

1 AN ACT relating to freedom from discrimination.

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

3 ➔SECTION 1. A NEW SECTION OF CHAPTER 446 IS CREATED TO READ  
4 AS FOLLOWS:

5 *The General Assembly finds and declares that:*

6 *(1) Our nation has a long an honorable history of respecting and accommodating*  
7 *the religious freedom rights of its people, dating from before the American*  
8 *Revolution to the present. Laws have protected the right of Quakers and other*  
9 *pacifists to serve the nation as non-combatants in times of war, the right of Jews*  
10 *and other Sabbath observers to dedicate their time to God and family instead of*  
11 *work on their Sabbath, and the right of religious organizations to provide*  
12 *charitable services to the public consistent with their beliefs and hire individuals*  
13 *who share the same beliefs;*

14 *(2) Protecting religious freedom from government intrusion is a state interest of the*  
15 *highest order. Legislation advances this interest by remedying, deterring, and*  
16 *preventing government interference with religious exercise in a way that*  
17 *complements the protections mandated by the state and federal constitutions;*

18 *(3) Protecting the religious freedom of faith-based charities and educational*  
19 *institutions serves the Commonwealth's compelling interest in providing essential*  
20 *social services to the poor, neglected, or disadvantaged and educational*  
21 *opportunities to the next generation consistent with the Commonwealth's long*  
22 *tradition of cooperating with religious organizations when providing these*  
23 *critical services;*

24 *(4) KRS 446.350 was enacted by this august body in 2013 and clearly establishes that*  
25 *it is unlawful to substantially burden a person's freedom of religion, and the right*  
26 *to act or refuse to act in a manner motivated by a sincerely held religious belief*  
27 *may not be substantially burdened unless the government proves by clear and*

1 convincing evidence that it has a compelling governmental interest in infringing  
2 the specific act or refusal to act and has used the least restrictive means to further  
3 that interest;

4 (5) Section 233A of the Constitution of Kentucky recognizes that marriage is between  
5 one (1) man and one (1) woman;

6 (6) In a pluralistic society, in which people of good faith hold more than one (1) view  
7 of marriage, it is possible for the government to recognize same-sex marriage and  
8 to prohibit employment discrimination based on sexual orientation or gender  
9 identity without forcing persons with sincerely held religious beliefs or moral  
10 convictions to conform; and

11 (7) The United States Supreme Court acknowledged in Obergefell v. Hodges, 576  
12 U.S. 644 (2015), that the conviction that marriage is by its nature a union of man  
13 and woman "long has been held, and continues to be held, in good faith by  
14 reasonable and sincere people here and throughout the world." The court further  
15 stated that many "reach that conclusion based on decent and honorable religious  
16 or philosophical premises, and neither they nor their beliefs are disparaged."

17 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 446 IS CREATED TO  
18 READ AS FOLLOWS:

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

20 (1) "Adoption or foster care service" means:

21 (a) Any service or agency licensed or seeking to be licensed by the Cabinet for  
22 Health and Family Services that supervises the placement of children in  
23 foster family homes or child-caring facilities, or places children for  
24 adoption; and

25 (b) Any institution, group home, or facility providing twenty-four (24) hour  
26 residential care for children that are placed in the custody of the Cabinet for  
27 Health and Family Services;

1 (2) "Person" means:

2 (a) A natural person, in his or her individual capacity, regardless of religious  
3 affiliation or lack of affiliation, or in his or her capacity as a member,  
4 officer, owner, volunteer, employee, manager, religious leader, clergy, or  
5 minister of any entity described in Sections 1 to 6 of this Act;

6 (b) A religious organization; and

7 (c) A corporation, limited liability company, partnership, sole proprietorship,  
8 trust, association, voluntary organization, or other closely held entity  
9 comprised of two (2) or more individuals or entities, operating with a  
10 sincerely held religious belief or moral conviction;

11 (3) "Religious organization" means:

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

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

17 (c) An officer, owner, employee, manager, religious leader, clergy, or minister,  
18 of an entity or organization the activity of which is protected by Section 1 of  
19 the Constitution of Kentucky and the First Amendment to the United States  
20 Constitution;

