

SENATE ENROLLED ACT No. 101

AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC34-13-9 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]:

Chapter 9. Religious Freedom Restoration

Sec. 1. This chapter applies to all governmental entity statutes, ordinances, resolutions, executive or administrative orders, regulations, customs, and usages, including the implementation or application thereof, regardless of whether they were enacted, adopted, or initiated before, on, or after July 1, 2015.

Sec. 2. A governmental entity statute, ordinance, resolution, executive or administrative order, regulation, custom, or usage may not be construed to be exempt from the application of this chapter unless a state statute expressly exempts the statute, ordinance, resolution, executive or administrative order, regulation, custom, or usage from the application of this chapter by citation to this chapter.

Sec. 3. (a) The following definitions apply throughout this section: (1) "Establishment Clause" refers to the part of the First Amendment of the Constitution of the United States or the Constitution of the State of Indiana prohibiting laws respecting the establishment of religion. (2) "Granting", used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions. (b) This chapter may not be construed to affect, interpret, or in any way address the Establishment Clause. (c) Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, does not constitute a violation of this chapter.

Sec. 4. As used in this chapter, "demonstrates" means meets the burdens of going forward with the evidence and of persuasion.

Sec. 5. As used in this chapter, "exercise of religion" includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.

Sec. 6. As used in this chapter, "governmental entity" includes the whole or any part of a branch, department, agency, instrumentality, official, or other individual or entity acting under color of law of any of the following: (1) State government. (2) A political subdivision (as defined in IC 36-1-2-13). (3) An instrumentality of a governmental entity described in subdivision (1) or (2), including a state educational institution, a body politic, a body corporate and politic, or any other similar entity established by law.

Sec. 7. As used in this chapter, "person" includes the following: (1) An individual. (2) An organization, a religious society, a church, a body of communicants, or a group organized and operated primarily for religious purposes. (3) A partnership, a limited liability company, a corporation, a company, a firm, a society, a joint-stock company, an unincorporated association,

or another entity that: (A) may sue and be sued; and (B) exercises practices that are compelled or limited by a system of religious belief held by: (i) an individual; or (ii) the individuals; who have control and substantial ownership of the entity, regardless of whether the entity is organized and operated for profit or nonprofit purposes.

Sec. 8. (a) Except as provided in subsection (b), a governmental entity may not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability. (b) A governmental entity may substantially burden a person's exercise of religion only if the governmental entity demonstrates 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.

Sec. 9. A person whose exercise of religion has been substantially burdened, or is likely to be substantially burdened, by a violation of this chapter may assert the violation or impending violation as a claim or defense in a judicial or administrative proceeding, regardless of whether the state or any other governmental entity is a party to the proceeding. If the relevant governmental entity is not a party to the proceeding, the governmental entity has an unconditional right to intervene in order to respond to the person's invocation of this chapter.

Sec. 10. (a) If a court or other tribunal in which a violation of this chapter is asserted in conformity with section 9 of this chapter determines that: (1) the person's exercise of religion has been substantially burdened, or is likely to be substantially burdened; and (2) the governmental entity imposing the burden has not demonstrated that application of the burden to the person: (A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest; the court or other tribunal shall allow a defense against any party and shall grant appropriate relief against the governmental entity. (b) Relief against the governmental entity may include any of the following: (1) Declaratory relief or an injunction or mandate that prevents, restrains, corrects, or abates the violation of this chapter. (2) Compensatory damages. (c) In the appropriate case, the court or other tribunal also may award all or part of the costs of litigation, including reasonable attorney's fees, to a person that prevails against the governmental entity under this chapter.

Sec. 11. This chapter is not intended to, and shall not be construed or interpreted to, create a claim or private cause of action against any private employer by any applicant, employee, or former employee.

Amendment:

This chapter does not: (1) authorize a provider to refuse to offer or provide services, facilities, use of public accommodations, goods, employment, or housing to any member or members of the general public on the basis of race, color, religion, ancestry, age, national origin, disability, sex, sexual orientation, gender identity, or United States military service;

(2) establish a defense to a civil action or criminal prosecution for refusal by a provider to offer or provide services, facilities, use of public accommodations, goods, employment, or housing to any member or members of the general public on the basis of race, color, religion, ancestry, age, national origin, disability, sex, sexual orientation, gender identity, or

United States military service; or (3) negate any rights available under the Constitution of the State of Indiana.[...]

As used in this chapter, "provider" means one (1) or more individuals, partnerships, associations, organizations, limited liability companies, corporations, and other organized groups of persons. The term does not include: (1) A church or other nonprofit religious organization or society, including an affiliated school, that is exempt from federal income taxation under 26 U.S.C. 501(a), as amended (excluding any activity that generates unrelated business taxable income (as defined in 26 U.S.C. 512, as amended)). (2) A rabbi, priest, preacher, minister, pastor, or designee of a church or other nonprofit religious organization or society when the individual is engaged in a religious or affiliated educational function of the church or other nonprofit religious organization or society.