of a correctional facility or any official who is found  
17       responsible for any violation may appeal any opinion to a Circuit Court of  
18       competent jurisdiction, which shall review the opinion in accordance with  
19       KRS Chapter 13B.
- 20       (5) The Attorney General shall have standing to enforce the provisions of this statute  
21       in the event of any violation and shall have standing to intervene in any action  
22       seeking enforcement. In addition to declaratory and injunctive relief, the  
23       Attorney General shall be entitled to collect civil penalties for any violation in an  
24       amount not to exceed one thousand dollars (\$1,000) per day for each day of the  
25       violation.
- 26       (6) This statute applies to all state and local laws, administrative regulations, and  
27       ordinances and the implementation of those laws, administrative regulations, and

1 ordinances, whether statutory or otherwise, and whether adopted before or after  
2 the effective date of this Act. State laws enacted after the effective date of this Act  
3 shall be subject to this section unless this statute is explicitly excluded. This  
4 section shall not be construed to authorize any government to burden any  
5 religious belief.

6 (7) If any provision of this section or the application thereof to any person or  
7 circumstance is held invalid, the invalidity shall not affect other provisions or  
8 applications of the section that can be given effect without the invalid provision  
9 or application, and to this end the provisions of this section are severable.

10 (8) Sovereign, judicial, and governmental immunity, including any immunity under  
11 the Eleventh Amendment to the Constitution of the United States, are waived to  
12 the extent of liability created under this section.

13 (9) Qualified official immunity shall be waived if:

14 (a) An aggrieved person files, a written complaint with the Attorney General,  
15 and within thirty (30) days of the receipt of the complaint, the Attorney  
16 General either:

17 1. Issues an opinion finding a violation that the responsible government  
18 officials fail to remedy within fourteen (14) days from the issuance of  
19 the opinion, in which case punitive damages shall also be available as  
20 a remedy; or

21 2. Fails to issue an opinion within the thirty (30) day time period; or

22 (b) There is published case law from the Supreme Court of Kentucky, the  
23 Kentucky Court of Appeals, the United States Supreme Court, or the United  
24 States Court of Appeals for the Sixth Circuit that finds a violation of this or  
25 any other state's religious freedom restoration statute, a violation of the  
26 federal religious freedom restoration statute, or a free exercise violation  
27 under the First Amendment to the United States Constitution under same or

1

*similar facts.*