

1 AN ACT relating to rights of conscience for child-placing agencies and child-caring
2 facilities.

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

4 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 199 IS CREATED TO
5 READ AS FOLLOWS:

6 *The General Assembly of the Commonwealth of Kentucky hereby finds and declares:*

- 7 *(1) Kentucky provides child welfare services, including child placement services,*
8 *through licensed state, charitable, religious, and private child-placing agencies*
9 *and child-caring facilities;*
- 10 *(2) Faith-based and religiously affiliated child-placing agencies and child-caring*
11 *facilities in particular have a lengthy and distinguished history of providing child*
12 *welfare services in this state that predates governmental involvement;*
- 13 *(3) Faith-based and religiously affiliated child-placing agencies and child-caring*
14 *facilities further have a long and distinguished history of continuing to provide*
15 *child welfare services in this state as licensed child-placing agencies and child-*
16 *caring facilities and should continue to be licensed and utilized by the state to*
17 *provide child welfare services, including child placing services;*
- 18 *(4) The faith of the people of the United States and of this Commonwealth has*
19 *always played a vital role in serving the most vulnerable, and people of any faith,*
20 *or no faith at all, should be free to serve children and families who are in need in*
21 *ways consistent with the communities that first inspired their service;*
- 22 *(5) Faith-based and religiously affiliated child-placing agencies and child-caring*
23 *facilities in this state display particular excellence when providing child welfare*
24 *services, including child placing services;*
- 25 *(6) Faith-based and religiously affiliated child-placing agencies and child-caring*
26 *facilities, like other child-placing agencies and child-caring facilities, can only*
27 *provide certain child welfare services, including child placing services, if licensed*

- 1 by the state;
- 2 (7) Individuals and child welfare service providers, including child-placing agencies,
- 3 have the inherent, fundamental, and inalienable right to the free exercise of
- 4 religion protected by the First Amendment to the United States Constitution and
- 5 Section 1 of the Constitution of Kentucky;
- 6 (8) KRS 446.350 protects the free exercise of religious rights of Kentucky citizens by
- 7 prohibiting the government from burdening the freedom of religion of a person
- 8 unless the burden is in furtherance of a compelling governmental interest and is
- 9 done in the least restrictive means;
- 10 (9) The right to the free exercise of religion for child welfare service providers,
- 11 including child-placing agencies, includes the freedom to refrain from conduct
- 12 that conflicts with their sincerely held religious beliefs;
- 13 (10) Children and families benefit greatly from the adoption and foster care services
- 14 provided by faith-based and religiously affiliated child welfare service providers,
- 15 including child-placing agencies in this state;
- 16 (11) Ensuring that faith-based and religiously affiliated child-placing agencies and
- 17 child-caring facilities can continue to provide child welfare services, including
- 18 child placing services, will benefit the children and families who receive those
- 19 services;
- 20 (12) Kentucky provides child placing services through individually licensed child-
- 21 placing agencies with varying religious beliefs;
- 22 (13) Because state and private entities provide child-placing services through many
- 23 agencies and facilities, each with varying religious beliefs or no religious beliefs,
- 24 any religiously compelled inability of a faith-based or religiously affiliated child-
- 25 placing agency to provide child placement will not prevent any individual from
- 26 alternative equal access to child placing services;
- 27 (14) There is no compelling reason to require a child-placing agency to violate its

1 sincerely held religious beliefs in providing any service, because alternative
 2 access to child placing services is equally and readily available;

3 (15) It is the intent of the General Assembly to implement remedial measures that are
 4 congruent and proportional to protecting the constitutional rights of child
 5 welfare providers, including child-placing agencies, guaranteed under the First,
 6 Fifth, and Fourteenth Amendments to the United States Constitution; and

7 (16) It is the further intent of the General Assembly that nothing in this chapter shall
 8 limit or deny any eligible individual the right to pursue participation in foster
 9 care or the adoption of a child.

