

REFERENCE TITLE: adoption; religious discrimination; prohibition

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

SB 1399

Introduced by
Senators Kerr: Barto

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 MAY NOT TAKE ANY DISCRIMINATORY ACTION AGAINST
11 A PERSON THAT ADVERTISES, PROVIDES OR FACILITATES ADOPTION OR ADOPTION
12 SERVICES OR FOSTER CARE OR FOSTER CARE SERVICES ON THE BASIS THAT THE
13 PERSON HAS PROVIDED OR DECLINES TO PROVIDE ADOPTION OR ADOPTION SERVICES
14 OR FOSTER CARE OR FOSTER CARE SERVICES BASED ON OR IN A MANNER CONSISTENT
15 WITH A RELIGIOUS BELIEF OR EXERCISE OF RELIGION.

16 B. STATE GOVERNMENT MAY NOT DISCRIMINATE AGAINST A PERSON TO WHOM
17 THE STATE GOVERNMENT GRANTS CUSTODY OF AN ADOPTED CHILD OR FOSTER CHILD ON
18 THE BASIS THAT THE PERSON GUIDES, INSTRUCTS OR RAISES A CHILD OR INTENDS
19 TO GUIDE, INSTRUCT OR RAISE A CHILD IN A MANNER CONSISTENT WITH A
20 RELIGIOUS BELIEF OR EXERCISE OF RELIGION.

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

25 D. NOTWITHSTANDING ANY OTHER LAW, AN ACTION UNDER THIS SECTION MAY
26 BE COMMENCED, AND RELIEF MAY BE GRANTED, IN A JUDICIAL PROCEEDING WITHOUT
27 REGARD TO WHETHER THE PERSON COMMENCING THE ACTION HAS SOUGHT OR EXHAUSTED
28 AVAILABLE ADMINISTRATIVE REMEDIES. IN ANY ACTION OR PROCEEDING TO ENFORCE
29 THIS SECTION, A PREVAILING PARTY WHO ESTABLISHES A VIOLATION OF THIS
30 SECTION SHALL RECOVER REASONABLE ATTORNEY FEES.

31 E. A PERSON MAY ASSERT A VIOLATION OF THIS SECTION AS AN ACTION OR
32 PROCEEDING AGAINST THE STATE GOVERNMENT IN ANY JUDICIAL OR ADMINISTRATIVE
33 PROCEEDING OR AS A DEFENSE IN ANY JUDICIAL OR ADMINISTRATIVE PROCEEDING
34 WHETHER THE ACTION OR PROCEEDING IS BROUGHT BY OR IN THE NAME OF THE STATE
35 GOVERNMENT OR ANOTHER PARTY.

36 F. A PERSON MAY ASSERT AN ACTUAL OR THREATENED VIOLATION OF THIS
37 SECTION AS A CLAIM OR DEFENSE IN A JUDICIAL OR ADMINISTRATIVE PROCEEDING
38 AND MAY OBTAIN COMPENSATORY DAMAGES, INJUNCTIVE RELIEF, DECLARATORY RELIEF
39 OR OTHER APPROPRIATE RELIEF. A PERSON SHALL BRING A CLAIM FOR A VIOLATION
40 OF THIS SECTION NOT LATER THAN TWO YEARS AFTER THE DAY THE CAUSE OF ACTION
41 ACCRUES.

