

By: Representatives Gunn, Arnold, Bounds,
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To: Judiciary B

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1523

1 AN ACT TO CREATE THE "PROTECTING FREEDOM OF CONSCIENCE FROM
2 GOVERNMENT DISCRIMINATION ACT"; TO PROVIDE CERTAIN PROTECTIONS
3 REGARDING A SINCERELY HELD RELIGIOUS BELIEF OR MORAL CONVICTION
4 FOR PERSONS, RELIGIOUS ORGANIZATIONS AND PRIVATE ASSOCIATIONS; TO
5 DEFINE A DISCRIMINATORY ACTION FOR PURPOSES OF THIS ACT; TO
6 PROVIDE THAT A PERSON MAY ASSERT A VIOLATION OF THIS ACT AS A
7 CLAIM AGAINST THE GOVERNMENT; TO PROVIDE CERTAIN REMEDIES; TO
8 REQUIRE A PERSON BRINGING A CLAIM UNDER THIS ACT TO DO SO NOT
9 LATER THAN TWO YEARS AFTER THE DISCRIMINATORY ACTION WAS TAKEN; TO
10 PROVIDE CERTAIN DEFINITIONS; AND FOR RELATED PURPOSES.

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

12 **SECTION 1.** This act shall be known and may be cited as the
13 "Protecting Freedom of Conscience from Government Discrimination
14 Act."

15 **SECTION 2.** The sincerely held religious beliefs or moral
16 convictions protected by this act are the belief or conviction
17 that:

18 (a) Marriage is or should be recognized as the union of
19 one man and one woman;

20 (b) Sexual relations are properly reserved to such a
21 marriage; and



22 (c) Male (man) or female (woman) refer to an
23 individual's immutable biological sex as objectively determined by
24 anatomy and genetics at time of birth.

25 **SECTION 3.** (1) The state government shall not take any
26 discriminatory action against a religious organization wholly or
27 partially on the basis that such organization:

28 (a) Solemnizes or declines to solemnize any marriage,
29 or provides or declines to provide services, accommodations,
30 facilities, goods or privileges for a purpose related to the
31 solemnization, formation, celebration or recognition of any
32 marriage, based upon or in a manner consistent with a sincerely
33 held religious belief or moral conviction described in Section 3
34 of this act;

35 (b) Makes any employment-related decision including,
36 but not limited to, the decision whether or not to hire, terminate
37 or discipline an individual whose conduct or religious beliefs are
38 inconsistent with those of the religious organization, based upon
39 or in a manner consistent with a sincerely held religious belief
40 or moral conviction described in Section 3 of this act; or

41 (c) Makes any decision concerning the sale, rental,
42 occupancy of, or terms and conditions of occupying a dwelling or
43 other housing under its control, based upon or in a manner
44 consistent with a sincerely held religious belief or moral
45 conviction described in Section 3 of this act.



46 (2) The state government shall not take any discriminatory
47 action against a religious organization that advertises, provides
48 or facilitates adoption or foster care, wholly or partially on the
49 basis that such organization has provided or declined to provide
50 any adoption or foster care service, or related service, based
51 upon or in a manner consistent with a sincerely held religious
52 belief or moral conviction described in Section 3 of this act.

53 (3) The state government shall not take any discriminatory
54 action against a person who the state grants custody of a foster
55 or adoptive child, or who seeks from the state custody of a foster
56 or adoptive child, wholly or partially on the basis that the
57 person guides, instructs or raises a child, or intends to guide,
58 instruct, or raise a child based upon or in a manner consistent
59 with a sincerely held religious belief or moral conviction
60 described in Section 3 of this act.

