

Senate Engrossed

~~adoption; religious discrimination; prohibition~~
(now: adoption; foster care; religious discrimination)

State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

SENATE BILL 1399

AN ACT

AMENDING TITLE 8, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 6; RELATING
TO ADOPTION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 8, Arizona Revised Statutes, is amended by adding
3 chapter 6, to read:

4 CHAPTER 6

5 PROHIBITION ON RELIGIOUS DISCRIMINATION

6 ARTICLE 1. GENERAL PROVISIONS

7 8-921. Prohibition on religious discrimination; adoption
8 services and foster care services; enforcement;
9 remedies; definitions

10 A. STATE GOVERNMENT OR ANY PRIVATE PERSON WHO SUES UNDER OR
11 ATTEMPTS TO ENFORCE A LAW, RULE OR REGULATION THAT IS ADOPTED BY THIS
12 STATE OR A POLITICAL SUBDIVISION OF THIS STATE MAY NOT TAKE ANY
13 DISCRIMINATORY ACTION AGAINST A PERSON THAT ADVERTISES, PROVIDES OR
14 FACILITATES ADOPTION OR ADOPTION SERVICES OR FOSTER CARE OR FOSTER CARE
15 SERVICES ON THE BASIS THAT THE PERSON HAS PROVIDED OR DECLINES TO PROVIDE
16 ADOPTION OR ADOPTION SERVICES OR FOSTER CARE OR FOSTER CARE SERVICES BASED
17 ON OR IN A MANNER CONSISTENT WITH THE PERSON'S RELIGIOUS BELIEF OR
18 EXERCISE OF RELIGION.

19 B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, IF A CONTRACTOR
20 HAS A RELIGIOUS OBJECTION TO PROVIDING SERVICES REQUIRED BY A CONTRACT,
21 THE CONTRACTOR SHALL SUBMIT WITH THEIR CONTRACT PROPOSAL AN ALTERNATIVE
22 APPROACH TO MEET THE SERVICES REQUIRED BY THE CONTRACT. IF THE CONTRACT
23 REQUIRES AN EVIDENCE-BASED CURRICULUM, THE ALTERNATIVE APPROACH MUST BE
24 EVIDENCE-BASED AND LISTED ON THE APPROPRIATE CLEARINGHOUSE. THE
25 CONTRACTOR MAY SATISFY THE CONTRACT OBLIGATIONS BY COLLABORATING WITH
26 OTHER CONTRACTORS TO PROVIDE SERVICES THAT THE CONTRACTOR OBJECTS TO
27 PROVIDING BASED ON A RELIGIOUS BELIEF OR EXERCISE OF RELIGION.

28 C. STATE GOVERNMENT OR ANY PRIVATE PERSON WHO SUES UNDER OR
29 ATTEMPTS TO ENFORCE A LAW, RULE OR REGULATION THAT IS ADOPTED BY THIS
30 STATE OR A POLITICAL SUBDIVISION OF THIS STATE MAY NOT DISCRIMINATE
31 AGAINST A PERSON TO WHOM THE STATE GOVERNMENT GRANTS CUSTODY OF AN ADOPTED
32 CHILD OR FOSTER CHILD ON THE BASIS THAT THE PERSON GUIDES, INSTRUCTS OR
33 RAISES A CHILD OR INTENDS TO GUIDE, INSTRUCT OR RAISE A CHILD IN A MANNER
34 CONSISTENT WITH THE PERSON'S RELIGIOUS BELIEF OR EXERCISE OF RELIGION.

35 D. NOTWITHSTANDING SUBSECTION C OF THIS SECTION, WHEN CONSIDERING
36 PLACEMENT OF A CHILD, STATE GOVERNMENT MAY CONSIDER WHETHER A PERSON
37 SHARES THE SAME RELIGIOUS BELIEF OR EXERCISE OF RELIGION WITH AN ADOPTED
38 CHILD OR FOSTER CHILD.

39 E. NOTWITHSTANDING ANY OTHER LAW, AN ACTION UNDER THIS SECTION MAY
40 BE COMMENCED AGAINST THE STATE GOVERNMENT EXCEPT A COURT, AND RELIEF MAY
41 BE GRANTED, IN A JUDICIAL PROCEEDING WITHOUT REGARD TO WHETHER THE PERSON
42 COMMENCING THE ACTION HAS SOUGHT OR EXHAUSTED AVAILABLE ADMINISTRATIVE
43 REMEDIES. IN ANY ACTION OR PROCEEDING TO ENFORCE THIS SECTION, A
44 PREVAILING PARTY WHO ESTABLISHES A VIOLATION OF THIS SECTION SHALL RECOVER
45 REASONABLE ATTORNEY FEES.

