

State of Arkansas
95th General Assembly
Regular Session, 2025

As Engrossed: S3/20/25

A Bill

HOUSE BILL 1669

By: Representative Bentley

By: Senator A. Clark

For An Act To Be Entitled

AN ACT TO CREATE THE KEEP KIDS FIRST ACT; TO PROVIDE FOR PROTECTIONS FROM DISCRIMINATION FOR ADOPTION AND FOSTER CARE PROVIDERS ACTING IN ACCORDANCE WITH SINCERELY HELD RELIGIOUS BELIEFS; TO PROVIDE A VEHICLE FOR RECOVERY BY ADOPTION AND FOSTER CARE PROVIDERS ACTING IN ACCORDANCE WITH SINCERELY HELD RELIGIOUS BELIEFS WHEN CERTAIN DISCRIMINATORY ACTIONS ARE TAKEN AGAINST THE FAITH-BASED ADOPTION AND FOSTER CARE PROVIDERS; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE KEEP KIDS FIRST ACT; AND TO PROVIDE FOR PROTECTIONS FROM DISCRIMINATION FOR ADOPTION AND FOSTER CARE PROVIDERS ACTING IN ACCORDANCE WITH SINCERELY HELD RELIGIOUS BELIEFS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. Title.

This act shall be known and may be cited as the "Keep Kids First Act".

SECTION 2. DO NOT CODIFY. Legislative findings.

(a) The General Assembly finds and declares that:

(1) The State of Arkansas seeks to place children in a safe, loving, and supportive home when it must place a child with an adoptive or foster family;



(2) The adoption and foster care agencies of the State of Arkansas represent diverse organizations and groups, some of which are faith-based and some of which are not faith-based, and faith-based organizations and groups have a lengthy and distinguished history of providing adoption and foster care services in the State of Arkansas;

(3) The United States Supreme Court has recognized the benefits of having more, not fewer, adoption and foster care providers, stating that "[m]aximizing the number of foster families and minimizing liability are important goals, but the City fails to show that granting CSS an exception will put those goals at risk. If anything, including CSS in the program seems likely to increase, not reduce, the number of available foster parents." Fulton v. City of Philadelphia, 593 U.S. 522, 541-42;

(4)(A) Private child placement agencies and individuals, including faith-based child placement agencies and individuals, have the right to the free exercise of religion under both the Arkansas Constitution and the United States Constitution.

(B) Under well-settled principles of constitutional law, free exercise of religion includes the freedom to abstain from conduct that conflicts with child placement agencies' sincerely held religious beliefs; and

(5) Ensuring that faith-based child placement agencies can continue to provide adoption and foster care services will benefit the children and families who receive those services.

(b) Therefore, the General Assembly declares that the Keep Kids First Act is necessary to ensure that faith-based adoption and foster care providers remain free to serve children in need and work with the State of Arkansas to find loving, forever homes for children.

SECTION 3. Arkansas Code Title 9, Chapter 28, Subchapter 4, is amended to add an additional section to read as follows:

9-28-417. Child welfare agencies – Conscience clause – Claim or defense.

(a) As used in this section:

(1) "Discriminatory action" means any action taken by state government to:

(A) Alter in any way the tax treatment of, or cause any

tax, penalty, or payment to be assessed against, or deny, delay, revoke, or otherwise make unavailable an exemption from taxation of a person whom the state government places custody of a foster or preadoptive child with;

(B) Disallow, deny, or otherwise make unavailable a deduction for state tax purposes of any charitable contribution made to or by a person whom the state government places custody of a foster or preadoptive child with;

(C) Withhold, reduce, exclude, terminate, materially alter the terms or conditions of, or otherwise make unavailable or deny any state grant, contract, subcontract, cooperative agreement, guarantee, loan, scholarship, or other similar benefit from or to a person whom the state government places custody of a foster or preadoptive child with;

(D) Withhold, reduce, exclude, terminate, adversely alter the terms or conditions of, or otherwise make unavailable or deny any entitlement or benefit under a state benefit program from or to a person whom the state government places custody of a foster or preadoptive child with;

(E) Impose, levy, or assess a monetary fine, fee, penalty, damages award, or injunction on a person whom the state government places custody of a foster or preadoptive child with;

(F) Withhold, reduce, exclude, terminate, materially alter the terms or conditions of, or otherwise make unavailable or deny any license, certification, accreditation, custody award or agreement, diploma, grade, recognition, or other similar benefit, position, or status from or to a person whom the state government places custody of a foster or preadoptive child with; or

(G) Refuse to hire or promote, force to resign, fire, demote, sanction, discipline, adversely alter the terms or conditions of employment, or retaliate or take other adverse employment action against a person whom the state government places custody of a foster or preadoptive child with and who is employed or commissioned by the state government; and

(2) "State government" means:

(A) The state or a political subdivision of the state, including without limitation a court;

(B) Any agency of the state or an agency of a political subdivision of the state, including without limitation a:

(i) Board;

- (ii) Bureau;
- (iii) Commission;
- (iv) Council;
- (v) Department;
- (vi) Division; or
- (vii) Office;

(C) Any city, county, local government, special district, or combination thereof;

(D) Any person acting under color of state law; or

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

(b)(1) The state government shall not require any private child placement agency to perform, assist, counsel, recommend, consent to, refer, or participate in any placement of a child for foster care or adoption when the proposed placement would violate the private child placement agency's sincerely held religious or moral beliefs.

(2)(A) The state government shall not take any discriminatory action against a person whom the state government places custody of a foster or preadoptive child with, whether in whole or in part, based on the person's:

(i) Sincerely held religious belief, or intent to guide, instruct, or raise a child, based upon or in a manner that is consistent with that person's sincerely held religious belief; or

(ii) Refusal to accept or support any government policy regarding sexual orientation or gender identity that conflicts with the person's sincerely held religious beliefs.

(B) The state government shall not establish or enforce any per se standard, rule, or policy that precludes consideration of a current or prospective foster or preadoptive parent for any particular placement based in whole or in part on the person's sincerely held religious beliefs regarding sexual orientation or gender identity.

(C) Nothing in subdivision (b)(2)(A) or subdivision (b)(2)(B) shall:

(i) Alter the fact that, in accordance with § 9-28-106, the state government may consider whether a person shares the same

religious background as a foster or preadoptive child's genetic parent when considering placement of the child to prioritize placement with a person of the same religious background or, if a person with the same or similar religious background is not available, to a person of a different religious background that is knowledgeable and appreciative of the child's religious background;

(ii) Preclude the state government from taking into consideration the religious or moral beliefs of a particular foster or preadoptive child, or his or her family of origin, when determining the most appropriate placement for the child, including without limitation religious or moral beliefs regarding sexual orientation and gender identity and how those beliefs relate to the religious or moral beliefs of a prospective foster or preadoptive parent; or

(iii) Be construed to prohibit the state government from making, or relieving the state government from its duty to make, all individual placements consistent with the best interests of the child as otherwise required by law.

(3)(A) The state government shall not take any adverse action against a person whom the state grants custody of a foster child or grants adoption of an adoptive child, or who seeks from the state custody of a foster child or adoption of an 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 upon or in a manner consistent with a sincerely held religious belief.

(B) However, in accordance with § 9-28-106, the state government may consider whether a person shares the same religious background as a foster or adoptive child's genetic parent or parents when considering placement of the child in order to prioritize placement of the child with a person of the same religious background or, if a person with the same or similar religious background is not available, with a person of a different religious background who is knowledgeable and appreciative of the child's religious background.

(c)(1) A person may assert a violation of this section as a claim against the state government in any judicial or administrative proceeding or as a defense in any judicial or administrative proceeding without regard to whether the proceeding is brought by or in the name of the state government,

any private person, or any other party.

(2) Refusal of a private child placement agency to perform, assist, counsel, recommend, consent to, refer, or participate in a child placement that violates the private child placement agency's religious or moral convictions shall not form the basis for the imposition of civil liability, other adverse administrative action, or any claim or cause of action under any state or local law.

(3) Notwithstanding any other provision of law, an action under this section may be commenced, and relief may be granted, without regard to whether the person commencing the action has sought or exhausted available administrative remedies.

(d)(1) Any person who successfully asserts a claim or defense under this section may recover:

(A) Declaratory relief;

(B) Injunctive relief to prevent or remedy a violation of this section or the effects of a violation of this section;

(C) Compensatory damages;

(D) Reasonable attorneys' fees and costs; and

(E) Any other appropriate relief.

(2) Notwithstanding subsection (e) of this section, only declaratory relief and injunctive relief shall be available to recover against a private person not acting under color of state law if there is a successful assertion of a defense under this section.

(e) Sovereign, governmental, and qualified immunities to suit and from liability are waived and abolished to the extent of liability created by subsection (d) of this section.

(f)(1) The protection of free exercise of religious beliefs afforded by this section are in addition to existing protections under federal law, state law, the Arkansas Constitution, and the United States Constitution.

(2) Nothing in this section shall be construed to:

(A) Preempt or repeal any state or local law that is equally or more protective of free exercise of religious beliefs;

(B) Narrow the meaning or application of any state or local law protecting free exercise of religious beliefs; or

(C) Prevent the state government from providing, either directly or through an individual or entity not seeking protection under this

section, any benefit or service authorized under state law.

SECTION 4. DO NOT CODIFY. Severability.

If any provision of this section or any application of such provision to any particular person or circumstance is held to be invalid under law, the remainder of this section and the application of its provisions to any other person or circumstance shall not be affected.

/s/Bentley

APPROVED: 4/10/25