

1 STATE OF OKLAHOMA

2 2nd Session of the 56th Legislature (2018)

3 SENATE BILL 1250

By: Brecheen

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5
6 AS INTRODUCED

7 An Act relating to freedom of conscience; creating
8 the Protecting Freedom of Conscience from Government
9 Discrimination Act; providing short title; stating
10 protected beliefs and convictions; prohibiting state
11 government from taking certain actions; specifying
12 certain protected actions; authorizing certain
13 recusal; establishing procedures for certain recusal;
14 authorizing certain civil actions and relief;
15 establishing statute of limitations for certain
16 actions; construing provisions; stating applicability
17 of act; defining terms; providing for codification;
18 and providing an effective date.

19 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

20 SECTION 1. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 261 of Title 51, unless there is
22 created a duplication in numbering, reads as follows:

23 This act shall be known and may be cited as the "Protecting
24 Freedom of Conscience from Government Discrimination Act".

SECTION 2. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 262 of Title 51, unless there is
created a duplication in numbering, reads as follows:

1 The sincerely held religious beliefs or moral convictions
2 protected by this act are the belief or conviction that:

3 1. Marriage is or should be recognized as the union of one man
4 and one woman;

5 2. Sexual relations are properly reserved to such a marriage;
6 and

7 3. The terms "male" or "female" refer to an individual's
8 immutable biological sex as objectively determined by anatomy and
9 genetics at time of birth.

10 SECTION 3. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 263 of Title 51, unless there is
12 created a duplication in numbering, reads as follows:

13 A. The state government shall not take any discriminatory
14 action against a religious organization wholly or partially on the
15 basis that such organization:

16 1. Solemnizes or declines to solemnize any marriage, or
17 provides or declines to provide services, accommodations,
18 facilities, goods or privileges for a purpose related to the
19 solemnization, formation, celebration or recognition of any
20 marriage, based upon or in a manner consistent with a sincerely held
21 religious belief or moral conviction described in Section 2 of this
22 act;

23 2. Makes any employment-related decision including, but not
24 limited to, the decision whether or not to hire, terminate or

1 discipline an individual whose conduct or religious beliefs are
2 inconsistent with those of the religious organization, based upon or
3 in a manner consistent with a sincerely held religious belief or
4 moral conviction described in Section 2 of this act; or

5 3. Makes any decision concerning the sale, rental, occupancy
6 of, or terms and conditions of occupying a dwelling or other housing
7 under its control, based upon or in a manner consistent with a
8 sincerely held religious belief or moral conviction described in
9 Section 2 of this act.

10 B. The state government shall not take any discriminatory
11 action against a religious organization that advertises, provides or
12 facilitates adoption or foster care, wholly or partially on the
13 basis that such organization has provided or declined to provide any
14 adoption or foster care service, or related service, based upon or
15 in a manner consistent with a sincerely held religious belief or
16 moral conviction described in Section 2 of this act.

17 C. The state government shall not take any discriminatory
18 action against a person who the state grants custody of a foster or
19 adoptive child, or who seeks from the state custody of a foster or
20 adoptive child, wholly or partially on the basis that the person
21 guides, instructs or raises a child, or intends to guide, instruct,
22 or raise a child based upon or in a manner consistent with a
23 sincerely held religious belief or moral conviction described in
24 Section 2 of this act.

1 D. The state government shall not take any discriminatory
2 action against a person wholly or partially on the basis that the
3 person declines to participate in the provision of treatments,
4 counseling, or surgeries related to sex reassignment or gender
5 identity transitioning or declines to participate in the provision
6 of psychological, counseling, or fertility services based upon a
7 sincerely held religious belief or moral conviction described in
8 Section 2 of this act. This subsection shall not be construed to
9 allow any person to deny visitation, recognition of a designated
10 representative for health care decision-making, or emergency medical
11 treatment necessary to cure an illness or injury as required by law.

12 E. The state government shall not take any discriminatory
13 action against a person wholly or partially on the basis that the
14 person has provided or declined to provide the following services,
15 accommodations, facilities, goods, or privileges for a purpose
16 related to the solemnization, formation, celebration, or recognition
17 of any marriage, based upon or in a manner consistent with a
18 sincerely held religious belief or moral conviction described in
19 Section 2 of this act:

20 1. Photography, poetry, videography, disc-jockey services,
21 wedding planning, printing, publishing or similar marriage-related
22 goods or services; or

23 2. Floral arrangements, dress making, cake or pastry artistry,
24 assembly-hall or other wedding-venue rentals, limousine or other

1 car-service rentals, jewelry sales and services, or similar
2 marriage-related services, accommodations, facilities or goods.

3 F. The state government shall not take any discriminatory
4 action against a person wholly or partially on the basis that the
5 person establishes sex-specific standards or policies concerning
6 employee or student dress or grooming, or concerning access to
7 restrooms, spas, baths, showers, dressing rooms, locker rooms, or
8 other intimate facilities or settings, based upon or in a manner
9 consistent with a sincerely held religious belief or moral
10 conviction described in Section 2 of this act.

