

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 578

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO ADOPTION AND FOSTER CARE; PROVIDING LEGISLATIVE INTENT; AMEND-  
2 ING CHAPTER 16, TITLE 16, IDAHO CODE, BY THE ADDITION OF A NEW SECTION  
3 16-1648, IDAHO CODE, TO DEFINE TERMS, TO ESTABLISH PROVISIONS PROHIBIT-  
4 ING RELIGIOUS DISCRIMINATION FOR ADOPTION AND FOSTER CARE SERVICES,  
5 TO ESTABLISH PROVISIONS REGARDING ENFORCEMENT, AND TO ESTABLISH PRO-  
6 VISIONS REGARDING REMEDIES; PROVIDING SEVERABILITY; AND DECLARING AN  
7 EMERGENCY AND PROVIDING AN EFFECTIVE DATE.  
8

9 Be It Enacted by the Legislature of the State of Idaho:

10 SECTION 1. LEGISLATIVE INTENT. It is the intent of the Legislature that  
11 the state places a child in a safe, loving, and supportive home when the  
12 state must place a child with an adoptive or foster family. The adoption  
13 and foster care agencies of this state represent diverse organizations and  
14 groups, some of which are faith-based and some of which are not faith-based.  
15 Children in need of placement services benefit from having as many adoption  
16 and foster parent agencies as possible because the more agencies that take  
17 part in these services, the greater the likelihood that a child will find a  
18 permanent placement. Children and families benefit greatly from the adop-  
19 tion and foster care services provided by faith-based and non-faith-based  
20 child placing agencies. Faith-based organizations and groups have a lengthy  
21 and distinguished history of providing adoption and foster care services  
22 in this state. Private child placing agencies and individuals, including  
23 faith-based child placing agencies and individuals, have the right to free  
24 exercise of religion under both the state and federal constitutions. Un-  
25 der well-settled principles of constitutional law, this right includes the  
26 freedom to abstain from conduct that conflicts with an agency's sincerely  
27 held religious beliefs. It is the intent of the Legislature that ensuring  
28 that faith-based child placing agencies can continue to provide adoption  
29 and foster care services will benefit the children and families who receive  
30 those services.

31 SECTION 2. That Chapter 16, Title 16, Idaho Code, be, and the same is  
32 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
33 ignated as Section 16-1648, Idaho Code, and to read as follows:

34 16-1648. PROHIBITION ON RELIGIOUS DISCRIMINATION. (1) As used in this  
35 section:

36 (a) "Adoption or foster care" or "adoption or foster care services"  
37 means social services provided to or on behalf of children, including  
38 services:

39 (i) Promoting foster parenting;

40 (ii) Providing foster homes, residential care, group homes, or  
41 temporary group shelters for children;

- 1 (iii) Recruiting foster parents;
- 2 (iv) Placing children in foster homes;
- 3 (v) Licensing or certifying foster homes;
- 4 (vi) Promoting adoption or recruiting adoptive parents;
- 5 (vii) Assisting adoptions or supporting adoptive families;
- 6 (viii) Performing or assisting home studies;
- 7 (ix) Assisting kinship guardianships or kinship caregivers;
- 8 (x) Providing family support services; and
- 9 (xi) Providing temporary family reunification services.

10 (b) "Discriminatory action" means any action taken by the state govern-  
11 ment to:

- 12 (i) Alter in any way the tax treatment of, or cause any tax,  
13 penalty, or payment to be assessed against, or deny, delay, re-  
14 voke, or otherwise make unavailable an exemption from taxation of  
15 any person referred to in subsections (2) and (3) of this section;
- 16 (ii) Disallow, deny, or otherwise make unavailable a deduction  
17 for state tax purposes of any charitable contribution made to or by  
18 any person referred to in subsections (2) and (3) of this section;
- 19 (iii) Withhold, reduce, exclude, terminate, materially alter the  
20 terms or conditions of, or otherwise make unavailable or deny any  
21 state grant, contract, subcontract, cooperative agreement, guar-  
22 antee, loan, scholarship, or other similar benefit from or to any  
23 person referred to in subsections (2) and (3) of this section;
- 24 (iv) Withhold, reduce, exclude, terminate, adversely alter the  
25 terms or conditions of, or otherwise make unavailable or deny any  
26 entitlement or benefit under a state benefit program from or to any  
27 person referred to in subsections (2) and (3) of this section;
- 28 (v) Impose, levy, or assess a monetary fine, fee, penalty, dam-  
29 ages award, or injunction;
- 30 (vi) Withhold, reduce, exclude, terminate, materially alter the  
31 terms or conditions of, or otherwise make unavailable or deny any  
32 license, certification, accreditation, custody award or agree-  
33 ment, diploma, grade, recognition, or other similar benefit,  
34 position, or status from or to any person; or
- 35 (vii) Refuse to hire or promote, force to resign, terminate, de-  
36 mote, sanction, discipline, adversely alter the terms or condi-  
37 tions of employment of, or retaliate or take other adverse employ-  
38 ment action against a person employed or commissioned by the state  
39 government.

