

1 AN ACT relating to protections of religious organizations.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 344 IS CREATED TO
4 READ AS FOLLOWS:

5 *The General Assembly finds and declares the following:*

- 6 *(1) Leading legal scholars concur that conflicts between same-sex marriage and*
7 *religious liberty are real and should be addressed through legislation;*
- 8 *(2) After the legalization of same-sex marriage, a religious educational institution in*
9 *Massachusetts was threatened by the government with loss of accreditation*
10 *because of its sincerely held religious beliefs about marriage;*
- 11 *(3) Citizens of the state hold a wide range of reasonable views on the issue of same-*
12 *sex marriage, and maintaining the state's commitment to religious freedom when*
13 *faced with these good-faith differences of opinion is vital;*
- 14 *(4) Our nation has a long and honorable history of respecting and accommodating*
15 *the religious freedom of its people, dating from before the American Revolution*
16 *to the present. Laws have protected the right of Quakers and other pacifists to*
17 *serve the nation as noncombatants in times of war, the right of Jews and other*
18 *Sabbath observers to dedicate their time to God and family instead of work on*
19 *their Sabbath, and the right of religious organizations to provide charitable*
20 *services to the public consistent with their beliefs, by hiring individuals who share*
21 *the same beliefs;*
- 22 *(5) Protecting religious freedom from government intrusion is a state interest of the*
23 *highest order. This legislation advances this interest by remedying, deterring, and*
24 *preventing government interference with religious exercise in a way that*
25 *complements the protections mandated by the state and federal constitutions;*
- 26 *(6) Protecting the religious freedom of faith-based charities and educational*
27 *institutions serves the state's compelling interest in providing essential social*

1 services to the poor and educational opportunities to the next generation. This is
 2 consistent with the state's long tradition of cooperating with religious
 3 organizations when providing these critical services;

4 (7) Kentucky adopted the Religious Freedom Restoration Act in 2013, when it
 5 enacted KRS 446.350 making clear that it is unlawful to substantially burden a
 6 person's exercise of religion, even if the burden results from a facially neutral
 7 rule of general applicability, unless that application of the burden to the person is
 8 both in furtherance of a compelling governmental interest, and the least
 9 restrictive means of furthering that compelling governmental interest;

10 (8) Laws and government actions that protect the free exercise of religious beliefs
 11 and moral convictions about marriage and human sexuality encourage private
 12 citizens and institutions to demonstrate tolerance for those beliefs and convictions
 13 and therefore contribute to a more respectful, diverse, and peaceful society; and

14 (9) In a pluralistic society in which people of good faith hold more than one (1) view
 15 of marriage, it is possible for the government to recognize same-sex marriage
 16 without forcing persons with sincerely held religious beliefs or moral convictions
 17 to conform.

18 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 344 IS CREATED TO
 19 READ AS FOLLOWS:

20 As used in Sections 1 to 6 of this Act:

21 (1) "Discriminatory actions" means and includes any action taken by the state
 22 government to:

23 (a) Alter in any way the tax treatment of, or cause any tax, penalty, or payment
 24 to be assessed against, or deny, delay, revoke, or otherwise make
 25 unavailable an exemption from taxation of any religious organization;

26 (b) Disallow, deny, or otherwise make unavailable a deduction for state tax
 27 purposes of any charitable contribution made to or by a religious

1 organization;

2 (c) Withhold, reduce, exclude, terminate, materially alter the terms or
3 conditions of, or otherwise make unavailable or deny any state grant,
4 contract, subcontract, cooperative agreement, guarantee, loan, scholarship,
5 or other similar benefit, from or to any religious organization;

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

9 (e) Impose, levy, or assess a monetary fine, fee, penalty, damages award, or
10 injunction;

11 (f) Withhold, reduce, exclude, terminate, materially alter the terms or
12 conditions of, or make unavailable or deny any license, certification,
13 accreditation, custody award or agreement, diploma, grade, recognition, or
14 other similar benefit, position, or status from or to any religious
15 organization; or

16 (g) Refuse to hire or promote, force to resign, fire, demote, sanction, discipline,
17 materially alter the terms or conditions of employment, retaliate, or take
18 other adverse employment action against a person employed or
19 commissioned by state government;

20 (3) "Religious organization" means:

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

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

26 (c) An officer, owner, employee, manager, religious leader, clergy, or minister
27 of an entity or organization described in this subsection;

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

4 (5) "State government" means:

5 (a) The state or a political subdivision of the state;

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

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

10 (d) Any private person suing under or attempting to enforce a law, rule, or
 11 regulation adopted by a government entity described in paragraph (a), (b),
 12 or (e) of this subsection; or

13 (e) Any city, county, urban-county government, charter county government,
 14 unified local government, consolidated local government, special district, or
 15 any combination thereof of the Commonwealth.

16 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 344 IS CREATED TO
 17 READ AS FOLLOWS:

18 The sincerely held religious beliefs or moral convictions protected by Sections 1 to 6 of
 19 this Act are the belief or convictions:

20 (1) Regarding the sex of the two (2) individuals who may enter into a marriage; and

21 (2) That male and man or female and woman refer to an individual's immutable
 22 biological sex as objectively determined by anatomy and genetics by or at the time
 23 of birth.