11 G. The state government shall not take any discriminatory
12 action against a state employee wholly or partially on the basis
13 that such employee lawfully speaks or engages in expressive conduct
14 based upon or in a manner consistent with a sincerely held religious
15 belief or moral conviction described in Section 2 of this act, so
16 long as:

17 1. If the employee's speech or expressive conduct occurs in the
18 workplace, that speech or expressive conduct is consistent with the
19 time, place, manner and frequency of any other expression of a
20 religious, political, or moral belief or conviction allowed; or

21 2. If the employee's speech or expressive conduct occurs
22 outside the workplace, that speech or expressive conduct is in the
23 employee's personal capacity and outside the course of performing
24 work duties.

1 H. 1. Any person employed or acting on behalf of the state
2 government who has authority to authorize or license marriages,
3 including, but not limited to, clerks, registers of deeds or their
4 deputies, may seek recusal from authorizing or licensing lawful
5 marriages based upon or in a manner consistent with a sincerely held
6 religious belief or moral conviction described in Section 2 of this
7 act. Any person making such recusal shall provide prior written
8 notice to the Administrative Office of the Courts who shall keep a
9 record of such recusal, and the state government shall not take any
10 discriminatory action against that person wholly or partially on the
11 basis of such recusal. The person who is recusing himself or
12 herself shall take all necessary steps to ensure that the
13 authorization and licensing of any legally valid marriage is not
14 impeded or delayed as a result of any recusal.

15 2. Any person employed or acting on behalf of the state
16 government who has authority to perform or solemnize marriages,
17 including, but not limited to, judges, magistrates, justices of the
18 peace or their deputies, may seek recusal from performing or
19 solemnizing lawful marriages based upon or in a manner consistent
20 with a sincerely held religious belief or moral conviction described
21 in Section 2 of this act. Any person making such recusal shall
22 provide prior written notice to the Administrative Office of the
23 Courts, and the state government shall not take any discriminatory
24 action against that person wholly or partially on the basis of such

1 | recusal. The Administrative Office of the Courts shall take all
2 | necessary steps to ensure that the performance or solemnization of
3 | any legally valid marriage is not impeded or delayed as a result of
4 | any recusal.

5 | SECTION 4. NEW LAW A new section of law to be codified
6 | in the Oklahoma Statutes as Section 264 of Title 51, unless there is
7 | created a duplication in numbering, reads as follows:

8 | A. As used in this act, discriminatory action includes any
9 | action taken by the state government to:

10 | 1. Alter in any way the tax treatment of, or cause any tax,
11 | penalty, or payment to be assessed against, or deny, delay, revoke,
12 | or otherwise make unavailable an exemption from taxation of any
13 | person referred to in Section 3 of this act;

14 | 2. Disallow, deny or otherwise make unavailable a deduction for
15 | state tax purposes of any charitable contribution made to or by such
16 | person;

17 | 3. Withhold, reduce, exclude, terminate, materially alter the
18 | terms or conditions of, or otherwise make unavailable or deny any
19 | state grant, contract, subcontract, cooperative agreement,
20 | guarantee, loan, scholarship, or other similar benefit from or to
21 | such person;

22 | 4. Withhold, reduce, exclude, terminate, materially alter the
23 | terms or conditions of, or otherwise make unavailable or deny any
24 |

1 entitlement or benefit under a state benefit program from or to such
2 person;

3 5. Impose, levy or assess a monetary fine, fee, penalty or
4 injunction;

5 6. Withhold, reduce, exclude, terminate, materially alter the
6 terms or conditions of, or otherwise make unavailable or deny any
7 license, certification, accreditation, custody award or agreement,
8 diploma, grade, recognition, or other similar benefit, position, or
9 status from or to any person; or

10 7. Refuse to hire or promote, force to resign, fire, demote,
11 sanction, discipline, materially alter the terms or conditions of
12 employment, or retaliate or take other adverse employment action
13 against a person employed or commissioned by the state government.

14 B. The state government shall consider accredited, licensed or
15 certified any person that would otherwise be accredited, licensed or
16 certified, respectively, for any purposes under state law but for a
17 determination against such person wholly or partially on the basis
18 that the person believes, speaks or acts in accordance with a
19 sincerely held religious belief or moral conviction described in
20 Section 2 of this act.

21 SECTION 5. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 265 of Title 51, unless there is
23 created a duplication in numbering, reads as follows:

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1 A. A person may assert a violation of this act as a claim
2 against the state government in any judicial or administrative
3 proceeding or as defense in any judicial or administrative
4 proceeding without regard to whether the proceeding is brought by or
5 in the name of the state government, any private person or any other
6 party.

7 B. An action under this act may be commenced, and relief may be
8 granted, in a court of the state without regard to whether the
9 person commencing the action has sought or exhausted available
10 administrative remedies.