10 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 199 IS CREATED TO
 11 READ AS FOLLOWS:

12 As used in Sections 1 to 8 of this Act, unless the context otherwise requires:

13 (1) "Adverse action" means any action that directly or indirectly negatively affects
 14 the person or entity against whom the action is taken, places the person in a
 15 worse position than the person or entity was in before the action was taken, or is
 16 likely to deter a reasonable person from acting or refusing to act. Adverse actions
 17 include the following:

18 (a) Denying an application for, or refusing to renew, revoking, suspending, or
 19 canceling funding;

20 (b) Declining to enter into, or refusing to renew, revoking, suspending, or
 21 canceling a contract;

22 (c) Declining to issue, or refusing to renew, revoking, suspending, or canceling
 23 a license;

24 (d) Terminating, suspending, demoting, or reassigning a person or entity;

25 (e) Imposing, levying, or assessing a monetary fine, fee, penalty, award,
 26 injunction, or damages;

27 (f) Altering in any way the tax treatment of, or causing any tax, penalty, or

1 payment to be assessed against, or denying, delaying, revoking, or otherwise
 2 making unavailable an exemption from taxation; and

3 (g) Limiting the ability of the person or entity to engage in child welfare
 4 services;

5 (2) "Child welfare services" means social services provided to or on behalf of
 6 children. Child welfare services include the following:

7 (a) Assisting abused or neglected children;

8 (b) Counseling children or parents;

9 (c) Promoting and recruiting foster parents;

10 (d) Providing foster homes, general residential operations, residential care,
 11 adoptive homes, or group homes;

12 (e) Providing placement services;

13 (f) Promoting and recruiting adoption parents;

14 (g) Assisting adoptions and supporting adoptive families; and

15 (h) Serving as an adoptive parent;

16 (3) "Child welfare services provider" means a person or entity, other than a
 17 governmental entity, that provides, seeks to provide, applies for or receives a
 18 contract, subcontract, grant, sub-grant, or cooperative agreement to provide
 19 child-welfare services; and

20 (4) "Governmental entity" means the Commonwealth of Kentucky, a municipality,
 21 or other political subdivision of this state or any agency of this state or of a
 22 municipality or other political subdivision of this state, including a department,
 23 bureau, board, commission, office, agency, council, and public institution of
 24 higher education.

25 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 199 IS CREATED TO
 26 READ AS FOLLOWS:

27 (1) A governmental entity or any person that contracts with this state or operates

1 under governmental authority to refer or place children for child welfare services
2 may not discriminate or take any action against a child welfare services provider
3 on the basis, wholly or partly, that the provider:

4 (a) Has declined, or is likely to decline, to provide, facilitate, or refer a person
5 for child welfare services that conflict with, or under circumstances that
6 conflict with, the child welfare services provider's sincerely held religious
7 beliefs or moral convictions contained in a written policy, statement of faith,
8 or other document adhered to by the child-welfare services provider;

9 (b) Provides or intends to provide a child or children under the control, care,
10 guardianship, or direction of the child welfare services provider, with a
11 religious education, including placing the child or children in a private or
12 parochial school, or otherwise providing a religious education;

13 (c) Has declined, or will decline to provide, facilitate, or refer a person for
14 abortions, contraceptives, or drugs, devices, or services that are potentially
15 abortion-inducing; or

16 (d) Refuses to enter into a contract that is inconsistent with or would in any
17 way interfere with or force a child welfare services provider to surrender
18 any right created by this section.

19 (2) If a child welfare services provider declines to provide, facilitate, or refer any
20 person for child-welfare services due to a conflict with the provider's sincerely
21 held religious beliefs or moral convictions contained in a written policy,
22 statement of faith, or other document adhered to by the child welfare services
23 provider, the decision of the child welfare services provider shall not limit the
24 ability of another child welfare services provider to provide, facilitate, or refer the
25 person for the child welfare services.