1 F. A PERSON MAY ASSERT A VIOLATION OF THIS SECTION AS AN ACTION OR
2 PROCEEDING AGAINST THE STATE GOVERNMENT EXCEPT A COURT IN ANY JUDICIAL OR
3 ADMINISTRATIVE PROCEEDING OR AS A DEFENSE IN ANY JUDICIAL OR
4 ADMINISTRATIVE PROCEEDING WHETHER THE ACTION OR PROCEEDING IS BROUGHT BY
5 OR IN THE NAME OF THE STATE GOVERNMENT OR ANOTHER PARTY.

6 G. A PERSON MAY ASSERT AN ACTUAL OR THREATENED VIOLATION OF THIS
7 SECTION AS A CLAIM AGAINST THE STATE GOVERNMENT EXCEPT A COURT OR AS A
8 DEFENSE IN A JUDICIAL OR ADMINISTRATIVE PROCEEDING AND MAY OBTAIN
9 COMPENSATORY DAMAGES, INJUNCTIVE RELIEF, DECLARATORY RELIEF OR OTHER
10 APPROPRIATE RELIEF. A PERSON SHALL BRING A CLAIM FOR A VIOLATION OF THIS
11 SECTION NOT LATER THAN TWO YEARS AFTER THE DAY THE CAUSE OF ACTION
12 ACCRUES.

13 H. THIS CHAPTER APPLIES TO ALL STATE AND LOCAL LAWS AND ORDINANCES
14 AND THE IMPLEMENTATION OF THOSE LAWS AND ORDINANCES, WHETHER STATUTORY OR
15 OTHERWISE, AND WHETHER ADOPTED BEFORE OR AFTER THE EFFECTIVE DATE OF THIS
16 SECTION.

17 I. FOR THE PURPOSES OF THIS SECTION:

18 1. "ADOPTION OR ADOPTION SERVICES" OR "FOSTER CARE OR FOSTER CARE
19 SERVICES" MEANS SOCIAL SERVICES THAT ARE PROVIDED TO OR ON BEHALF OF
20 CHILDREN, INCLUDING:

21 (a) PROMOTING FOSTER PARENTING.

22 (b) PROVIDING FOSTER HOMES, RESIDENTIAL CARE, GROUP HOMES OR
23 TEMPORARY GROUP SHELTERS FOR CHILDREN.

24 (c) RECRUITING FOSTER PARENTS.

25 (d) PLACING CHILDREN IN FOSTER HOMES.

26 (e) LICENSING OR CERTIFYING FOSTER HOMES.

27 (f) PROMOTING ADOPTION OR RECRUITING ADOPTIVE PARENTS.

28 (g) ASSISTING ADOPTIONS OR SUPPORTING ADOPTIVE FAMILIES.

29 (h) PERFORMING OR ASSISTING HOME STUDIES.

30 (i) ASSISTING KINSHIP FOSTER CARE OR KINSHIP FOSTER CARE PARENTS.

31 (j) PROVIDING FAMILY PRESERVATION SERVICES.

32 (k) PROVIDING FAMILY SUPPORT SERVICES.

33 (l) PROVIDING TEMPORARY FAMILY REUNIFICATION SERVICES.

34 2. "CONTRACTOR" MEANS A PERSON THAT:

35 (a) ADVERTISES, PROVIDES OR FACILITATES ADOPTION OR ADOPTION
36 SERVICES.

37 (b) ADVERTISES, PROVIDES OR FACILITATES FOSTER CARE OR FOSTER CARE
38 SERVICES.

39 (c) CONTRACTS WITH THIS STATE TO PROVIDE EDUCATIONAL TRAINING FOR
40 ADOPTED OR FOSTER CARE CHILDREN AND PARENTS.

41 3. "DISCRIMINATORY ACTION" MEANS AN ACTION TAKEN BY STATE
42 GOVERNMENT TO DO ANY OF THE FOLLOWING ON THE BASIS OF A PERSON'S RELIGIOUS
43 BELIEF OR EXERCISE OF RELIGION:

1 (a) ALTER THE TAX TREATMENT OF, OR CAUSE ANY TAX, PENALTY OR
2 PAYMENT TO BE ASSESSED AGAINST, OR DENY, DELAY, REVOKE OR OTHERWISE MAKE
3 UNAVAILABLE AN EXEMPTION FROM TAXATION OF A PERSON.