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

- 1 H. FOR THE PURPOSES OF THIS SECTION:
2 1. "ADOPTION OR ADOPTION SERVICES" OR "FOSTER CARE OR FOSTER CARE
3 SERVICES" MEANS SOCIAL SERVICES THAT ARE PROVIDED TO OR ON BEHALF OF
4 CHILDREN, INCLUDING:
5 (a) PROMOTING FOSTER PARENTING.
6 (b) PROVIDING FOSTER HOMES, RESIDENTIAL CARE, GROUP HOMES OR
7 TEMPORARY GROUP SHELTERS FOR CHILDREN.
8 (c) RECRUITING FOSTER PARENTS.
9 (d) PLACING CHILDREN IN FOSTER HOMES.
10 (e) LICENSING OR CERTIFYING FOSTER HOMES.
11 (f) PROMOTING ADOPTION OR RECRUITING ADOPTIVE PARENTS.
12 (g) ASSISTING ADOPTIONS OR SUPPORTING ADOPTIVE FAMILIES.
13 (h) PERFORMING OR ASSISTING HOME STUDIES.
14 (i) ASSISTING KINSHIP FOSTER CARE OR KINSHIP FOSTER CARE PARENTS.
15 (j) PROVIDING FAMILY PRESERVATION SERVICES.
16 (k) PROVIDING FAMILY SUPPORT SERVICES.
17 (l) PROVIDING TEMPORARY FAMILY REUNIFICATION SERVICES.
18 2. "DISCRIMINATORY ACTION" MEANS AN ACTION TAKEN BY STATE
19 GOVERNMENT TO DO ANY OF THE FOLLOWING:
20 (a) ALTER THE TAX TREATMENT OF, OR CAUSE ANY TAX, PENALTY OR
21 PAYMENT TO BE ASSESSED AGAINST, OR DENY, DELAY, REVOKE OR OTHERWISE MAKE
22 UNAVAILABLE AN EXEMPTION FROM TAXATION OF A PERSON.
23 (b) DISALLOW, DENY OR OTHERWISE MAKE UNAVAILABLE A DEDUCTION FOR
24 STATE TAX PURPOSES OF ANY CHARITABLE CONTRIBUTION THAT IS MADE TO OR BY A
25 PERSON.
26 (c) WITHHOLD, REDUCE, EXCLUDE, TERMINATE, MATERIALLY ALTER THE
27 TERMS OR CONDITIONS OF OR OTHERWISE MAKE UNAVAILABLE OR DENY ANY STATE
28 GRANT, CONTRACT, SUBCONTRACT, COOPERATIVE AGREEMENT, GUARANTEE, LOAN,
29 SCHOLARSHIP OR OTHER SIMILAR BENEFIT FROM OR TO A PERSON.
30 (d) WITHHOLD, REDUCE, EXCLUDE, TERMINATE, ADVERSELY ALTER THE TERMS
31 OR CONDITIONS OF OR OTHERWISE MAKE UNAVAILABLE OR DENY ANY ENTITLEMENT OR
32 BENEFIT UNDER A STATE BENEFIT PROGRAM FROM OR TO A PERSON.
33 (e) IMPOSE, LEVY OR ASSESS A MONETARY FINE, A FEE, A PENALTY,
34 DAMAGES OR AN INJUNCTION.
35 (f) WITHHOLD, REDUCE, EXCLUDE, TERMINATE, MATERIALLY ALTER THE
36 TERMS OR CONDITIONS OF OR OTHERWISE MAKE UNAVAILABLE OR DENY ANY LICENSE,
37 CERTIFICATION, ACCREDITATION, CUSTODY AWARD OR AGREEMENT, DIPLOMA, GRADE,
38 RECOGNITION OR OTHER SIMILAR BENEFIT, POSITION OR STATUS FROM OR TO A
39 PERSON.
40 (g) REFUSE TO HIRE OR PROMOTE, FORCE TO RESIGN, FIRE, DEMOTE,
41 SANCTION, DISCIPLINE, ADVERSELY ALTER THE TERMS OR CONDITIONS OF
42 EMPLOYMENT OR RETALIATE OR TAKE OTHER ADVERSE EMPLOYMENT ACTION AGAINST A
43 PERSON WHO IS EMPLOYED OR COMMISSIONED BY STATE GOVERNMENT.

