

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING DISCRIMINATORY ACTION AGAINST A PERSON
5 PROVIDING ADOPTION OR FOSTER CARE SERVICES BASED ON THE PERSON'S RELIGIOUS BELIEF;
6 PROVIDING DEFINITIONS; PROVIDING REMEDIES; AND PROVIDING A STATUTE OF LIMITATIONS."

7
8 WHEREAS, the State of Montana seeks to place a child in a safe, loving, and supportive home
9 whenever the state is required to place a child with an adoptive or foster family; and

10 WHEREAS, adoption and foster care agencies in Montana assist families with adoption and foster
11 parent placements of children; and

12 WHEREAS, the adoption agencies and foster care providers of this state represent diverse
13 organizations and groups, some of which are faith-based and some of which are nonfaith-based; and

14 WHEREAS, children in need of placement services benefit from having as many adoption agencies
15 and foster care providers as possible because the more agencies and providers that take part in placement
16 services, the greater the likelihood that a child will find a permanent placement; and

17 WHEREAS, the United States Supreme Court in *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021),
18 recognized the benefits of having more and not fewer adoption agencies and foster care providers, stating that
19 "[m]aximizing the number of foster families and minimizing liability are important goals, but the City fails to show
20 that granting [Catholic Social Services] an exception will put those goals at risk. If anything, including CSS in
21 the program seems likely to increase, not reduce, the number of available foster parents"; and

22 WHEREAS, children and families benefit greatly from the adoption and foster care services provided by
23 faith-based and nonfaith-based child placing agencies; and

24 WHEREAS, faith-based organizations and groups have a lengthy and distinguished history of providing
25 adoption and foster care services in Montana; and

26 WHEREAS, private child-placing agencies and individuals, including faith-based child-placing agencies
27 and individuals, have the right to free exercise of religion under both the state and federal constitutions, which,
28 under well-settled principles of constitutional law, includes the freedom to abstain from conduct that conflicts

1 with an agency's sincerely held religious beliefs; and

2 WHEREAS, ensuring that faith-based child-placing agencies can continue to provide adoption and
3 foster care services will benefit the children and families who receive those services; and

4 WHEREAS, the United States Constitution allows all adoption and foster care providers to operate
5 according to their beliefs without fear of unjust government punishment; and

6 WHEREAS, in the unanimous decision in *Fulton v. City of Philadelphia*, the U.S. Supreme Court made
7 clear that state governments violate the requirements of religious neutrality when they undermine religious
8 beliefs or practices and that the "[g]overnment fails to act neutrally when it proceeds in a manner intolerant of
9 religious beliefs or restricts practices because of their religious nature"; and

10 WHEREAS, the U.S. Supreme Court in *Espinoza v. Montana Dept. of Revenue*, 140 S. Ct. 2246, 2276
11 (2020) (Gorsuch, J., concurring), stated that "[t]he Constitution forbids laws that prohibit the free exercise of
12 religion. That guarantee protects not just the right to be a religious person, holding beliefs inwardly and secretly;
13 it also protects the right to act on those beliefs outwardly and publicly [*italics removed*]"; and

14 WHEREAS, the *Espinoza* Court noted that the U.S. Supreme Court has "long recognized the
15 importance of protecting religious actions, not just religious status" and, quoting *Cantwell v. Connecticut*, 310
16 U.S. 296, 3030 (1940), state that "the First Amendment protects the 'freedom to act' as well as the 'freedom to
17 believe'"; and

18 WHEREAS, in *Thomas v. Review Bd. of Ind. Employment Security Div.*, 450 U.S. 707, 717-718 (1981),
19 the U.S. Supreme Court held that the government violates the Free Exercise Clause whenever it "conditions
20 receipt of an important benefit upon conduct prescribed by a religious faith, or... denies such a benefit because
21 of conduct mandated by a religious belief, thereby putting substantial pressure on an adherent to modify his
22 behavior and to violate his beliefs."

23

24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

25

26 NEW SECTION. Section 1. Definitions. As used in [sections 1 through 4] the following definitions
27 apply:

28 (1) "Adoption or foster care" or "adoption or foster care service" means social services provided to

1 or on behalf of children, including:

2 (a) promoting foster parenting;

3 (b) providing foster homes, residential care, group homes, or temporary group shelters for children;

4 (c) recruiting foster parents;

5 (d) placing children in foster homes;

6 (e) licensing or certifying foster homes;

7 (f) promoting adoption or recruiting adoptive parents;

8 (g) assisting adoptions or supporting adoptive families;

9 (h) performing or assisting home studies;

10 (i) assisting kinship guardianships or kinship caregivers;

11 (j) providing family preservation services;

12 (k) providing family support services; and

13 (l) providing temporary family reunification services.

14 (2) "Discriminatory action" means an action taken by the state government to:

15 (a) alter in any way the tax treatment of, cause any tax, penalty, or payment to be assessed
16 against, or deny, delay, revoke, or otherwise make unavailable an exemption from taxation to a person;

17 (b) disallow, deny, or otherwise make unavailable a deduction for state tax purposes of any
18 charitable contribution made to or by a person;

19 (c) withhold, reduce, exclude, terminate, materially alter the terms or conditions of, or otherwise
20 make unavailable or deny:

21 (i) any state grant, contract, subcontract, cooperative agreement, guarantee, loan, scholarship, or
22 other similar benefit from or to a person;

23 (ii) any entitlement or benefit under a state benefit program from or to a person; or

24 (iii) any license, certification, accreditation, custody award or agreement, diploma, grade,
25 recognition, or other similar benefit, position, or status from or to a person;

26 (d) impose, levy, or assess a monetary fine, fee, penalty, damages award, or injunction; or

27 (e) refuse to hire or promote, force to resign, fire, demote, sanction, discipline, adversely alter the
28 terms or conditions of employment, or retaliate or take other adverse employment action against a person

1 employed or commissioned by the state government.