4 (b) DISALLOW, DENY OR OTHERWISE MAKE UNAVAILABLE A DEDUCTION FOR
5 STATE TAX PURPOSES OF ANY CHARITABLE CONTRIBUTION THAT IS MADE TO OR BY A
6 PERSON.

7 (c) WITHHOLD, REDUCE, EXCLUDE, TERMINATE, MATERIALLY ALTER THE
8 TERMS OR CONDITIONS OF OR OTHERWISE MAKE UNAVAILABLE OR DENY ANY STATE
9 GRANT, CONTRACT, SUBCONTRACT, COOPERATIVE AGREEMENT, GUARANTEE, LOAN,
10 SCHOLARSHIP OR OTHER SIMILAR BENEFIT FROM OR TO A PERSON.

11 (d) WITHHOLD, REDUCE, EXCLUDE, TERMINATE, ADVERSELY ALTER THE TERMS
12 OR CONDITIONS OF OR OTHERWISE MAKE UNAVAILABLE OR DENY ANY ENTITLEMENT OR
13 BENEFIT UNDER A STATE BENEFIT PROGRAM FROM OR TO A PERSON.

14 (e) IMPOSE, LEVY OR ASSESS A MONETARY FINE, A FEE, A PENALTY,
15 DAMAGES OR AN INJUNCTION.

16 (f) WITHHOLD, REDUCE, EXCLUDE, TERMINATE, MATERIALLY ALTER THE
17 TERMS OR CONDITIONS OF OR OTHERWISE MAKE UNAVAILABLE OR DENY ANY LICENSE,
18 CERTIFICATION, ACCREDITATION, CUSTODY AWARD OR AGREEMENT, DIPLOMA, GRADE,
19 RECOGNITION OR OTHER SIMILAR BENEFIT, POSITION OR STATUS FROM OR TO A
20 PERSON.

21 (g) REFUSE TO HIRE OR PROMOTE, FORCE TO RESIGN, FIRE, DEMOTE,
22 SANCTION, DISCIPLINE, ADVERSELY ALTER THE TERMS OR CONDITIONS OF
23 EMPLOYMENT OR RETALIATE OR TAKE OTHER ADVERSE EMPLOYMENT ACTION AGAINST A
24 PERSON WHO IS EMPLOYED OR COMMISSIONED BY STATE GOVERNMENT IF THE PERSON
25 THAT IS THE SUBJECT OF THE ADVERSE EMPLOYMENT ACTION HAS FIRST GIVEN
26 NOTICE TO THEIR EMPLOYER OF THEIR RELIGIOUS OBJECTION.

27 4. "PERSON" MEANS:

28 (a) A NATURAL PERSON, IN HIS OR HER INDIVIDUAL CAPACITY, OR IN HIS
29 OR HER CAPACITY AS A MEMBER, OFFICER, OWNER, VOLUNTEER, EMPLOYEE, MANAGER,
30 RELIGIOUS LEADER, CLERGY OR MINISTER OF ANY ENTITY DESCRIBED IN THIS
31 PARAGRAPH.

32 (b) A RELIGIOUS ORGANIZATION.

33 (c) A SOLE PROPRIETORSHIP, PARTNERSHIP, TRUST, CLOSELY HELD
34 CORPORATION OR OTHER CLOSELY HELD ENTITY.

35 (d) A COOPERATIVE, VENTURE OR ENTERPRISE THAT IS COMPOSED OF TWO OR
36 MORE INDIVIDUALS OR ENTITIES DESCRIBED IN THIS PARAGRAPH, REGARDLESS OF
37 NONPROFIT OR FOR-PROFIT STATUS.

38 5. "RELIGIOUS ORGANIZATION" MEANS:

39 (a) A HOUSE OF WORSHIP, CHURCH, SYNAGOGUE, SHRINE, MOSQUE OR
40 TEMPLE.

41 (b) A RELIGIOUS GROUP, CORPORATION, ASSOCIATION, SCHOOL OR
42 EDUCATIONAL INSTITUTION, MINISTRY, ORDER OR SOCIETY OR A SIMILAR ENTITY,
43 REGARDLESS OF WHETHER IT IS INTEGRATED OR AFFILIATED WITH A CHURCH OR
44 OTHER HOUSE OF WORSHIP.

1 (c) AN OFFICER, OWNER, EMPLOYEE, MANAGER, RELIGIOUS LEADER, CLERGY
2 OR MINISTER OF AN ENTITY OR ORGANIZATION DESCRIBED IN THIS SUBSECTION.