21 (4) "Sex-specific" means an individual's male or female immutable biological sex as  
22 either male or female, and as objectively determined by anatomy and genetics at  
23 the time of birth, and stated on the individual's birth certificate;

24 (5) "State benefit program" means any program administered or funded by the state,  
25 any cabinet, department, bureau, or agency of the state, state-owned corporation,  
26 educational institution, commission, committee, conference, council, office, or  
27 any other form of organization providing public assistance, cash or negotiable

1 instruments; and

2 (6) "State government" means:

3 (a) The Commonwealth of Kentucky;

4 (b) Any city, county, urban county, charter county, consolidated local  
5 government, or unified local government;

6 (c) Any political subdivision, organizational unit, department, division, branch,  
7 section, unit, office, administrative body, program cabinet, or agency of the  
8 Commonwealth of Kentucky or of any governmental unit identified in  
9 paragraph (b) of this subsection;

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

11 (e) Any private person suing under or attempting to enforce a law, rule, or  
12 regulation adopted by the Commonwealth, any political subdivision of the  
13 Commonwealth, or of any governmental unit identified in paragraph (b) of  
14 this subsection.

15 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 446 IS CREATED TO  
16 READ AS FOLLOWS:

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

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

21 (b) That "male" or "man" or "female" or "woman" refer to an individual's  
22 sex.

23 (2) The state government shall not take any discriminatory action against a religious  
24 organization wholly or partially on the basis that the organization:

25 (a) Solemnizes or declines to solemnize any marriage, or provides or declines to  
26 provide services, accommodations, facilities, goods, or privileges for a  
27 purpose related to the solemnization, formation, celebration, or recognition

1 of any marriage, based upon or in a manner consistent with a sincerely held  
2 religious belief or moral conviction described in subsection (1) of this  
3 section;

4 (b) Makes any employment-related decision, including but not limited to the  
5 decision whether or not to hire, terminate, or discipline an individual whose  
6 conduct or actions are inconsistent with those of the religious organization,  
7 based upon or in a manner consistent with a sincerely held religious belief  
8 or moral conviction described in subsection (1) of this section; or

9 (c) Makes any decision regarding the sale, rental, occupancy of, or terms and  
10 conditions of occupying a dwelling or other housing under its control based  
11 upon or in a manner consistent with a sincerely held religious belief or  
12 moral conviction described in subsection (1) of this section.

13 (3) The state government shall not take any discriminatory action against a religious  
14 organization that advertises, provides, or facilitates adoption or foster care,  
15 wholly or partially on the basis that the organization has provided or declined to  
16 provide any adoption or foster care service, or related service, based upon or in a  
17 manner consistent with a sincerely held religious belief or moral conviction  
18 described in subsection (1) of this section.

19 (4) The state government shall not take any discriminatory action against a person to  
20 whom the state grants custody of a foster or adoptive child, or who seeks custody  
21 of a foster or adoptive child from the state, wholly or partially on the basis that  
22 the person guides, instructs, or raises a child, or intends to guide, instruct, or  
23 raise a child, based upon or in a manner consistent with a sincerely held religious  
24 belief or moral conviction described in subsection (1) of this section.

25 (5) The state government shall not take any discriminatory action against a person  
26 wholly or partially on the basis that the person, because of a sincerely held  
27 religious belief or moral conviction described in subsection (1) of this section,

1 declines to participate in the provision of any specific medical care or health care  
2 service, including:

3 (a) Initial examination;

4 (b) Testing;

5 (c) Diagnosis;

6 (d) Referral;

7 (e) The dispensing or administering of any drug, medication, or device;

8 (f) Psychological counseling or therapy; or

9 (g) Any other care or necessary services performed or provided by any medical  
10 practitioner.

11 This subsection shall not be construed to allow any person to deny visitation,  
12 recognition of a designated representative for health care decision making, or  
13 emergency medical treatment necessary to prevent death or imminent serious  
14 physical injury.

