

Amendment - 2nd Reading/2nd House-tan - Requested by: Cora Neumann - (S) Committee of the Whole

- 2025

69th Legislature 2025

Drafter: Julianne Burkhardt,

HB0655.001.003

1 HOUSE BILL NO. 655

2 INTRODUCED BY G. OBLANDER, E. ALBUS, R. GREGG, C. COCHRAN, E. BUTTREY, S. GIST, N. NICOL,
3 B. LER, J. SCHILLINGER, K. ZOLNIKOV, J. ETCHART, L. BREWSTER, S. MANESS

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

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

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

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

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

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

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

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

27 WHEREAS, private child-placing agencies and individuals, including faith-based child-placing agencies

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1 and individuals, have the right to free exercise of religion under both the state and federal constitutions, which,
2 under well-settled principles of constitutional law, includes the freedom to abstain from conduct that conflicts
3 with an agency's sincerely held religious beliefs; and

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

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

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

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

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

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

25
26 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 4] the following definitions

apply:

(1) "Adoption~~-or foster care~~" or "adoption ~~or foster care~~-service" means social services 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)~~(a) promoting adoption or recruiting adoptive parents;

~~(g)~~(b) assisting adoptions or supporting adoptive families;

~~(h)~~(c) performing or assisting home studies;

~~(i) assisting kinship guardianships or kinship caregivers;~~

~~(j)~~(d) providing family preservation services; and

~~(k)~~(e) providing family support services; and

~~(l) providing temporary family reunification services.~~

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

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

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

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

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

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

(iii) any license, certification, accreditation, custody award or agreement, diploma, grade,

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1 recognition, or other similar benefit, position, or status from or to a person;

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

3 (e) refuse to hire or promote, force to resign, fire, demote, sanction, discipline, adversely alter the
4 terms or conditions of employment, or retaliate or take other adverse employment action against a person
5 employed or commissioned by the state government.

6 (3) "Person" means:

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

10 (b) a religious organization;

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

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

14 (4) "Religious organization" means:

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

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

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

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

24 (6) "State government" means:

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

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

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

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

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

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)(2)~~ The state government ~~may~~ shall consider whether a person shares the same religion or faith tradition as ~~a foster or an~~ 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]: