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Chapter No. 334
16/HR26/R1128SG
CST/GV

HOUSE BILL NO. 1523

Originated in House _____ Clerk

HOUSE BILL NO. 1523

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

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

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

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

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

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

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

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

(a) Solemnizes or declines to solemnize any marriage, or provides or declines to provide services, accommodations, facilities, goods or privileges for a purpose related to the solemnization, formation, celebration or recognition of any marriage, based upon or in a manner consistent with a sincerely held religious belief or moral conviction described in Section 2 of this act;

(b) Makes any employment-related decision, including, but not limited to, the decision whether or not to hire, terminate or discipline an individual whose conduct or religious beliefs are inconsistent with those of the religious organization, based upon or in a manner consistent with a sincerely held religious belief or moral conviction described in Section 2 of this act; or

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

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

(3) The state government shall not take any discriminatory action against a person who the state grants custody of a foster or adoptive child, or who seeks from the state 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 upon or in a manner consistent with a sincerely held religious belief or moral conviction described in Section 2 of this act.

(4) The state government shall not take any discriminatory action against a person wholly or partially on the basis that the person declines to participate in the provision of treatments, counseling, or surgeries related to sex reassignment or gender identity transitioning or declines to participate in the provision of psychological, counseling, or fertility services based upon a sincerely held religious belief or moral conviction described in Section 2 of this act. This subsection (4) shall not be construed to allow any person to deny visitation, recognition of a designated representative for health care decision-making, or

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

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

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

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

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

consistent with a sincerely held religious belief or moral conviction described in Section 2 of this act.

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

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

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

(8) (a) Any person employed or acting on behalf of the state government who has authority to authorize or license marriages, including, but not limited to, clerks, registers of deeds or their deputies, may seek recusal from authorizing or licensing lawful marriages based upon or in a manner consistent with a sincerely held religious belief or moral conviction described in Section 2 of this act. Any person making such recusal shall provide prior written notice to the State Registrar

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

(b) Any person employed or acting on behalf of the state government who has authority to perform or solemnize marriages, including, but not limited to, judges, magistrates, justices of the peace or their deputies, may seek recusal from performing or solemnizing lawful marriages based upon or in a manner consistent with a sincerely held religious belief or moral conviction described in Section 2 of this act. Any person making such recusal shall provide prior written notice to the Administrative Office of Courts, and the state government shall not take any discriminatory action against that person wholly or partially on the basis of such recusal. The Administrative Office of Courts shall take all necessary steps to ensure that the performance or solemnization of any legally valid marriage is not impeded or delayed as a result of any recusal.

SECTION 4. (1) As used in this act, discriminatory action includes any action taken by the 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 any person referred to in Section 3 of this act;

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

(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 such person;

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

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

(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 any person; or

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

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

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

SECTION 5. (1) A person may assert a violation of this act as a claim against the state government in any judicial or administrative proceeding or as 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) An action under this act may be commenced, and relief may be granted, in a court of the state without regard to whether the person commencing the action has sought or exhausted available administrative remedies.

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

SECTION 6. An aggrieved person must first seek injunctive relief to prevent or remedy a violation of this act or the effects of a violation of this act. If injunctive relief is granted by

the court and the injunction is thereafter violated, then and only then may the aggrieved party, subject to the limitations of liability set forth in Section 11-46-15, seek the following:

(a) Compensatory damages for pecuniary and nonpecuniary losses;

(b) Reasonable attorneys' fees and costs; and

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

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

SECTION 8. (1) This act shall be construed in favor of a broad protection of free exercise of religious beliefs and moral convictions, to the maximum extent permitted by the state and federal constitutions.

(2) The protection of free exercise of religious beliefs and moral convictions afforded by this act are in addition to the protections provided under federal law, state law, and the state and federal constitutions. Nothing in this act shall be construed to preempt or repeal any state or local law that is equally or more protective of free exercise of religious beliefs or moral convictions. Nothing in this act shall be construed to narrow the

meaning or application of any state or local law protecting free exercise of religious beliefs or moral convictions. Nothing in this act shall be construed to prevent the state government from providing, either directly or through an individual or entity not seeking protection under this act, any benefit or service authorized under state law.

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

SECTION 9. As used in Section 1 through 9 of this act, the following words and phrases shall have the meanings ascribed in this section unless the context clearly indicates otherwise:

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

(2) "State government" means:

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

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

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

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

(3) "Person" means:

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

(b) A religious organization;

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

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

(4) "Religious organization" means:

(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 subsection (4).

(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;

(j) Performing or assisting home studies;

(k) Assisting kinship guardianships or kinship caregivers;

(l) Providing family preservation services;

(m) Providing family support services; and

(n) Providing temporary family reunification services.

SECTION 10. The provisions of Sections 1 through 9 of this act shall be excluded from the application of Section 11-61-1.

SECTION 11. This act shall take effect and be in force from and after July 1, 2016.

PASSED BY THE HOUSE OF REPRESENTATIVES
February 19, 2016

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 30, 2016

PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

GOVERNOR

April 5, 2016
10:55 AM