61 (4) The state government shall not take any discriminatory
62 action against a person wholly or partially on the basis that the
63 person declines to participate in the provision of treatments,
64 counseling, or surgeries related to sex reassignment or gender
65 identity transitioning or declines to participate in the provision
66 of psychological, counseling, or fertility services based upon a
67 sincerely held religious belief or moral conviction described in
68 Section 3 of this act. This subsection (4) shall not be construed
69 to allow any person to deny visitation, recognition of a
70 designated representative for health care decision-making, or



71 emergency medical treatment necessary to cure an illness or injury
72 as required by law.

73 (5) The state government shall not take any discriminatory
74 action against a person wholly or partially on the basis that the
75 person has provided or declined to provide the following services,
76 accommodations, facilities, goods, or privileges for a purpose
77 related to the solemnization, formation, celebration, or
78 recognition of any marriage, based upon or in a manner consistent
79 with a sincerely held religious belief or moral conviction
80 described in Section 3 of this act:

81 (a) Photography, poetry, videography, disc-jockey
82 services, wedding planning, printing, publishing or similar
83 marriage-related goods or services; or

84 (b) Floral arrangements, dress making, cake or pastry
85 artistry, assembly-hall or other wedding-venue rentals, limousine
86 or other car-service rentals, jewelry sales and services, or
87 similar marriage-related services, accommodations, facilities or
88 goods.

89 (6) The state government shall not take any discriminatory
90 action against a person wholly or partially on the basis that the
91 person establishes sex-specific standards or policies concerning
92 employee or student dress or grooming, or concerning access to
93 restrooms, spas, baths, showers, dressing rooms, locker rooms, or
94 other intimate facilities or settings, based upon or in a manner



95 consistent with a sincerely held religious belief or moral
96 conviction described in Section 3 of this act.

97 (7) The state government shall not take any discriminatory
98 action against a state employee wholly or partially on the basis
99 that such employee lawfully speaks or engages in expressive
100 conduct based upon or in a manner consistent with a sincerely held
101 religious belief or moral conviction described in Section 3 of
102 this act, so long as:

103 (a) If the employee's speech or expressive conduct
104 occurs in the workplace, that speech or expressive conduct is
105 consistent with the time, place, manner and frequency of any other
106 expression of a religious, political, or moral belief or
107 conviction allowed; or

108 (b) If the employee's speech or expressive conduct
109 occurs outside the workplace, that speech or expressive conduct is
110 in the employee's personal capacity and outside the course of
111 performing work duties.

112 (8) (a) Any person employed or acting on behalf of the
113 state government who has authority to authorize or license
114 marriages, including, but not limited to, clerks, registers of
115 deeds or their deputies, may seek recusal from authorizing or
116 licensing lawful marriages based upon or in a manner consistent
117 with a sincerely held religious belief or moral conviction
118 described in Section 3 of this act. Any person making such
119 recusal shall provide prior written notice to the State Registrar



120 of Vital Records who shall keep a record of such recusal, and the
121 state government shall not take any discriminatory action against
122 that person wholly or partially on the basis of such recusal. The
123 person who is recusing himself or herself shall take all necessary
124 steps to ensure that the authorization and licensing of any
125 legally valid marriage is not impeded or delayed as a result of
126 any recusal.

127 (b) Any person employed or acting on behalf of the
128 state government who has authority to perform or solemnize
129 marriages, including, but not limited to, judges, magistrates,
130 justices of the peace or their deputies, may seek recusal from
131 performing or solemnizing lawful marriages based upon or in a
132 manner consistent with a sincerely held religious belief or moral
133 conviction described in Section 3 of this act. Any person making
134 such recusal shall provide prior written notice to the
135 Administrative Office of Courts, and the state government shall
136 not take any discriminatory action against that person wholly or
137 partially on the basis of such recusal. The Administrative Office
138 of Courts shall take all necessary steps to ensure that the
139 performance or solemnization of any legally valid marriage is not
140 impeded or delayed as a result of any recusal.

