Conference Engrossed

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
Senate
Fiftieth Legislature
Second Regular Session
2012

CHAPTER 326

SENATE BILL 1365

AN ACT

AMENDING TITLE 41, CHAPTER 9, ARTICLE 9, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1493.04; AMENDING SECTION 41-3751, ARIZONA REVISED STATUTES; RELATING TO THE FREE EXERCISE OF RELIGION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Title 41, chapter 9, article 9, Arizona Revised Statutes, is amended by adding section 41-1493.04, to read:

41-1493.04. Free exercise of religion; professional or occupational license; certificate or registration; appointments to governmental offices; definition

A. GOVERNMENT SHALL NOT DENY, REVOKE OR SUSPEND A PERSON'S PROFESSIONAL OR OCCUPATIONAL LICENSE, CERTIFICATE OR REGISTRATION FOR ANY OF THE FOLLOWING AND THE FOLLOWING ARE NOT UNPROFESSIONAL CONDUCT:

1. DECLINING TO PROVIDE OR PARTICIPATE IN PROVIDING ANY SERVICE THAT VIOLATES THE PERSON'S SINCERELY HELD RELIGIOUS BELIEFS EXCEPT PERFORMING THE DUTIES OF A PEACE OFFICER.

2. REFUSING TO AFFIRM A STATEMENT OR OATH THAT IS CONTRARY TO THE PERSON'S SINCERELY HELD RELIGIOUS BELIEFS.

3. EXPRESSING SINCERELY HELD RELIGIOUS BELIEFS IN ANY CONTEXT, INCLUDING A PROFESSIONAL CONTEXT AS LONG AS THE SERVICES PROVIDED OTHERWISE MEET THE CURRENT STANDARD OF CARE OR PRACTICE FOR THE PROFESSION.

4. PROVIDING FAITH-BASED SERVICES THAT OTHERWISE MEET THE CURRENT STANDARD OF CARE OR PRACTICE FOR THE PROFESSION.

5. MAKING BUSINESS RELATED DECISIONS IN ACCORDANCE WITH SINCERELY HELD RELIGIOUS BELIEFS SUCH AS:

(a) EMPLOYMENT DECISIONS, UNLESS OTHERWISE PROHIBITED BY STATE OR FEDERAL LAW.

(b) CLIENT SELECTION DECISIONS.

(c) FINANCIAL DECISIONS.

B. GOVERNMENT SHALL NOT DENY A PERSON AN APPOINTMENT TO PUBLIC OFFICE OR A POSITION ON A BOARD, COMMISSION OR COMMITTEE BASED ON THE PERSON'S EXERCISE OF RELIGION.

C. THIS SECTION IS NOT A DEFENSE TO AND DOES NOT AUTHORIZE ANY PERSON TO ENGAGE IN SEXUAL MISCONDUCT OR ANY CRIMINAL CONDUCT.

D. THIS SECTION DOES NOT AUTHORIZE ANY PERSON TO ENGAGE IN CONDUCT THAT IS PROHIBITED UNDER THE CONSTITUTION OF THE UNITED STATES OR OF THIS STATE OR SECTION 15-535.

E. THIS SECTION DOES NOT AUTHORIZE ANY PERSON TO ENGAGE IN CONDUCT THAT VIOLATES THE EMERGENCY MEDICAL TREATMENT AND ACTIVE LABOR ACT (P.L. 99-272; 100 STAT. 164; 42 UNITED STATES CODE SECTION 1395DD) OR THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT (P.L. 106-274; 114 STAT. 803; 42 UNITED STATES CODE SECTION 2000CC-1) AS OF THE EFFECTIVE DATE OF THIS SECTION.

F. FOR THE PURPOSES OF THIS SECTION, "GOVERNMENT" INCLUDES ALL COURTS AND ADMINISTRATIVE BODIES OR ENTITIES UNDER THE JURISDICTION OF THE ARIZONA SUPREME COURT.

Sec. 2. Section 41-3751, Arizona Revised Statutes, is amended to read:

41-3751. Contracts for goods and services; religious organizations; definitions

A. Notwithstanding any other law or executive order, and in accordance with this section, all public bodies shall contract for goods and services provided pursuant to title 8, 36 or 46 or title 31, chapter 2, article 6 without discrimination against religious organizations, INCLUDING DISCRIMINATION BECAUSE OF THEIR RELIGIOUS BELIEFS OR EXERCISE OF RELIGION and shall provide beneficiaries of assistance under the programs established by law with certificates, vouchers or other forms of disbursement that are redeemable with these organizations that are awarded a contract. The public bodies may use any state, federal, local or other monies available for these purposes.

