

State of South Dakota

NINETY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2016

193X0207

HOUSE ENGROSSED NO. **HB 1107** - 02/08/2016

Introduced by: Representatives Craig, Bolin, Brunner, Deutsch, DiSanto, Gosch, Greenfield (Lana), Heinemann (Leslie), Hunt, Klumb, Latterell, Marty, Mickelson, Novstrup (Al), Otten (Herman), Partridge, Peterson (Kent), Qualm, Rasmussen, Stalzer, Verchio, Wiik, Willadsen, and Wollmann and Senators Greenfield (Brock), Curd, Ewing, Fiegen, Haggar (Jenna), Heineman (Phyllis), Holien, Jensen (Phil), Monroe, Novstrup (David), Olson, Omdahl, Otten (Ernie), Rampelberg, Shorma, and Van Gerpen

1 FOR AN ACT ENTITLED, An Act to ensure government nondiscrimination in matters of
2 religious beliefs and moral convictions.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That the code be amended by adding a NEW SECTION to read:

5 Terms used in this Act mean:

6 (1) "Person," any individual, corporation, company sole proprietorship, partnership,
7 society, club, organization, or association, except the term does not include medical
8 providers, hospitals, clinics, hospices, nursing homes, or residential custodial
9 facilities with respect to visitation, recognition of a designated representative for
10 health care decision making, or refusal to provide life-saving and emergency medical
11 treatment necessary to cure an illness or injury, or state employees and the employees
12 of any school board, county, municipality, or other entity included under the



1 definition of state, when acting within the scope of employment;

2 (2) "State," any department, commission, board, agency, or agent of the state; any
3 political subdivision of the state or any department, commission, board, agency, or
4 agent of a political subdivision of the state; or any individual or entity acting under
5 color of state law;

6 (3) "State benefit program," any program administered or funded by the state, or by an
7 agent on behalf of the state that provides cash, vouchers, payments, grants, contracts,
8 loans, or similar assistance to a person.

9 Section 2. That the code be amended by adding a NEW SECTION to read:

10 Notwithstanding any provision to the contrary, the state may not take any discriminatory
11 action against a person, wholly or partially, on the basis that the person believes, speaks, or acts
12 in accordance with a sincerely held religious belief or moral conviction that:

- 13 (1) Marriage is or should only be recognized as the union of one man and one woman;
14 (2) Sexual relations are properly reserved to marriage; or
15 (3) The terms male or man and female or woman refer to distinct and immutable
16 biological sexes that are determined by anatomy and genetics by the time of birth.

17 Section 3. That the code be amended by adding a NEW SECTION to read:

18 For purposes of this Act, a discriminatory action is any action the state takes that:

- 19 (1) Alters the tax treatment; assesses any tax, penalty, or payment against; or denies,
20 delays, revokes, or otherwise makes unavailable an exemption from taxation to a
21 person;
22 (2) Applies a fine, penalty, or payment against a person;
23 (3) Disallows, denies, or otherwise makes unavailable a state tax deduction for any
24 charitable contribution made by or to a person;

- 1 (4) Withholds, reduces, excludes, terminates, denies, materially alters the terms or
2 conditions of, or otherwise makes unavailable any state grant, contract, subcontract,
3 cooperative agreement, guarantee, loan, scholarship, diploma, grade, recognition,
4 license, certification, accreditation, employment, or other similar benefit, position,
5 or status from or to a person;
- 6 (5) Withholds, reduces, excludes, terminates, denies, or otherwise makes unavailable any
7 entitlement or benefit of a state benefit program, including admission to, equal
8 treatment in, or eligibility for a degree from an educational program from or to a
9 person;
- 10 (6) Withholds, reduces, excludes, terminates, denies, or otherwise makes unavailable
11 access or an entitlement to state property, a facility, an educational institution, a
12 speech forum, or a charitable fund-raising campaign from or to a person; or
- 13 (7) Investigates or initiates an investigation, claim, or administrative proceeding against
14 a person if that person would not otherwise be subject to the investigation.

15 Section 4. That the code be amended by adding a NEW SECTION to read:

16 The state shall recognize the accreditation, license, or certification of any person that would
17 be accredited, licensed, or certified under state law but for a determination against the person
18 wholly or partially on the basis that the person believes, speaks, or acts in accordance with a
19 sincerely held religious belief or moral conviction described in section 2 of this Act.

20 Section 5. That the code be amended by adding a NEW SECTION to read:

21 A person may assert a violation of this Act as an action or defense in any judicial or
22 administrative proceeding and may obtain compensatory damages, injunctive relief, declaratory
23 relief, or any other appropriate relief. Standing to assert an action or defense pursuant to this
24 section is governed by the general rules of standing in this state.

1 Section 6. That the code be amended by adding a NEW SECTION to read:

2 Notwithstanding any other provision of law to the contrary, a person may commence an
3 action and the court may grant relief, pursuant to section 5 of this Act, without regard as to
4 whether the person commencing the action has sought or exhausted available administrative
5 remedies.

6 Section 7. That the code be amended by adding a NEW SECTION to read:

7 In any action or proceeding to enforce the provisions of this Act, a prevailing party who
8 establishes a violation of this Act may recover reasonable attorney's fees and costs.

9 Section 8. That the code be amended by adding a NEW SECTION to read:

10 Nothing in this Act may be construed to prevent the state from providing either directly or
11 through a person not seeking protection under this Act, any benefit or service authorized under
12 state law.

13 Section 9. That the code be amended by adding a NEW SECTION to read:

14 The protection of free exercise of religious beliefs and moral convictions afforded by this
15 Act are in addition to the protections provided under federal law, state law, and the state and
16 federal constitutions. Nothing in this Act may be construed to preempt or repeal any state or
17 local law that is equally or more protective of free exercise of religious beliefs or moral
18 convictions. Nothing in this Act may be construed to narrow the meaning or application of any
19 state or local law protecting free exercise of religious beliefs or moral convictions.