

goods or services, or judgments, attestations, or other commissions that involve protected rights. The subsection also defines “Protected rights” to mean the rights of persons to be free from governmental actions that impair, impede, infringe upon, or otherwise restrict the exercise of any right guaranteed by the United States Constitution or the Constitution of Kentucky, including but not limited to a person’s right of conscience, freedom of religion, freedom of speech, freedom of the press, and right to peaceable assembly.

Subsection (2) prohibits the government from compelling, “actions, goods, services, judgments, attestations, or other commissions that conflict with protected rights.”

Subsection (4) provides that a court, commission, or public agency shall not punish (by fine, imprisonment, or other means) a protected activity provider for actions or inactions arising from or related to providing protected activities or refusing to provide protected activities:

- unless a court finds that the complaining person or the government has proven by clear and convincing evidence that the person or the government had a compelling governmental interest in infringing upon the specific act or refusal to act and had used the least restrictive means to further that interest.

The GA version of SB 180 adds definitions for “Place of public accommodation, resort, or amusement” as well as “Standard goods or services.” The GA version also adds that the measure shall not apply to the provision of standard goods or services:

- 1. In the ordinary course of business; or**
- 2. At a place of public accommodation, resort, or amusement.**

Part III: Fiscal Explanation, Bill Provisions, and Estimated Cost

The fiscal impact of SB 180 GA on local governments is indeterminable, the same as for the measure as introduced.

Since KRS 446.350 is similar to SB 180 GA, the statute’s litigation history is important, but not dispositive, in analyzing the fiscal impact of the measure on local governments.

Research has uncovered just one decision pertaining to KRS 446.350. The Fayette Circuit Court issued a ruling (*Hands On Originals, Inc. V. Lexington-Fayette Urban County Human Rights Commission, et al*) that favored a plaintiff who claimed that the Commission had burdened his freedom of religion. He had a sincerely held religious belief that was substantially burdened by the Lexington-Fayette Urban County Human Rights Commission. The Commission failed to prove by clear and convincing evidence that it had a compelling governmental interest and that it had used the least restrictive means to further that interest. The Fayette Circuit Court ordered the Commission to vacate and set aside its order against Hands On Originals, Inc. and to dismiss all charges against the company.

With regard to statutes in other states that are similar to KRS 446.350, a law review note (The Kentucky Religious Freedom Act: Neither a Savior for the Free Exercise of Religion Nor a Monstrous Threat to Civil Rights) maintains that there has been scant litigation pertaining to these statutes. Of the sixteen states with similar statutes, five states have had eleven cases combined, and four states have had no decisions.

It is unknown what the future holds for the fiscal impact of KRS 446.350. How much litigation will occur? To what extent will local governments have to adjust their practices as the result of litigation? What will litigation and the adjusted practices cost local governments? These questions remain unanswered. However, the litigation history of KRS 446.350 and similar statutes in other states provides some clues. These statutes have rarely been litigated. If the pattern continues in Kentucky, then KRS 446.350 may ultimately have a minimal negative fiscal impact on local governments.

Since SB 180 GA covers a wide range of activities and rights and since there is no litigation history with SB 180 GA as a codified statute, the questions posed above are even more difficult to answer with regard to the measure than with regard to KRS 446.350.

Data Source(s): Hands On Originals, Inc. V. Lexington-Fayette Urban County Human Rights Commission, et al (Fayette Circuit Court Civil Action NO. 14-CI-04474); Jennifer A. Pekman, The Kentucky Religious Freedom Act: Neither a Savior for the Free Exercise of Religion Nor a Monstrous Threat to Civil Rights, 103 Kentucky Law Journal 127, 133 (2014-2015); KRS

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