

Kansas Preservation of Religious Freedom Act

Kansas Statutes Annotated, Chapter 60, Article 53

60-5301. Citation of act. K.S.A. 2016 Supp. 60-5301 through 60-5305, and amendments thereto, shall be known and may be cited as the Kansas preservation of religious freedom act.

60-5302. Definitions. As used in the Kansas preservation of religious freedom act:

- (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.
- (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.
- (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.
- (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.
- (e) "Government" includes the executive, legislative and judicial branches and any and all agencies, boards, commissions, departments, districts, authorities or other entities, subdivisions or parts whatsoever of state and local government as well as any person acting under color of law.
- (f) "Person" means any legal person or entity under the laws of the state of Kansas and the laws of the United States.

60-5303. Exercise of religion; burden of proof; remedies. (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 convincing evidence, that application of the burden to the person:

- (1) Is in furtherance of a compelling governmental interest; and
 - (2) is the least restrictive means of furthering that compelling governmental interest.
- (b) A person whose exercise of religion has been burdened, or is substantially likely to be burdened, in violation of this act, may assert such violation as a claim or defense in a judicial proceeding. A court may grant appropriate relief as may be necessary including:
- (1) Injunctive relief;
 - (2) protective order;
 - (3) writ of mandamus or prohibition;
 - (4) declaratory relief;
 - (5) actual damages; or
 - (6) costs and attorney fees determined by the court.
- (c) Any person found by a court of competent jurisdiction to have abused the protection of this act by making a fraudulent claim may be enjoined from filing further claims under this act without leave of court.

60-5304. Exercise of religion; compelling governmental interest. In determining whether a compelling governmental interest is sufficient to justify a substantial burden on a person's exercise of religion pursuant to K.S.A. 2016 Supp. 60-5303, and amendments thereto, only those interests of the highest order and not otherwise served can overbalance the fundamental right to the exercise of religion preserved by this act. In order to prevail under the standard established pursuant to subsection (a) of K.S.A. 2016 Supp. 60-5303, and amendments thereto, the government shall demonstrate that such standard is satisfied through

application of the asserted violation of this act to the particular claimant whose sincere exercise of religion has been burdened. The religious liberty interest protected by this act is an independent liberty that occupies a preferred position, and no encroachments upon this liberty shall be permitted, whether direct or indirect, unless required by clear and compelling governmental interests of the highest order.

60-5305. Construction of act. (a) Nothing in this act shall be construed to:

- (1) Impair the fundamental right of every parent to control the care and custody of such parent's minor children, including, but not limited to, control over education, discipline, religious and moral instruction, health, medical care, welfare, place of habitation, counseling and psychological and emotional well-being of such minor children as set forth in the laws and constitution of the state of Kansas and of the United States;
 - (2) authorize any relationship, marital or otherwise, that would violate section 16 of article 15 of the constitution of the state of Kansas;
 - (3) authorize the application or enforcement, in the courts of the state of Kansas, of any law, rule, code or legal system other than the laws of the state of Kansas and of the United States;
 - (4) limit any religious organization from receiving any funding or other assistance from a government, or of any person to receive government funding for a religious activity to the extent permitted by the laws and constitution of the state of Kansas and of the United States; or
 - (5) protect actions or decisions to end the life of any adult or child, born or unborn.
- (b) Except as provided in subsection (c), this act applies to all government action including, but not limited to, all state and local laws, ordinances, rules, regulations and policies and to their implementation, whether enacted or adopted before, on or after the effective date of this act.
- (c) This act shall not apply to penological rules and regulations, conditions or policies established by a jail, correctional institution, juvenile correctional facility or juvenile detention facility or an entity supervising offenders in the community that are reasonably related to the safety and security of incarcerated persons, staff, visitors, supervised offenders or the public, or to maintenance of good order and discipline in any jail, correctional institution, juvenile correctional facility or juvenile detention facility.

60-5311. Exercise of religion by religious student associations; definitions. As used in K.S.A. 2016 Supp. 60-5311 through 60-5313, and amendments thereto:

- (a) "Benefit" means the following:
- (1) Recognition;
 - (2) registration;
 - (3) the use of facilities of the postsecondary educational institution for meetings or speaking purposes;
 - (4) the use of channels of communication of the postsecondary educational institution; and
 - (5) funding sources that are otherwise available to other student associations in the postsecondary educational institution.
- (b) "Postsecondary educational institution" shall have the same meaning as that term is defined in K.S.A. 74-3201b, and amendments thereto.
- (c) "Student" means any person who is enrolled on a full-time or part-time basis in a postsecondary educational institution.
- (d) "Religious student association" means an association of students organized around shared religious beliefs.

60-5312. Same; prohibition on certain actions by postsecondary educational institutions. No postsecondary educational institution may take any action or enforce any policy that would deny a religious student association any benefit available to any other student association, or discriminate against a religious student association with respect to such benefit, based on such association's requirement that the leaders or members of such association:

- (a) Adhere to the association's sincerely held religious beliefs;
- (b) comply with the association's sincerely held religious beliefs;
- (c) comply with the association's sincere religious standards of conduct; or

(d) be committed to furthering the association's religious missions, as such religious beliefs, observance requirements, standards of conduct or missions are defined by the religious student association, or the religion on which the association is based.

60-5313. Same; cause of action. Any student or religious student association aggrieved by a violation of K.S.A. 2016 Supp. 60-5312, and amendments thereto, may bring a cause of action against the postsecondary educational institution for such violation and seek appropriate relief, including, but not limited to, monetary damages. Any student or religious student association aggrieved by a violation of K.S.A. 2016 Supp. 60-5312, and amendments thereto, also may assert such violation as a defense or counterclaim in any civil or administrative proceedings brought against such student or religious student association.