AN ACT

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

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

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

CHAPTER 6
PROHIBITION ON RELIGIOUS DISCRIMINATION

ARTICLE 1. GENERAL PROVISIONS

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

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

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

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

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

E. NOTWITHSTANDING ANY OTHER LAW, AN ACTION UNDER THIS SECTION MAY
BE COMMENCED AGAINST THE STATE GOVERNMENT EXCEPT A COURT, AND RELIEF MAY
BE GRANTED, IN A JUDICIAL PROCEEDING WITHOUT REGARD TO WHETHER THE PERSON
COMMENCING THE ACTION HAS SOUGHT OR EXHAUSTED AVAILABLE ADMINISTRATIVE
REMEDIES. IN ANY ACTION OR PROCEEDING TO ENFORCE THIS SECTION, A
PREVAILING PARTY WHO ESTABLISHES A VIOLATION OF THIS SECTION SHALL RECOVER
REASONABLE ATTORNEY FEES.
F. A PERSON MAY ASSERT A VIOLATION OF THIS SECTION AS AN ACTION OR PROCEEDING AGAINST THE STATE GOVERNMENT EXCEPT A COURT IN ANY JUDICIAL OR ADMINISTRATIVE PROCEEDING OR AS A DEFENSE IN ANY JUDICIAL OR ADMINISTRATIVE PROCEEDING WHETHER THE ACTION OR PROCEEDING IS BROUGHT BY OR IN THE NAME OF THE STATE GOVERNMENT OR ANOTHER PARTY.

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

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

I. FOR THE PURPOSES OF THIS SECTION:

1. "ADOPTION OR ADOPTION SERVICES" OR "FOSTER CARE OR FOSTER CARE SERVICES" MEANS SOCIAL SERVICES THAT ARE PROVIDED TO OR ON BEHALF OF CHILDREN, INCLUDING:
   (a) PROMOTING FOSTER PARENTING.
   (b) PROVIDING FOSTER HOMES, RESIDENTIAL CARE, GROUP HOMES OR TEMPORARY GROUP SHELTERS FOR CHILDREN.
   (c) RECRUITING FOSTER PARENTS.
   (d) PLACING CHILDREN IN FOSTER HOMES.
   (e) LICENSING OR CERTIFYING FOSTER HOMES.
   (f) PROMOTING ADOPTION OR RECRUITING ADOPTIVE PARENTS.
   (g) ASSISTING ADOPTIONS OR SUPPORTING ADOPTIVE FAMILIES.
   (h) PERFORMING OR ASSISTING HOME STUDIES.
   (i) ASSISTING KINSHIP FOSTER CARE OR KINSHIP FOSTER CARE PARENTS.
   (j) PROVIDING FAMILY PRESERVATION SERVICES.
   (k) PROVIDING FAMILY SUPPORT SERVICES.
   (l) PROVIDING TEMPORARY FAMILY REUNIFICATION SERVICES.

2. "CONTRACTOR" MEANS A PERSON THAT:
   (a) ADVERTISES, PROVIDES OR FACILITATES ADOPTION OR ADOPTION SERVICES.
   (b) ADVERTISES, PROVIDES OR FACILITATES FOSTER CARE OR FOSTER CARE SERVICES.
   (c) CONTRACTS WITH THIS STATE TO PROVIDE EDUCATIONAL TRAINING FOR ADOPTED OR FOSTER CARE CHILDREN AND PARENTS.

3. "DISCRIMINATORY ACTION" MEANS AN ACTION TAKEN BY STATE GOVERNMENT TO DO ANY OF THE FOLLOWING ON THE BASIS OF A PERSON’S RELIGIOUS BELIEF OR EXERCISE OF RELIGION:
(a) ALTER THE TAX TREATMENT OF, OR CAUSE ANY TAX, PENALTY OR PAYMENT TO BE ASSESSED AGAINST, OR DENY, DELAY, REVOKE OR OTHERWISE MAKE UNAVAILABLE AN EXEMPTION FROM TAXATION OF A PERSON.

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

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

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

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

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

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

4. "PERSON" MEANS:

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

(b) A RELIGIOUS ORGANIZATION.

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

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

5. "RELIGIOUS ORGANIZATION" MEANS:

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

(b) A RELIGIOUS GROUP, CORPORATION, ASSOCIATION, SCHOOL OR EDUCATIONAL INSTITUTION, MINISTRY, ORDER OR SOCIETY OR A SIMILAR ENTITY, REGARDLESS OF WHETHER IT IS INTEGRATED OR AFFILIATED WITH A CHURCH OR OTHER HOUSE OF WORSHIP.
(c) AN OFFICER, OWNER, EMPLOYEE, MANAGER, RELIGIOUS LEADER, CLERGY 
OR MINISTER OF AN ENTITY OR ORGANIZATION DESCRIBED IN THIS SUBSECTION.  
6. "STATE BENEFIT PROGRAM" MEANS ANY PROGRAM THAT IS ADMINISTERED, 
CONTROLLED OR FUNDED BY THIS STATE OR BY ANY AGENT ON BEHALF OF THIS STATE 
AND THAT PROVIDES CASH, PAYMENTS, GRANTS, CONTRACTS, LOANS OR IN-KIND 
ASSISTANCE.  
7. "STATE GOVERNMENT" MEANS:  
(a) THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE.  
(b) ANY AGENCY OF THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE, INCLUDING A DEPARTMENT, BUREAU, BOARD, COMMISSION, COUNCIL OR COURT.  
(c) ANY PERSON WHO ACTS UNDER COLOR OF STATE LAW.  
Sec. 2. Legislative findings  
The legislature finds that:  
1. Arizona has a compelling governmental interest in protecting 
adoptive and foster care families from discrimination against religious 
beliefs and exercise of religion.  
2. As of the effective date of this act there are twenty-five 
adoption and foster care agencies in this state that assist families with 
adoption and foster parent placements of children.  
3. The adoption and foster care agencies of this state represent 
diverse organizations and groups, some of which are faith based and some 
of which are not faith based.  
4. Children in need of placement services benefit from having as 
many adoption and foster parent agencies as possible because the more 
agencies that take part in these services, the greater is the likelihood 
that the child will find a permanent placement.  
5. The supreme court of the United States has recognized the 
benefits of having more, not fewer, adoption and foster care providers, 
stating that "maximizing the number of foster families and minimizing 
liability are important goals, but the city fails to show that granting 
(Catholic Social Services) an exception will put those goals at risk. If 
anything, including CSS in the program seems likely to increase not reduce 
the number of available foster parents." Fulton v. City of Philadelphia, 
141 S. Ct. 1868 (2021).  
6. Children and families benefit greatly from the adoption and 
foster care services provided by faith-based and nonfaith-based child 
placing agencies.  
7. Faith-based organizations and groups have a lengthy and 
distinguished history of providing adoption and foster care services in 
this state, including some organizations and groups that predate the 
state's involvement in such services.  
8. Private child placing agencies and individuals, including 
faith-based child placing agencies and individuals, have the right to free 
exercise of religion under both the state and federal constitutions.
Under well settled principles of constitutional law, this right includes the freedom to abstain from conduct that conflicts with an agency's sincerely held religious beliefs.

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

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

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

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

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

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

Sec. 3. **Severability**

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

APPROVED BY THE GOVERNOR APRIL 6, 2022.