B. The public bodies shall allow contracts with religious organizations to provide goods and services provided pursuant to title 8, 36 or 46 or title 31, chapter 2, article 6 and to accept certificates, vouchers or other forms of disbursement under any program established on the same basis as any other nongovernmental provider without impairing the religious character of these organizations, and without diminishing the religious freedom of beneficiaries of assistance funded under these programs. The programs shall be implemented consistent with the first amendment of the United States Constitution. The public bodies shall not discriminate against an organization that is or applies to be a contractor to provide assistance or that accepts certificates, vouchers or other forms of disbursement on the basis that the organization has a religious character.

C. A religious organization with a contract described in this section shall retain its independence from federal, state and local governments, including the religious organization's control over the definition, development, practice and expression of its religious beliefs. Public bodies shall not require a religious organization to alter its form of internal governance or to remove religious art, icons, scripture or other symbols in order to be eligible to contract to provide assistance or to accept certificates, vouchers or other forms of disbursement funded under any program or public contract.

D. If a person who applies for or receives goods, services or disbursements objects to the religious character of the organization or institution from which the person receives or would receive assistance funded under any program, the public body shall provide the person, within a reasonable period of time after the date of the objection, with assistance from an alternative provider that is accessible to the person if an alternative provider is available and the value of which is not less than the value of assistance that the person would have received from the religious organization. Organizations shall provide notice to people receiving assistance of the right to object pursuant to this subsection.

E. A religious organization's exemption provided under section 702 of the civil rights act of 1964 (P.L. 88-352; 78 Stat. 255; 42 United States Code section 2000e-1a) regarding employment practices is not affected by its participation in or receipt of monies from programs described in this section. Nothing in this section allows religious organizations to discriminate in employment practices on the basis of race, age, color, sex or national origin.

F. Except as otherwise provided by law, a religious organization shall not discriminate against a person in regard to rendering assistance funded under any program described in this section on the basis of religion, a religious belief or refusal to participate in a religious practice, or on the basis of race, age, color, sex or national origin.

G. Except as provided in subsection H, any religious organization that contracts to provide goods, services or assistance funded under any program is subject to the same rules as other contractors to account in accordance with generally accepted auditing principles for the use of the monies provided under the program.

H. If a religious organization segregates public monies provided under these programs into separate accounts, only the programs funded by financial assistance provided with these monies are subject to financial and performance audits.

I. Appeals from the decisions of the head of a state agency, board or commission may be made to the director of the department of administration in accordance with the rules of procedure adopted by the director pursuant to chapter 23, article 9 of this title to resolve bid protests.

J. A RELIGIOUS ORGANIZATION WHOSE RIGHTS HAVE BEEN VIOLATED UNDER THIS SECTION MAY ASSERT THAT VIOLATION AS A CLAIM OR DEFENSE IN AN ADMINISTRATIVE PROCEEDING OR A JUDICIAL PROCEEDING ONCE ALL ADMINISTRATIVE REMEDIES HAVE BEEN EXHAUSTED AND OBTAIN APPROPRIATE RELIEF, INCLUDING INJUNCTIVE RELIEF AND COMPENSATORY DAMAGES. A RELIGIOUS ORGANIZATION THAT PREVAILS IN AN ACTION TO ENFORCE THIS SECTION MAY SEEK TO RECOVER ATTORNEY FEES AND COSTS PURSUANT TO SECTION 12-348.

~~J.~~ K. No monies provided directly to institutions or organizations to provide services and administer programs under this section may be spent for sectarian worship, instruction or proselytization. This subsection does not apply to the contracting for the services of chaplains by a public body.

~~K.~~ L. For the purposes of this section: ~~,~~

1. "EXERCISE OF RELIGION" HAS THE SAME MEANING PRESCRIBED IN SECTION 41-1493.

2. "Public body" means state agencies, boards and commissions and political subdivisions of this state.

APPROVED BY THE GOVERNOR MAY 11, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 14, 2012.

Passed the House April 16, 2012,

by the following vote: 38 Ayes,

18 Nays, 3 Not Voting 1 vacant

Speaker of the House

Cheryl Laube

Chief Clerk of the House

Passed the Senate February 28, 2012,

by the following vote: 21 Ayes,

9 Nays, 0 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR
This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20_____,

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

S.B. 1365

HOUSE FINAL PASSAGE
as per Joint Conference

Passed the House May 1, 2012,

by the following vote: 41 Ayes,

17 Nays, 2 Not Voting

[signature]
Speaker of the House

Cheryl Laube
Chief Clerk of the House

SENATE FINAL PASSAGE
as per Joint Conference

Passed the Senate April 30, 2012,

by the following vote: 21 Ayes,

9 Nays, 0 Not Voting

Steve Pierce LV
President of the Senate

Charmin Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor

this 3rd day of May, 2012,

at 10:24 o'clock A M.

Secretary to the Governor

Approved this 11th day of

May, 2012,

at 3:00 o'clock P. M.

Janice K. Brewer
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 14th day of May, 2012,

at 8:30 o'clock a M.

Ken Bennett
Secretary of State

S.B. 1365