



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  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

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

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

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

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

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

**NEW SECTION. Section 3. Remedies -- statute of limitations.** (1) A person may assert a violation

of [section 2] as a claim against the state government in a judicial or administrative proceeding or as a defense in a judicial or administrative proceeding without regard to whether the proceeding is brought by or in the name of the state government, a private person, or another party.

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

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

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

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

(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.

25

- END -