26 (3) A child welfare services provider's interpretation or application of its sincerely
27 held religious beliefs or moral convictions contained in a written policy,

1 statement of faith, or other document adhered to by a child welfare services
2 provider shall be controlling on any reviewing body in a judicial or administrative
3 proceeding.

4 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 199 IS CREATED TO
5 READ AS FOLLOWS:

6 (1) A child welfare services provider may assert an actual or threatened violation of
7 Section 3 of this Act as a claim or defense in a judicial or administrative
8 proceeding.

9 (2) A child welfare services provider who successfully asserts a claim or defense
10 under this section shall be entitled to recover:

11 (a) Declaratory relief;

12 (b) Injunctive relief; and

13 (c) Any other relief authorized by law.

14 (3) This section shall apply prospectively and retrospectively.

15 (4) An action under this section may be brought in Franklin Circuit Court or in the
16 Circuit Court of the county in which the child welfare service provider resides.

17 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 199 IS CREATED TO
18 READ AS FOLLOWS:

19 (1) Sovereign and governmental immunity to suit are waived for any judicial or
20 administration proceeding brought under Section 4 of this Act.

21 (2) Notwithstanding the provisions of subsection (1) of this section, nothing in this
22 section shall be interpreted to waive or abolish sovereign immunity to suit under
23 the Eleventh Amendment to the United States Constitution.

24 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 199 IS CREATED TO
25 READ AS FOLLOWS:

26 (1) Before initiating an action under Section 4 of this Act, the attorney representing
27 a child welfare services provider shall advise the child welfare services provider of

1 all reasonably available alternative dispute resolution options that may be
 2 available to the parties to resolve the claim.

3 (2) At the earliest opportunity after the attorney for any respondent has notice of a
 4 potential claim or action, the attorney for the respondent shall advise the
 5 respondent of all reasonably available alternative dispute resolution options that
 6 may be available to the parties to resolve the claim.

7 (3) The child welfare services provider and the respondent shall make a good-faith
 8 effort to resolve part or all of the claim through alternative dispute resolution
 9 before the child welfare services provider initiates an action.

10 (4) The attorneys for the child welfare services provider and the respondent shall
 11 state in pleadings filed with the court that they have complied with subsections (1)
 12 to (3) of this section.

13 (5) The court may sanction any party that fails to comply with subsections (1) to (3)
 14 and may award reasonable costs, including part or all of the attorney's fees to the
 15 prevailing party or parties.

16 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 199 IS CREATED TO
 17 READ AS FOLLOWS:

18 The provisions of Sections 1 to 8 of this Act, inclusive, shall be construed in favor of a
 19 broad protection of free exercise of religious beliefs and moral convictions, to the
 20 maximum extent afforded by the federal and state constitutions. The protection of free
 21 exercise of religious beliefs and moral convictions afforded by Sections 1 to 8 of this
 22 Act, inclusive, is in addition to the protections provided under federal law, state law,
 23 and the federal and state constitutions. Nothing in Sections 1 to 8 of this Act may be
 24 construed to:

25 (1) Preempt or repeal any state law or local ordinance that is equally or more
 26 protective of free exercise of religious beliefs or moral convictions; or

27 (2) Narrow the meaning or application of any state law or local ordinance protecting

1 free exercise of religious beliefs or moral convictions.

2 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 199 IS CREATED TO
3 READ AS FOLLOWS:

4 (1) The provisions Section 1 to 8 of this Act apply to, and in cases of conflict,
5 supersede any other provision of law that impinges upon the free exercise of
6 religious beliefs and moral convictions protected under Sections 1 to 8 of this Act.

7 (2) To assert a claim under the provisions of Section 1 to 8 of this Act, a person or
8 entity shall bring an action no later than two (2) years after the date the person or
9 entity knew or should have known that discrimination occurred or an adverse
10 action was taken against the person or entity.

11 (3) No provision of Sections 1 to 8 of this Act shall be construed to allow a child
12 welfare services provider to decline to provide, facilitate, or refer a person for
13 child welfare services on the basis of a person's race, ethnicity, or national
14 origin.