15 (6) The state government shall not take any discriminatory action against a person  
16 wholly or partially on the basis that the person has provided or declined to  
17 provide the following services, accommodations, facilities, goods, or privileges for  
18 a purpose related to the solemnization, formation, celebration, or recognition of  
19 any marriage, based upon or in a manner consistent with a sincerely held  
20 religious belief or moral conviction as described in subsection (1) of this section:

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

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

27 (7) The state government shall not take any discriminatory action against a person

1 wholly or partially on the basis that the person established sex-specific standards  
2 or policies concerning employee or student dress or grooming, or concerning  
3 access to restrooms, spas, baths, showers, dressing rooms, locker rooms, or other  
4 intimate facilities or settings, based upon or in a manner consistent with a  
5 sincerely held religious belief or moral conviction described in subsection (1) of  
6 this section.

7 (8) The state government shall not take any discriminatory action against a state  
8 employee wholly or partially on the basis that the employee lawfully speaks or  
9 engages in expressive conduct based upon or in a manner consistent with a  
10 sincerely held religious belief or moral conviction described in subsection (1) of  
11 this section provided:

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

15 (b) If the employee's speech or expressive conduct occurs outside the work  
16 place, the speech or expressive conduct is in the employee's personal  
17 capacity and outside the course and scope of performing work duties.

18 (9) (a) Any person employed or acting on behalf of the state government who has  
19 authority to issue marriage licenses, including but not limited to county  
20 clerks or their deputies, may seek recusal from authorizing or licensing  
21 lawful marriages based upon or in a manner consistent with a sincerely  
22 held religious belief or moral conviction described in subsection (1) of this  
23 section; and

24 (b) Any person seeking recusal under paragraph (a) of this subsection shall  
25 provide prior written notice to the Secretary of State, and the state  
26 government shall not take any discriminatory action against that person  
27 wholly or partially on the basis of the recusal. The county clerk or the

1           Secretary of State shall take all necessary steps to ensure that the  
2           authorization and licensing of any legally valid marriage is not impeded or  
3           delayed as a result of any recusal.

4   (10) (a) Any person employed or acting on behalf of the state government who has  
5           authority to perform or solemnize marriages, including but not limited to  
6           judges, magistrates, justices of the peace, or their deputies, may seek recusal  
7           from performing or solemnizing lawful marriages based upon or in a  
8           manner consistent with a sincerely held religious belief or moral conviction  
9           described in subsection (1) of this section; and

10          (b) Any person seeking recusal under paragraph (a) of this subsection shall  
11           provide prior written notice to the director of the Administrative Office of  
12           the Courts, the county judge/executive, or the local legislative body of the  
13           county in which the person resides, and the appropriate official or body  
14           shall take all necessary steps to ensure that the performance or  
15           solemnization of any legally valid marriage is not impeded or delayed as a  
16           result of any recusal.

17          ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 446 IS CREATED TO  
18          READ AS FOLLOWS:

19          As used in Sections 1 to 6 of this Act, "discriminatory action" means and shall include  
20          any action taken by the state government to:

21          (1) Alter in any way the tax treatment of, or cause any tax, penalty, or payment to be  
22           assessed against, or deny, delay, revoke, or otherwise make unavailable an  
23           exemption from taxation of any person protected under Section 3 of this Act;

24          (2) Disallow, deny, or otherwise make unavailable a deduction for state tax purposes  
25           of any charitable contribution made to or by any person protected under Section  
26           3 of this Act;

27          (3) Withhold, reduce, exclude, terminate, materially and adversely alter the terms or



1 conditions of, or otherwise make unavailable or deny any state grant, contract,  
2 subcontract, cooperative agreement, guarantee, loan, scholarship, or other  
3 similar benefit from or to any person protected under Section 3 of this Act;

4 (4) Withhold, reduce, exclude, terminate, materially and adversely alter the terms or  
5 conditions of, or otherwise make unavailable or deny any entitlement or benefit  
6 under a state benefit program from or to any person protected under Section 3 of  
7 this Act;

8 (5) Impose, levy, or assess a monetary fine, fee, penalty, award of damages, or  
9 injunction;

10 (6) Withhold, reduce, exclude, terminate, materially and adversely alter the terms or  
11 conditions of, or otherwise make unavailable or deny any license, certification,  
12 accreditation, custody award or agreement diploma, graduation, recognition, or  
13 other similar benefit, position, or status from or to any person; or

14 (7) Refuse to hire, promote, force to resign, fire, demote, sanction, discipline,  
15 materially and adversely alter the terms or conditions of employment, retaliate or  
16 take other adverse employment action against a person employed or  
17 commissioned by state government.