24 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 344 IS CREATED TO
 25 READ AS FOLLOWS:

26 (1) State government shall not take any discriminatory action against a religious
 27 organization wholly or partially on the basis that the organization:

1 (a) Solemnizes or declines to solemnize any marriage, or provides or declines to
2 provide services, accommodations, facilities, goods, or privileges for a
3 purpose related to the solemnization, formation, celebration, or recognition
4 of any marriage, based upon or in a manner consistent with a sincerely held
5 religious belief or moral conviction described in Section 3 of this Act;

6 (b) Makes any employment-related decision, including but not limited to the
7 decision whether or not to hire, terminate, or discipline an individual whose
8 conduct or religious beliefs are inconsistent with those of the religious
9 organization, based upon or in a manner consistent with a sincerely held
10 religious belief or moral conviction described in Section 3 of this Act; or

11 (c) Makes any decision concerning the sale, rental, occupancy of, or terms and
12 conditions of occupying a dwelling or other housing under its control, based
13 upon or in a manner consistent with a sincerely held religious belief or
14 moral conviction described in Section 3 of this Act.

15 (2) State government shall consider accredited, licensed, or certified any religious
16 organization that would otherwise be accredited, licensed, or certified,
17 respectively, for any purposes under state law but for a determination against
18 such religious organization wholly or partially on the basis that the religious
19 organization believes, speaks, or acts in accordance with a sincerely held
20 religious belief or moral conviction described in Section 3 of this Act.

21 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 344 IS CREATED TO
22 READ AS FOLLOWS:

23 (1) A religious organization may assert a violation of Sections 1 to 6 of this Act as a
24 claim against state government in any judicial or administrative proceeding or as
25 a defense in any judicial or administrative proceeding without regard to whether
26 the proceeding is brought by or in the name of state government, private person,
27 or any other party.

- 1 (2) Notwithstanding any other provision of law, an action under Sections 1 to 6 of
2 this Act may be commenced, and relief may be granted, in a court of the state
3 without regard to whether the person commencing the action has sought or
4 exhausted available administrative remedies.
- 5 (3) Any religious organization who successfully asserts a claim or defense under
6 Sections 1 to 6 of this Act may recover:
- 7 (a) Declaratory relief;
8 (b) Injunctive relief to prevent or remedy a violation of Sections 1 to 6 of this
9 Act or the effects of such a violation;
10 (c) Compensatory damages for pecuniary and nonpecuniary losses;
11 (d) Reasonable attorneys' fees and costs; and
12 (e) Any other appropriate relief, except that only declaratory relief and
13 injunctive relief shall be available against a private person not acting under
14 color of state law upon a successful assertion of a defense under Sections 1
15 to 6 of this Act.
- 16 (4) A religious organization shall bring an action to assert a claim under Sections 1
17 to 6 of this Act not later than two (2) years after the date that the person knew or
18 should have known that a discriminatory action was taken against that religious
19 organization.
- 20 (5) Sovereign, governmental, and qualified immunities to suit and from liability are
21 waived and abolished to the extent of liability created by this section, and a
22 person may sue state government, except state courts, for damages allowed by this
23 section.
- 24 (6) Notwithstanding subsection (5) of this section, Sections 1 to 6 of this Act do not
25 waive or abolish sovereign immunity to suit and from liability under the Eleventh
26 Amendment to the United States Constitution.
- 27 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 344 IS CREATED TO

1 READ AS FOLLOWS:

2 (1) Sections 1 to 6 of this Act shall be construed in favor of a broad protection of free
3 exercise of religious beliefs and moral convictions, to the maximum extent
4 permitted by the state and federal constitutions.

5 (2) The protection of free exercise of religious beliefs and moral convictions afforded
6 by Sections 1 to 6 of this Act are in addition to the protections provided under
7 federal law, state law, and the state and federal constitutions. Nothing in Sections
8 1 to 6 of this Act shall be construed to:

9 (a) Preempt or repeal any state or local law that is equally or more protective of
10 free exercise of religious beliefs or moral convictions;

11 (b) Narrow the meaning or application of any state or local law protecting free
12 exercise of religious beliefs or moral convictions; and

13 (c) Prevent state government from providing, either directly or through an
14 individual or entity not seeking protection under Sections 1 to 6 of this Act,
15 any benefit or service authorized under state law.

16 (3) Sections 1 to 6 of this Act apply to, and in cases of conflict supersede, each statute
17 of the state that impinges upon the free exercise of religious beliefs and moral
18 convictions protected by Sections 1 to 6 of this Act, unless a conflicting statute is
19 expressly made exempt from the application of Sections 1 to 6 of this Act.
20 Sections 1 to 6 of this Act also apply to, and in cases of conflict supersede, any
21 ordinance, rule, regulation, order, opinion, decision, practice, or other exercise of
22 the state government's authority that impinges upon the free exercise of religious
23 beliefs and moral convictions protected by Sections 1 to 6 of this Act.

24 (4) If any provision of Sections 1 to 6 of this Act or any application of the provision
25 to any particular person or circumstance is held to be invalid under law, the
26 remainder of Sections 1 to 6 of this Act and the application of its provisions to
27 any other person or circumstance shall not be affected.