141 **SECTION 4.** (1) As used in this act, discriminatory action
142 includes any action taken by the state government to:

143 (a) Alter in any way the tax treatment of, or cause any
144 tax, penalty, or payment to be assessed against, or deny, delay,



145 revoke, or otherwise make unavailable an exemption from taxation
146 of any person referred to in Section 4 of this act;

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

150 (c) Withhold, reduce, exclude, terminate, materially
151 alter the terms or conditions of, or otherwise make unavailable or
152 deny any state grant, contract, subcontract, cooperative
153 agreement, guarantee, loan, scholarship, or other similar benefit
154 from or to such person;

155 (d) Withhold, reduce, exclude, terminate, materially
156 alter the terms or conditions of, or otherwise make unavailable or
157 deny any entitlement or benefit under a state benefit program from
158 or to such person;

159 (e) Impose, levy or assess a monetary fine, fee,
160 penalty or injunction;

161 (f) Withhold, reduce, exclude, terminate, materially
162 alter the terms or conditions of, or otherwise make unavailable or
163 deny any license, certification, accreditation, custody award or
164 agreement, diploma, grade, recognition, or other similar benefit,
165 position, or status from or to any person; or

166 (g) Refuse to hire or promote, force to resign, fire,
167 demote, sanction, discipline, materially alter the terms or
168 conditions of employment, or retaliate or take other adverse



169 employment action against a person employed or commissioned by the
170 state government.

171 (2) The state government shall consider accredited, licensed
172 or certified any person that would otherwise be accredited,
173 licensed or certified, respectively, for any purposes under state
174 law but for a determination against such person wholly or
175 partially on the basis that the person believes, speaks or acts in
176 accordance with a sincerely held religious belief or moral
177 conviction described in Section 3 of this act.

178 **SECTION 5.** (1) A person may assert a violation of this act
179 as a claim against the state government in any judicial or
180 administrative proceeding or as defense in any judicial or
181 administrative proceeding without regard to whether the proceeding
182 is brought by or in the name of the state government, any private
183 person or any other party.

184 (2) An action under this act may be commenced, and relief
185 may be granted, in a court of the state without regard to whether
186 the person commencing the action has sought or exhausted available
187 administrative remedies.

188 (3) Violations of this act which are properly governed by
189 Chapter 46, Title 11, Mississippi Code of 1972, shall be brought
190 in accordance with that chapter.

191 **SECTION 6.** Any person who successfully asserts a claim or
192 defense under this act may recover:

193 (a) Declaratory relief;



194 (b) Injunctive relief to prevent or remedy a violation
195 of this act or the effects of such a violation;

196 (c) Compensatory damages for pecuniary and nonpecuniary
197 losses;

198 (d) Reasonable attorneys' fees and costs; and

199 (e) Any other appropriate relief except only
200 declaratory relief and injunctive relief shall be available
201 against a private person not acting under color of state law upon
202 a successful assertion of a claim or defense under this act.

203 **SECTION 7.** A person must bring an action to assert a claim
204 under this act not later than two (2) years after the date that
205 the person knew or should have known that a discriminatory action
206 was taken against that person.

207 **SECTION 8.** (1) Sovereign, governmental and qualified
208 immunities to suit and from liability are waived and abolished to
209 the extent of liability created by Section 7 of this act, and a
210 person may sue the state government, except state courts, for
211 damages allowed by Section 7 of this act.

212 (2) Notwithstanding subsection (2) of this section, this
213 section does not waive or abolish sovereign immunity to suit and
214 from liability under the Eleventh Amendment to the United States
215 Constitution.

216 **SECTION 9.** (1) This act shall be construed in favor of a
217 broad protection of free exercise of religious beliefs and moral



218 convictions, to the maximum extent permitted by the state and
219 federal constitutions.