1 3. "PERSON" MEANS:
2 (a) A NATURAL PERSON, IN HIS OR HER INDIVIDUAL CAPACITY, OR IN HIS
3 OR HER CAPACITY AS A MEMBER, OFFICER, OWNER, VOLUNTEER, EMPLOYEE, MANAGER,
4 RELIGIOUS LEADER, CLERGY OR MINISTER OF ANY ENTITY DESCRIBED IN THIS
5 PARAGRAPH.
6 (b) A RELIGIOUS ORGANIZATION.
7 (c) A SOLE PROPRIETORSHIP, PARTNERSHIP, TRUST, CLOSELY HELD
8 CORPORATION OR OTHER CLOSELY HELD ENTITY.
9 (d) A COOPERATIVE, VENTURE OR ENTERPRISE THAT IS COMPOSED OF TWO OR
10 MORE INDIVIDUALS OR ENTITIES DESCRIBED IN THIS PARAGRAPH, REGARDLESS OF
11 NONPROFIT OR FOR-PROFIT STATUS.
12 4. "RELIGIOUS ORGANIZATION" MEANS:
13 (a) A HOUSE OF WORSHIP, CHURCH, SYNAGOGUE, SHRINE, MOSQUE OR
14 TEMPLE.
15 (b) A RELIGIOUS GROUP, CORPORATION, ASSOCIATION, SCHOOL OR
16 EDUCATIONAL INSTITUTION, MINISTRY, ORDER OR SOCIETY OR A SIMILAR ENTITY,
17 REGARDLESS OF WHETHER IT IS INTEGRATED OR AFFILIATED WITH A CHURCH OR
18 OTHER HOUSE OF WORSHIP.
19 (c) AN OFFICER, OWNER, EMPLOYEE, MANAGER, RELIGIOUS LEADER, CLERGY
20 OR MINISTER OF AN ENTITY OR ORGANIZATION DESCRIBED IN THIS SUBSECTION.
21 5. "STATE BENEFIT PROGRAM" MEANS ANY PROGRAM THAT IS ADMINISTERED,
22 CONTROLLED OR FUNDED BY THIS STATE OR BY ANY AGENT ON BEHALF OF THIS STATE
23 AND THAT PROVIDES CASH, PAYMENTS, GRANTS, CONTRACTS, LOANS OR IN-KIND
24 ASSISTANCE.
25 6. "STATE GOVERNMENT" MEANS:
26 (a) THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE.
27 (b) ANY AGENCY OF THIS STATE OR A POLITICAL SUBDIVISION OF THIS
28 STATE, INCLUDING A DEPARTMENT, BUREAU, BOARD, COMMISSION, COUNCIL OR
29 COURT.
30 (c) ANY PERSON WHO ACTS UNDER COLOR OF STATE LAW.
31 (d) ANY PRIVATE PERSON WHO SUES UNDER OR ATTEMPTS TO ENFORCE A LAW,
32 RULE OR REGULATION THAT IS ADOPTED BY THIS STATE OR A POLITICAL
33 SUBDIVISION OF THIS STATE.
34 Sec. 2. Legislative findings
35 The legislature finds that:
36 1. Arizona has a compelling governmental interest in protecting
37 adoptive and foster care families from discrimination against religious
38 beliefs and exercise of religion.
39 2. As of the effective date of this act there are _____ adoption
40 and foster care agencies in this state that assist families with adoption
41 and foster parent placements of children.
42 3. The adoption and foster care agencies of this state represent
43 diverse organizations and groups, some of which are faith based and some
44 of which are not faith based.

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

5 5. The supreme court of the United States has recognized the
6 benefits of having more, not fewer, adoption and foster care providers,
7 stating that "maximizing the number of foster families and minimizing
8 liability are important goals, but the city fails to show that granting
9 (Catholic Social Services) an exception will put those goals at risk. If
10 anything, including CSS in the program seems likely to increase not reduce
11 the number of available foster parents." Fulton v. City of Philadelphia,
12 141 S. Ct. 1868 (2021).

13 6. Children and families benefit greatly from the adoption and
14 foster care services provided by faith-based and nonfaith-based child
15 placing agencies.

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

20 8. Private child placing agencies and individuals, including
21 faith-based child placing agencies and individuals, have the right to free
22 exercise of religion under both the state and federal constitutions.
23 Under well settled principles of constitutional law, this right includes
24 the freedom to abstain from conduct that conflicts with an agency's
25 sincerely held religious beliefs.

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

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

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

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

43 13. The supreme court of the United States has "long recognized the
44 importance of protecting religious actions, not just religious status."
45 Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246, 2276 (2020). The

1 First Amendment protects the freedom to act as well as the freedom to
2 believe. Id.

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

9 Sec. 3. Severability

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