

SECOND REGULAR SESSION
[P E R F E C T E D]
SENATE SUBSTITUTE # 3 FOR
SENATE JOINT RESOLUTION NO. 39
98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ONDER.

Offered March 7, 2016.

Senate Substitute adopted, March 7, 2016.

Taken up for Perfection March 7, 2016. Bill declared Perfected and Ordered Printed.

ADRIANE D. CROUSE, Secretary.

5268S.17P

JOINT RESOLUTION

Submitting to the qualified voters of Missouri, an amendment to article I of the Constitution of Missouri, by adding thereto one new section relating to the protection of certain religious organizations and individuals from being penalized by the state because of their sincere religious beliefs or practices concerning marriage between two persons of the same sex.

Be it resolved by the Senate, the House of Representatives concurring therein:

That at the next general election to be held in the state of Missouri, on
2 Tuesday next following the first Monday in November, 2016, or at a special
3 election to be called by the governor for that purpose, there is hereby submitted
4 to the qualified voters of this state, for adoption or rejection, the following
5 amendment to article I of the Constitution of the state of Missouri:

Section A. Article I, Constitution of Missouri, is amended by adding
2 thereto one new section, to be known as section 36, to read as follows:

**Section 36. 1. (1) That the state shall not impose a penalty on a
2 religious organization on the basis that the organization believes or
3 acts in accordance with a sincere religious belief concerning marriage
4 between two persons of the same sex;**

**(2) That the state shall not impose a penalty on any clergy or
5 other religious leader on the basis that such cleric or leader declines
6 to perform, solemnize, or facilitate a marriage or ceremony because of
7 a sincere religious belief concerning marriage between two persons of
8 the same sex, nor shall the state refuse to authorize any clergy or
9 religious leader to conduct marriages recognized by the state because
10**

11 of a sincere religious belief concerning such a marriage;

12 (3) That the state shall not impose a penalty on any church,
13 synagogue, mosque, temple, or other house of worship, denomination,
14 or other religious organization on the basis that such organization
15 declines to make its buildings or other facilities and property open or
16 available to perform, solemnize, or facilitate a marriage or ceremony
17 because of a sincere religious belief concerning marriage between two
18 persons of the same sex; and

19 (4) That the state shall not impose a penalty on an individual
20 who declines either to personally be a participant in a wedding or
21 marriage or to provide goods or services of expressional or artistic
22 creation, such as a photographer or florist, for a wedding or marriage
23 or a closely preceding or ensuing reception therefore, because of a
24 sincere religious belief concerning marriage between two persons of
25 the same sex.

26 2. As used in subsection 1 of this section, "penalty" means, but is
27 not limited to, any adverse action taken by the state to:

28 (1) Alter the tax treatment of, or cause any tax, fine, or payment
29 to be assessed against, to delay, revoke, or otherwise deny an
30 exemption from taxation of, any religious organization;

31 (2) Disallow or hinder a deduction for tax purposes of any
32 charitable contribution made to any religious organization;

33 (3) Withhold, reduce, exclude, terminate, or otherwise deny any
34 accreditation, license, certificate, contract, grant, loan, guarantee, or
35 insurance from or to any religious organization;

36 (4) Withhold, reduce, exclude, terminate, or otherwise deny any
37 entitlement, social service benefit, health care benefit, or to alter or
38 deny a custody award, foster home placement, or adoption from, to, or
39 by any religious organization;

40 (5) Deny access to meeting space, channels of communication, or
41 other resources at an educational institution that is otherwise available
42 to other student organizations, participation in charitable fundraising
43 campaigns that are otherwise available to other charitable
44 organizations, or access to minister at correctional institutions or other
45 public facilities and property as is otherwise available to other
46 nongovernmental organizations, to or by any religious organization; or

47 (6) Recognize or allow an administrative charge or civil claim

48 against a religious organization or individual.

