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

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

A. STATE GOVERNMENT 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 DECLARES TO PROVIDE ADOPTION OR ADOPTION SERVICES OR FOSTER CARE OR FOSTER CARE SERVICES BASED ON OR IN A MANNER CONSISTENT WITH A RELIGIOUS BELIEF OR EXERCISE OF RELIGION.

B. STATE GOVERNMENT 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 A RELIGIOUS BELIEF OR EXERCISE OF RELIGION.

C. NOTWITHSTANDING SUBSECTION B 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.

D. NOTWITHSTANDING ANY OTHER LAW, AN ACTION UNDER THIS SECTION MAY BE COMMENCED, 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.

E. A PERSON MAY ASSERT A VIOLATION OF THIS SECTION AS AN ACTION OR PROCEEDING AGAINST THE STATE GOVERNMENT 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.

F. A PERSON MAY ASSERT AN ACTUAL OR THREATENED VIOLATION OF THIS SECTION AS A CLAIM OR 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.

G. 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.
H. 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. "DISCRIMINATORY ACTION" MEANS AN ACTION TAKEN BY STATE GOVERNMENT TO DO ANY OF THE FOLLOWING:
   (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.
3. "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.
4. "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.
5. "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.
6. "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.
   (d) 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.

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 _______ 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.