11 SECTION 6. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 266 of Title 51, unless there is
13 created a duplication in numbering, reads as follows:

14 An aggrieved person shall first seek injunctive relief to
15 prevent or remedy a violation of this act or the effects of a
16 violation of this act. If injunctive relief is granted by the court
17 and the injunction is thereafter violated, the aggrieved party may
18 then seek the following:

- 19 1. Compensatory damages for pecuniary and nonpecuniary losses;
- 20 2. Reasonable attorney fees and costs; and
- 21 3. Any other appropriate relief, except that only declaratory
22 relief and injunctive relief shall be available against a private
23 person not acting under color of state law upon a successful
24 assertion of a claim or defense under this act.

1 SECTION 7. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 267 of Title 51, unless there is
3 created a duplication in numbering, reads as follows:

4 A person shall bring an action to assert a claim under this act
5 not later than two (2) years after the date that the person knew or
6 should have known that a discriminatory action was taken against
7 that person.

8 SECTION 8. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 268 of Title 51, unless there is
10 created a duplication in numbering, reads as follows:

11 A. This act shall be construed in favor of a broad protection
12 of free exercise of religious beliefs and moral convictions, to the
13 maximum extent permitted by the state and federal constitutions.

14 B. The protection of free exercise of religious beliefs and
15 moral convictions afforded by this act are in addition to the
16 protections provided under federal law, state law, and the state and
17 federal constitutions. Nothing in this act shall be construed to
18 preempt or repeal any state or local law that is equally or more
19 protective of free exercise of religious beliefs or moral
20 convictions. Nothing in this act shall be construed to narrow the
21 meaning or application of any state or local law protecting free
22 exercise of religious beliefs or moral convictions. Nothing in this
23 act shall be construed to prevent the state government from
24 providing, either directly or through an individual or entity not

1 seeking protection under this act, any benefit or service authorized
2 under state law.

3 C. This act applies to, and in cases of conflict supersedes,
4 each statute of the state that impinges upon the free exercise of
5 religious beliefs and moral convictions protected by this act,
6 unless a conflicting statute is expressly made exempt from the
7 application of this act. This act also applies to, and in cases of
8 conflict supersedes, any ordinance, rule, regulation, order,
9 opinion, decision, practice or other exercise of the state
10 government's authority that impinges upon the free exercise of
11 religious beliefs or moral convictions protected by this act.

12 SECTION 9. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 269 of Title 51, unless there is
14 created a duplication in numbering, reads as follows:

15 As used in this act:

16 1. "State benefit program" means any program administered or
17 funded by the state, or by any agent on behalf of the state,
18 providing cash, payments, grants, contracts, loans or in-kind
19 assistance;

20 2. "State government" means:

21 a. the State of Oklahoma or a political subdivision of
22 the state,

23 b. any agency of the state or of a political subdivision
24 of the state, including a department, bureau, board,

1 commission, council, court or public institution of
2 higher education,

3 c. any person acting under color of state law, and

4 d. any private party or third party suing under or
5 enforcing a law, ordinance, rule or regulation of the
6 state or political subdivision of the state;

7 3. "Person" means:

8 a. a natural person, in his or her individual capacity,
9 regardless of religious affiliation or lack thereof,
10 or in his or her capacity as a member, officer, owner,
11 volunteer, employee, manager, religious leader, clergy
12 or minister of any entity described in this section,

13 b. a religious organization,

14 c. a sole proprietorship, or closely held company,
15 partnership, association, organization, firm,
16 corporation, cooperative, trust, society or other
17 closely held entity operating with a sincerely held
18 religious belief or moral conviction described in this
19 act, or

20 d. cooperatives, ventures or enterprises comprised of two
21 (2) or more individuals or entities described in this
22 subsection;

23 4. "Religious organization" means:
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- a. a house of worship, including, but not limited to, churches, synagogues, shrines, mosques and temples,
- b. a religious group, corporation, association, school or educational institution, ministry, order, society or similar entity, regardless of whether it is integrated or affiliated with a church or other house of worship, and
- c. an officer, owner, employee, manager, religious leader, clergy or minister of an entity or organization described in this paragraph; and

5. "Adoption or foster care" or "adoption or foster care service" means social services provided to or on behalf of children, including:

- a. assisting abused or neglected children,
- b. teaching children and parents occupational, homemaking and other domestic skills,
- c. promoting foster parenting,
- d. providing foster homes, residential care, group homes or temporary group shelters for children,
- e. recruiting foster parents,
- f. placing children in foster homes,
- g. licensing foster homes,
- h. promoting adoption or recruiting adoptive parents,
- i. assisting adoptions or supporting adoptive families,

- 1 j. performing or assisting home studies,
- 2 k. assisting kinship guardianships or kinship caregivers,
- 3 l. providing family preservation services,
- 4 m. providing family support services, and
- 5 n. providing temporary family reunification services.

6 SECTION 10. This act shall become effective November 1, 2018.

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