3 6. "STATE BENEFIT PROGRAM" MEANS ANY PROGRAM THAT IS ADMINISTERED,
4 CONTROLLED OR FUNDED BY THIS STATE OR BY ANY AGENT ON BEHALF OF THIS STATE
5 AND THAT PROVIDES CASH, PAYMENTS, GRANTS, CONTRACTS, LOANS OR IN-KIND
6 ASSISTANCE.

7 7. "STATE GOVERNMENT" MEANS:

8 (a) THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE.

9 (b) ANY AGENCY OF THIS STATE OR A POLITICAL SUBDIVISION OF THIS
10 STATE, INCLUDING A DEPARTMENT, BUREAU, BOARD, COMMISSION, COUNCIL OR
11 COURT.

12 (c) ANY PERSON WHO ACTS UNDER COLOR OF STATE LAW.

13 Sec. 2. Legislative findings

14 The legislature finds that:

15 1. Arizona has a compelling governmental interest in protecting
16 adoptive and foster care families from discrimination against religious
17 beliefs and exercise of religion.

18 2. As of the effective date of this act there are twenty-five
19 adoption and foster care agencies in this state that assist families with
20 adoption and foster parent placements of children.

21 3. The adoption and foster care agencies of this state represent
22 diverse organizations and groups, some of which are faith based and some
23 of which are not faith based.

24 4. Children in need of placement services benefit from having as
25 many adoption and foster parent agencies as possible because the more
26 agencies that take part in these services, the greater is the likelihood
27 that the child will find a permanent placement.

28 5. The supreme court of the United States has recognized the
29 benefits of having more, not fewer, adoption and foster care providers,
30 stating that "maximizing the number of foster families and minimizing
31 liability are important goals, but the city fails to show that granting
32 (Catholic Social Services) an exception will put those goals at risk. If
33 anything, including CSS in the program seems likely to increase not reduce
34 the number of available foster parents." Fulton v. City of Philadelphia,
35 141 S. Ct. 1868 (2021).

36 6. Children and families benefit greatly from the adoption and
37 foster care services provided by faith-based and nonfaith-based child
38 placing agencies.

39 7. Faith-based organizations and groups have a lengthy and
40 distinguished history of providing adoption and foster care services in
41 this state, including some organizations and groups that predate the
42 state's involvement in such services.

43 8. Private child placing agencies and individuals, including
44 faith-based child placing agencies and individuals, have the right to free
45 exercise of religion under both the state and federal constitutions.

1 Under well settled principles of constitutional law, this right includes
2 the freedom to abstain from conduct that conflicts with an agency's
3 sincerely held religious beliefs.

4 9. Ensuring that faith-based child placing agencies can continue to
5 provide adoption and foster care services will benefit the children and
6 families who receive those services.

7 10. The United States Constitution allows all adoption and foster
8 care providers to operate according to their beliefs without fear of
9 unjust government punishment.

10 11. The supreme court of the United States made clear that state
11 governments violate the requirements of religious neutrality when they
12 undermine religious beliefs or practices, stating that "government fails
13 to act neutrally when it proceeds in a manner intolerant of religious
14 beliefs or restricts practices because of their religious nature." Fulton
15 v. City of Philadelphia, 141 S. Ct. 1868 (2021).

16 12. "The Constitution forbids laws that prohibit the free exercise
17 of religion. That guarantee protects not just the right to be a religious
18 person, holding beliefs inwardly and secretly; it also protects the right
19 to act on those beliefs outwardly and publicly." Espinoza v. Montana Dep't
20 of Revenue, 140 S. Ct. 2246, 2276 (2020).

21 13. The supreme court of the United States has "long recognized the
22 importance of protecting religious actions, not just religious status."
23 Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246, 2276 (2020). The
24 First Amendment protects the freedom to act as well as the freedom to
25 believe. Id.

26 14. The government violates the Free Exercise Clause whenever it
27 "conditions receipt of an important benefit upon conduct proscribed by a
28 religious faith, or ... denies such benefit because of conduct mandated by a
29 religious belief, thereby putting substantial pressure on an adherent to
30 modify his behavior to violate his beliefs." Thomas v. Review Bd. of Ind.
31 Employment Security Div., 450 U.S. 707, 717-18 (1981).

32 Sec. 3. Severability

33 If a provision of this act or its application to any person or
34 circumstance is held invalid, the invalidity does not affect other
35 provisions or applications of the act that can be given effect without the
36 invalid provision or application, and to this end the provisions of this
37 act are severable.