2 (3) "Person" means:

3 (a) a natural person, acting in the person's individual capacity or in the person's capacity as a
4 member, officer, owner, volunteer, employee, manager, religious leader, clergy, or minister of an entity
5 described in this subsection (3);

6 (b) a religious organization;

7 (c) a sole proprietorship, partnership, trust, closely held corporation, or other closely held entity; or

8 (d) a cooperative, venture, or enterprise comprised of two or more individuals or entities described
9 in this subsection (3) regardless of nonprofit or for-profit status.

10 (4) "Religious organization" means:

11 (a) a house of worship, including but not limited to churches, synagogues, shrines, mosques, and
12 temples;

13 (b) a religious group, corporation, association, school or educational institution, ministry, order,
14 society, or similar entity, regardless of whether it is integrated or affiliated with a church or other house of
15 worship; or

16 (c) an officer, owner, employee, manager, religious leader, clergy, or minister of an entity or
17 organization described in this subsection (4).

18 (5) "State benefit program" means a program administered, controlled, or funded by the state or by
19 an agent on behalf of the state providing cash, payments, grants, contracts, loans, or in-kind assistance.

20 (6) "State government" means:

21 (a) the state or political subdivision of the state;

22 (b) an agency of the state or of a political subdivision of the state, including a department, bureau,
23 board, commission, council, or court;

24 (c) a city, county, urban-county government, charter county government, unified local government,
25 consolidated local government, special district, or any combination of these;

26 (d) a person acting under color of state law; or

27 (e) a private person suing under or attempting to enforce a law, rule, or regulation adopted by the
28 state or a political subdivision of the state.

1

2 **NEW SECTION. Section 2. Discriminatory acts prohibited in adoption or foster care services.**

3 (1) The state government may not take a discriminatory action against a person that advertises, provides, or
4 facilitates adoption or foster care services wholly or partially on the basis that the person:

5 (a) has provided or declines to provide an adoption or foster care service or related service based
6 on or in a manner consistent with the person's sincerely held religious belief; or

7 (b) maintains policies and procedures in accordance with the person's sincerely held religious
8 belief.

9 (2) (a) Except as provided, in subsection (2)(b), the state government may not take a
10 discriminatory action against a person whom the state grants custody of a foster or adoptive child or who seeks
11 from the state the custody of a foster or adoptive child wholly or partially on the basis that the person guides,
12 instructs, or raises a child or intends to guide, instruct, or raise a child based on or in a manner consistent with
13 the person's sincerely held religious belief.

14 (b) The state government may consider whether a person shares the same religion or faith
15 tradition as a foster or adoptive child when considering placement of the child in order to prioritize placement
16 with a person of the same religion or faith tradition.

17

18 **NEW SECTION. Section 3. Remedies -- statute of limitations.** (1) A person may assert a violation
19 of [section 2] as a claim against the state government in a judicial or administrative proceeding or as a defense
20 in a judicial or administrative proceeding without regard to whether the proceeding is brought by or in the name
21 of the state government, a private person, or another party.

22 (2) An action alleging a violation of [section 2]:

23 (a) must be brought no later than 2 years after the date the person knew or should have known
24 that a discriminatory action was taken against the person; and

25 (b) may be commenced, and relief may be granted, without regard to whether the person bringing
26 the action has sought or exhausted available administrative remedies.

27 (3) A person who successfully asserts a claim or defense for a violation of [section 2] may recover:

28 (a) declaratory or injunctive relief;

- 1 (b) compensatory damages;
2 (c) reasonable attorney fees and costs; and
3 (d) any other appropriate relief.
4

5 NEW SECTION. Section 4. Construction. (1) [Sections 1 through 4] must be construed in favor of a
6 broad protection of free exercise of religious beliefs to the maximum extent permitted by the state and federal
7 constitutions.

8 (2) The protection of free exercise of religious beliefs afforded by [sections 1 through 4] are in
9 addition to the protections provided under federal law, state law, and the state and federal constitutions.
10 Nothing in [sections 1 through 4] may be construed to:

- 11 (a) preempt or repeal any state or local law that is equally or more protective of free exercise of
12 religious beliefs;
13 (b) narrow the meaning or application of any state or local law protecting free exercise of religious
14 beliefs; or
15 (c) prevent the state government from providing, either directly or through an individual or entity
16 not seeking protection under [sections 1 through 4] any benefit or service authorized under state law.
17

18 NEW SECTION. Section 5. Codification instruction. [Sections 1 through 4] are intended to be
19 codified as a new part in Title 42, chapter 7, and the provisions of Title 42, chapter 7, apply to [sections 1
20 through 4].
21

22 NEW SECTION. Section 6. Severability. If a part of [this act] is invalid, all valid parts that are
23 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
24 the part remains in effect in all valid applications that are severable from the invalid applications.
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