220 (2) The protection of free exercise of religious beliefs and
221 moral convictions afforded by this act are in addition to the
222 protections provided under federal law, state law, and the state
223 and federal constitutions. Nothing in this act shall be construed
224 to preempt or repeal any state or local law that is equally or
225 more protective of free exercise of religious beliefs or moral
226 convictions. Nothing in this act shall be construed to narrow the
227 meaning or application of any state or local law protecting free
228 exercise of religious beliefs or moral convictions. Nothing in
229 this act shall be construed to prevent the state government from
230 providing, either directly or through an individual or entity not
231 seeking protection under this act, any benefit or service
232 authorized under state law.

233 (3) This act applies to, and in cases of conflict
234 supersedes, each statute of the state that impinges upon the free
235 exercise of religious beliefs and moral convictions protected by
236 this act, unless a conflicting statute is expressly made exempt
237 from the application of this act. This act also applies to, and
238 in cases of conflict supersedes, any ordinance, rule, regulation,
239 order, opinion, decision, practice or other exercise of the state
240 government's authority that impinges upon the free exercise of
241 religious beliefs or moral convictions protected by this act.



242 **SECTION 10.** As used in Section 1 through 10 of this act, the
243 following words and phrases shall have the meanings ascribed in
244 this section unless the context clearly indicates otherwise:

245 (1) "State benefit program" means any program administered
246 or funded by the state, or by any agent on behalf of the state,
247 providing cash, payments, grants, contracts, loans or in-kind
248 assistance.

249 (2) "State government" means:

250 (a) The State of Mississippi or a political subdivision
251 of the state;

252 (b) Any agency of the state or of a political
253 subdivision of the state, including a department, bureau, board,
254 commission, council, court or public institution of higher
255 education;

256 (c) Any person acting under color of state law; and

257 (d) Any private party or third party suing under or
258 enforcing a law, ordinance, rule or regulation of the state or
259 political subdivision of the state.

260 (3) "Person" means:

261 (a) A natural person, in his or her individual
262 capacity, regardless of religious affiliation or lack thereof, or
263 in his or her capacity as a member, officer, owner, volunteer,
264 employee, manager, religious leader, clergy or minister of any
265 entity described in this section;

266 (b) A religious organization;



267 (c) A sole proprietorship, or closely held company,
268 partnership, association, organization, firm, corporation,
269 cooperative, trust, society or other closely held entity operating
270 with a sincerely held religious belief or moral conviction
271 described in Section 2 of this act; or

272 (d) Cooperatives, ventures or enterprises comprised of
273 two (2) or more individuals or entities described in this
274 subsection.

275 (4) "Religious organization" means:

276 (a) A house of worship, including, but not limited to,
277 churches, synagogues, shrines, mosques and temples;

278 (b) A religious group, corporation, association, school
279 or educational institution, ministry, order, society or similar
280 entity, regardless of whether it is integrated or affiliated with
281 a church or other house of worship; and

282 (c) An officer, owner, employee, manager, religious
283 leader, clergy or minister of an entity or organization described
284 in this subsection (4).

285 (5) "Adoption or foster care" or "adoption or foster care
286 service" means social services provided to or on behalf of
287 children, including:

288 (a) Assisting abused or neglected children;

289 (b) Teaching children and parents occupational,
290 homemaking and other domestic skills;

291 (c) Promoting foster parenting;



- 292 (d) Providing foster homes, residential care, group
293 homes or temporary group shelters for children;
294 (e) Recruiting foster parents;
295 (f) Placing children in foster homes;
296 (g) Licensing foster homes;
297 (h) Promoting adoption or recruiting adoptive parents;
298 (i) Assisting adoptions or supporting adoptive
299 families;
300 (j) Performing or assisting home studies;
301 (k) Assisting kinship guardianships or kinship
302 caregivers;
303 (l) Providing family preservation services;
304 (m) Providing family support services; and
305 (n) Providing temporary family reunification services.

306 **SECTION 11.** The provisions of Sections 1 through 10 of this
307 act shall be excluded from the application of Section 11-61-1.

308 **SECTION 12.** This act shall take effect and be in force from
309 and after July 1, 2016.