18 ➔SECTION 5. A NEW SECTION OF KRS Chapter 446 IS CREATED TO  
19 READ AS FOLLOWS:

20 (1) Any person injured or adversely affected by the violation of any provision of  
21 Sections 1 to 6 of this Act may:

22 (a) Seek administrative relief under KRS Chapter 49; or

23 (b) Bring a civil cause of action against the state in the Circuit Court of the  
24 county in which the plaintiff resides and may recover:

25 1. Declaratory relief;

26 2. Injunctive relief to prevent or remedy a violation or the effects of a  
27 violation of Sections 1 to 6 of this Act;

1           3.   Compensatory damages for pecuniary and nonpecuniary loss;

2           4.   Reasonable attorney's fees and costs; and

3           5.   Any and all other proper relief to which the person may be deemed  
4           entitled.

5   (2)   A person may assert a violation of any provision of Sections 1 to 6 of this Act as a  
6   defense in any judicial or administrative proceeding without regard to whether  
7   the proceeding is brought by or in the name of the state, any private person, or  
8   any other party.

9   (3)   Any action asserting a claim for a violation of any provision of Sections 1 to 6 of  
10   this Act shall be commenced not later than two (2) years from the date that the  
11   person knew or reasonably should have known that a discriminatory action was  
12   taken against that person.

13   (4)   The Commonwealth waives sovereign and governmental immunity for any  
14   liability created under this section and a person may sue the state government for  
15   the relief and damages provided under this section.

16       ➔SECTION 6.   A NEW SECTION OF KRS CHAPTER 446 IS CREATED TO  
17   READ AS FOLLOWS:

18   (1)   The provisions of Sections 1 to 6 of this Act shall be liberally construed and  
19   applied to effectuate its purposes.

20   (2)   (a)   The protection of free exercise of religious beliefs and moral convictions  
21   provided under Sections 1 to 6 of this Act are in addition to the protections  
22   provided under federal law, any other state law, the United States  
23   Constitution, and the Constitution of Kentucky.

24   (b)   Nothing in Sections 1 to 6 of this Act shall be construed to preempt or  
25   repeal any state or local law that is equally or more protective of free  
26   exercise of religious beliefs or moral convictions.

27   (c)   Nothing in Sections 1 to 6 of this Act shall be construed to narrow the

1           meaning or application of any state or local law protecting free exercise of  
2           religious beliefs or moral convictions.

3           (d) Nothing in Sections 1 to 6 of this Act shall be construed to prevent the state  
4           government from providing, either directly or through an individual or  
5           entity not seeking protection under this Act, any benefit or service  
6           authorized under state law.

7           (3) Sections 1 to 6 of this Act shall apply to, and in cases of conflict shall supersede:

8           (a) Any statute that impinges upon the free exercise of religious beliefs and  
9           moral convictions protected under Sections 1 to 6 of this Act, unless a  
10           conflicting statute is expressly exempted from the application of Sections 1  
11           to 6 of this Act; and

12           (b) Any ordinance, rule, regulation, order, opinion, decision, practice, or other  
13           exercise of state government's authority that impinges upon the free  
14           exercise of religious beliefs and moral convictions protected by Sections 1 to  
15           6 of this Act.

16           (4) If any provision of Sections 1 to 6 of this Act or the application thereof to any  
17           person or circumstance is held invalid, the invalidity shall not affect other  
18           provisions or applications of the Act that can be given effect without the invalid  
19           provision or application, and to this end the provisions of this Act are severable.