H-0243.1

HOUSE BILL 1178

State of Washington 65th Legislature 2017 Regular Session

By Representatives Shea, Young, Taylor, McCaslin, and Koster

AN ACT Relating to protecting the rights of religious freedom and conscience of individuals in their beliefs and practices from government discrimination; and adding a new chapter to Title 49 RCW.

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

NEW SECTION. **Sec. 1.** This act may be known and cited as the protection of the rights of religious exercise and conscience from government discrimination act.

NEW SECTION. **Sec. 2.** The legislature finds the following:

(1) Leading legal scholars concur that conflicts between same-sex marriage and religious liberty are real and should be addressed through legislation;

(2) Citizens of the state hold a wide range of reasonable views on the issue of same-sex marriage, and maintaining the state's commitment to religious freedom when faced with these good faith differences of opinion is vital;

(3) Our nation has a long and honorable history of respecting and accommodating the religious liberty of its people, dating from before the American revolution to the present. For example, laws have protected the right of Quakers and other pacifists to serve the nation as noncombatants in times of war, the right of Jews and other

Sabbath observers to dedicate their time to God and family instead of work on their Sabbath, and permitting religious organizations to employ persons of the same beliefs to effectively provide charitable services to the public consistent with their beliefs;

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

(5) Protecting the religious freedom of faith-based charities and educational institutions serves the state's interest in providing essential social services to the poor and educational opportunities to the next generation and is consonant with the long tradition of cooperation between the state and such charities and educational institution in the provision of such services;

(6) Laws and governmental actions that protect the free exercise of religious beliefs and moral convictions about marriage and gender will encourage private citizens and institutions to demonstrate tolerance for those beliefs and convictions and therefore contribute to a more respectful, diverse, and peaceful society; and

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

NEW SECTION. **Sec. 3.** As used in this chapter:

(1) "Person" includes any individual or any corporation, limited liability company, sole proprietorship, partnership, society, club, organization, association, but does not include:

(a) State employees acting within the scope of their employment; or

(b) Hospitals, clinics, hospices, nursing homes, or other medical or residential custodial facilities with respect to visitation, recognition of a designated representative for health care decision making, or refusal to provide emergency medical treatment necessary to cure an illness or injury.

(2) "State" includes:

(a) Any department, commission, board, agency, or agent of the state;

(b) Any department, commission, board, agency, or agent of a political subdivision of the state; and

(c) Any individual or entity acting under color of state law.

(3) "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.

NEW SECTION. **Sec. 4.** (1) In general. Notwithstanding any statute, rule, or order to the contrary, the state shall not take any discriminatory action against a person, wholly or partially on the basis that such person believes, speaks, or acts in accordance with a sincerely held religious belief or moral conviction that:

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

(b) Sexual relations are properly reserved for marriage;

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

(2) Discriminatory action defined. As used in subsection (1) of this section, a discriminatory action means any action taken by the state to:

(a) Alter in any way the state tax treatment of, or cause any tax, penalty, or payment to be assessed against, or deny, delay, or revoke an exemption from taxation of, any person referred to in subsection (1) of this section;

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

(c) Withhold, reduce, exclude, terminate, or otherwise make unavailable or deny any state grant, contract, subcontract, cooperative agreement, guarantee, loan, scholarship, license, certification, accreditation, employment, or other similar position or status from or to such person;

(d) Withhold, reduce, exclude, terminate, or otherwise make unavailable or deny any entitlement or benefit under a state benefit program, including admission to, equal treatment in, or eligibility for a degree from an educational program, from or to such person; or

(e) Withhold, reduce, exclude, terminate or otherwise make unavailable or deny access or an entitlement to state property, facilities, educational institutions, speech fora, including

traditional, limited, and nonpublic fora, or charitable fund-raising campaigns from or to such person.

(3) Accreditation; licensure; certification. The state 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 subsection (1) of this section.

NEW SECTION. **Sec. 5.** (1) Cause of action. A person may assert a violation of this chapter as a claim or defense in a judicial or administrative proceeding and obtain compensatory damages, injunctive relief, declaratory relief, or any other appropriate relief. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under the laws of the state.

(2) Administrative remedies not required. Notwithstanding any other provision of law, an action under this section 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) Attorneys' fees. In any action or proceeding to enforce a provision of this chapter, a prevailing party who establishes a violation of this chapter is entitled to recover reasonable attorneys' fees and costs.

(4) Authority of the state to enforce this chapter. The attorney general may bring an action for injunctive or declaratory relief against any agency or authority of the state or any of its political subdivisions, or an officer or employee of such agency or authority, to enforce compliance with this chapter. Nothing in this subsection shall be construed to deny, impair, or otherwise affect any right or authority of the attorney general, the state, or any agency, officer, or employee of the state, acting under any law other than this subsection, to institute or intervene in any proceeding.

NEW SECTION. **Sec. 6.** No preemption, repeal, or narrow construction. The protection of free exercise of religious beliefs and moral convictions afforded by this chapter are in addition to the protections provided under federal law, state law, and the state and federal constitutions. Nothing in this chapter is 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 chapter is construed to narrow the meaning or application of any state or local law protecting free exercise of religious beliefs or moral convictions. And nothing in this chapter is construed to prevent the state from providing, either directly or through a person, individual, or entity not seeking protection under this chapter, any benefit or service authorized under state law.

NEW SECTION. **Sec. 7.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 8.** Sections 1 through 6 of this act constitute a new chapter in Title 49 RCW.

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