40 (c) "State benefit program" means any program administered, con-  
41 trolled, or funded by the state, or by any agent on behalf of the state,  
42 providing cash, payments, grants, contracts, loans, or in-kind assis-  
43 tance.

44 (d) "State government" means:

- 45 (i) The state or a political subdivision of the state;
- 46 (ii) Any agency of the state or of a political subdivision of the  
47 state, including a department, bureau, board, commission, coun-  
48 cil, or court;

1 (iii) Any city, county, urban county government, charter county  
2 government, unified local government, consolidated local govern-  
3 ment, special district, or any combination thereof;

4 (iv) Any person acting under color of state law; and

5 (v) Any private person suing under or attempting to enforce a law,  
6 rule, or regulation adopted by the state or a political subdivi-  
7 sion of the state.

8 (2) The state government shall not take any discriminatory action  
9 against a person that advertises, provides, or facilitates adoption or  
10 foster care services wholly or partially on the basis that the person has  
11 provided or declined to provide any adoption or foster care service or  
12 related service based on or in a manner consistent with a sincerely held re-  
13 ligious belief.

14 (3) The state government shall not take any discriminatory action  
15 against a person who the state grants custody of a foster or adoptive child  
16 wholly or partially on the basis that the person guides, instructs, or raises  
17 a child, or intends to guide, instruct, or raise a child, based on or in a man-  
18 ner consistent with a sincerely held religious belief. The state government  
19 may consider whether a person shares the same religious or faith tradition  
20 as a foster or adoptive child when considering placement of the child in  
21 order to prioritize placement with a person of the same religious or faith  
22 tradition.

23 (4) The state government shall consider any person as accredited, li-  
24 censed, or certified who would otherwise be accredited, licensed, or certi-  
25 fied, respectively, for any purposes under state law if not for a determina-  
26 tion against such person wholly or partially on the basis that the person be-  
27 lieves, maintains policies and procedures, or acts in accordance with a sin-  
28 cerely held religious belief.

29 (5) The state government shall consider any person for a contract,  
30 grant, or agreement that would otherwise be considered for a contract,  
31 grant, or agreement if not for a determination against such person wholly  
32 or partially on the basis that the person believes, maintains policies and  
33 procedures, or acts in accordance with a sincerely held religious belief.

34 (6) A person may assert a violation of the provisions of this section as  
35 a claim against the state government in any judicial or administrative pro-  
36 ceeding or as a defense in any judicial or administrative proceeding with-  
37 out regard to whether the proceeding is brought by or in the name of the state  
38 government, any private person, or any other party.

39 (7) Notwithstanding any other provision of law to the contrary, an ac-  
40 tion under this section may be commenced, and relief may be granted, without  
41 regard to whether the person commencing the action has sought or exhausted  
42 available administrative remedies.

43 (8) A person shall bring an action to assert a claim under this section  
44 no later than two (2) years after the date that the person knew or should have  
45 known that a discriminatory action was taken against that person.

46 (9) Any person who successfully asserts a claim or defense under this  
47 section may recover:

48 (a) Declaratory relief;

49 (b) Injunctive relief to prevent or remedy a violation of this section  
50 or the effects of such a violation;

1 (c) Compensatory damages;  
2 (d) Reasonable attorney's fees and costs; and  
3 (e) Any other appropriate relief, except that declaratory relief and  
4 injunctive relief shall be available against a private person not act-  
5 ing under color of state law upon a successful assertion of a defense un-  
6 der this section.

7 (10) Sovereign, governmental, and qualified immunities to suit and  
8 from liability are waived and abolished to the extent of liability pursuant  
9 to subsection (9) of this section, and a person may sue the state government,  
10 except state courts, for damages allowed pursuant to subsection (9) of this  
11 section.

12 SECTION 3. SEVERABILITY. The provisions of this act are hereby declared  
13 to be severable and if any provision of this act or the application of such  
14 provision to any person or circumstance is declared invalid for any reason,  
15 such declaration shall not affect the validity of the remaining portions of  
16 this act.

17 SECTION 4. An emergency existing therefor, which emergency is hereby  
18 declared to exist, this act shall be in full force and effect on and after  
19 July 1, 2024.