49 3. The state shall consider accredited, licensed, or certified for
50 purposes of state law any religious organization that would be
51 accredited, licensed, or certified, respectively, for such purposes but for
52 a determination that the organization believes or acts in accordance
53 with a sincere religious belief concerning marriage between two
54 persons of the same sex.

55 4. (1) Nothing in this section prevents the state from providing
56 a license to marry or providing any other marital entitlement, service,
57 or benefits authorized by state law.

58 (2) Nothing in this section permits a hospital or other health
59 care facility, or an elder care facility or hospice, to refuse to treat a
60 marriage as valid for purposes of a spouse's right to visitation or to
61 make surrogate health care decisions.

62 5. For purposes of this section, the following terms mean:

63 (1) "Acts", any action or failure to take action, including failure
64 to participate in, perform, encourage, service, solemnize, or facilitate,
65 all without regard to whether compelled by or central to a system of
66 religious belief;

67 (2) "Individual", a natural person or a closely held commercial
68 entity owned by a natural person or persons;

69 (3) "Religious organization", an organization that is:

70 (a) A house of worship, including but not limited to, a church,
71 diocese, conference, convention, denomination, association, synagogue,
72 mosque, or temple;

73 (b) A religious society, corporation, entity, partnership, order,
74 preschool, school, institution of higher education, ministry, charity,
75 social service provider, children's home, hospital or other health care
76 facility, hospice, elder care facility, or crisis pregnancy center, whether
77 or not connected to or affiliated with a church, diocese, denomination,
78 or other organization of churches, where said organization holds itself
79 out to the public in whole or in part as religious and its purposes and
80 activities are in whole or in part religious; or

81 (c) Any clergy, religious leader, minister, officer, manager,
82 employee, member, or volunteer of any entity described in paragraphs
83 (a) or (b) of this subdivision, while acting in the scope of his or her
84 office, employment, or duties of position;

85 (4) "State", a governmental body or person that is:

86 (a) A department, commission, board, agency, office, committee,
87 or court of this state, and any agent of the state or an official acting
88 under color of law of the state; or

89 (b) A municipality, county, school district, or other political
90 subdivision in this state, and any agent of such a body or official acting
91 under color of law of a political subdivision.

92 6. (1) A religious organization or individual may assert an actual
93 or threatened violation of this section as a claim or defense in a
94 judicial or administrative proceeding, or other hearing or dispute
95 resolution process.

96 (2) A claim or defense under this section shall proceed without
97 regard to whether the state is a named party in the judicial or
98 administrative proceeding, or other hearing or dispute resolution
99 process.

100 (3) A claim under this section may be commenced, and relief may
101 be granted, in a court of competent jurisdiction without regard to
102 whether the religious organization or individual commencing the claim
103 has pursued or exhausted available administrative remedies.

104 (4) The court may award compensatory damages, injunctive
105 relief, declaratory relief, or any other appropriate relief against the
106 state, and the state waives any immunity from liability in actions
107 brought under this section.

108 7. Nothing in this section repeals or supersedes any state law
109 that is equally or more protective of religious beliefs or acts. Nothing
110 in this section narrows the meaning or application of any state law
111 protecting religious beliefs or acts.

112 8. If any provision of this section or any application of such
113 provision to any religious organization or individual is held to be
114 contrary to the United States Constitution or otherwise in conflict with
115 the laws of the United States, the remainder of this section and the
116 application of the provision to any other religious organizations or
117 individuals shall not be affected.

Section B. Pursuant to chapter 116, and other applicable constitutional
2 provisions and laws of this state allowing the general assembly to adopt ballot
3 language for the submission of this joint resolution to the voters of this state, the
4 official summary statement of this resolution shall be as follows:

5 "Shall the Missouri Constitution be amended to provide that the
6 state shall not penalize religious organizations and certain
7 individuals for religious beliefs or acts concerning marriage
8 between two persons of the same sex, but the amendment does not
9 prevent the provision of a marriage license or other marital
10 benefits to such persons?"



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