**South Carolina General Assembly**

124th Session, 2021-2022

**H. 3878**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. G.R. Smith, McCravy, Trantham, Burns, Thayer, Long, Huggins, Jones, Nutt, Chumley, Gilliam, V.S. Moss, Oremus, Wooten, Pope, Erickson, Bradley, Herbkersman, W. Newton, Daning, Taylor, Haddon, Magnuson, McGarry and Crawford

Document Path: l:\council\bills\cc\15961vr21.docx

Introduced in the House on February 11, 2021

Currently residing in the House Committee on **Judiciary**

Summary: Child welfare provider protection

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/11/2021 House Introduced and read first time ([House Journal‑page 4](file:///h:\hj\20210211.docx))

2/11/2021 House Referred to Committee on **Judiciary** ([House Journal‑page 4](file:///h:\hj\20210211.docx))

2/24/2021 House Member(s) request name added as sponsor: Wooten, Pope, Erickson, Bradley, Herbkersman, W.Newton, Daning, Taylor, Haddon, Magnuson

3/2/2021 House Member(s) request name added as sponsor: McGarry

3/10/2021 House Member(s) request name added as sponsor: Crawford

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**VERSIONS OF THIS BILL**

[2/11/2021](file:///p:\pprever\2021-22\3878_20210211.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “CHILD WELFARE PROVIDERS PROTECTION ACT” BY ADDING CHAPTER 10 TO TITLE 63 SO AS TO PROTECT PERSONS WHO PROVIDE ADOPTION OR FOSTER CARE SERVICES FROM GOVERNMENTAL DISCRIMINATORY ACTIONS TAKEN AGAINST SUCH PERSONS FOR SERVICES PROVIDED OR DECLINED BASED UPON OR IN A MANNER CONSISTENT WITH A SINCERELY HELD RELIGIOUS BELIEF OR MORAL CONVICTION; TO DEFINE TERMS; TO CREATE LEGAL REMEDIES FOR VIOLATION OF THE CHAPTER; AND FOR OTHER PURPOSES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be known and cited as the “Child Welfare Providers Protection Act”.

SECTION 2. Title 63 of the 1976 Code is amended by adding:

“CHAPTER 10

Protections for Child Welfare Providers

Section 63‑10‑10. As used in this chapter unless the context requires otherwise:

(1) ‘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; or

(n) providing temporary family reunification services.

(2) ‘Discriminatory action’ means 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 63‑10‑20;

(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) disqualify, disfavor, discredit, disregard, or otherwise make less competitive or qualifying any application, tender, offer, bid, proposal, or request for any state grant, contract, subcontract, cooperative agreement, guarantee, loan, scholarship, or other similar benefit from or to such person;

(e) 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;

(f) disqualify, disfavor, discredit, disregard, or otherwise make less competitive or qualifying any application, tender, offer, bid, proposal, or request for any entitlement or benefit under a state benefit program from or to such person;

(g) impose, levy, or assess a monetary fine, fee, penalty, damages award, or injunction;

(h) 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

(i) 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 state government.

(3) ‘Person’ means:

(a) a natural person, in that person’s individual capacity, regardless of religious affiliation or lack thereof, or in that person’s capacity as a member, officer, owner, volunteer, employee, manager, religious leader, clergy, or minister of any entity described in this item;

(b) a religious organization;

(c) a sole proprietorship, partnership, trust, closely held corporation, or other closely held entity operating with a sincerely held religious belief or moral conviction described in Section 63‑10‑20; or

(d) cooperatives, ventures, or enterprises comprised of two or more individuals or entities described in this item regardless of nonprofit or for‑profit status.

(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 affiliated with a church or other house of worship; or

(c) an officer, owner, employee, manager, religious leader, clergy, or minister of an entity or organization described in this item.

(5) ‘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.

(6) ‘State government’ means:

(a) the State 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 city, county, urban‑county government, charter county government, unified local government, consolidated local government, special district, or any combination thereof;

(d) any person acting under color of state law; or

(e) any private person suing under or attempting to enforce a law, rule, or regulation of the State or a political subdivision of the State.

Section 63‑10‑20. (A) The state government may not take any discriminatory action against a person that advertises, provides, or facilitates adoption or foster care, wholly or partially on the basis that such person 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.

(B) The state government may not take any discriminatory action against a person to whom the State grants custody of a foster or adoptive child, or a person 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.

Section 63‑10‑30. 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.

Section 63‑10‑40. (A) A person may assert a violation of this chapter as a claim against state government in any judicial or administrative proceeding or as a defense in any judicial or administrative proceeding without regard to whether the proceeding is brought by or in the name of state government, any private person, or any other party.

(B) Notwithstanding any other provision of law, an action under this chapter 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.

Section 63‑10‑50. Any person who successfully asserts a claim or defense under this chapter may recover:

(1) declaratory relief;

(2) injunctive relief to prevent or remedy a violation of this chapter or the effects of such a violation;

(3) compensatory damages for pecuniary and nonpecuniary losses;

(4) reasonable attorneys’ fees and costs; and

(5) any other appropriate relief.

Provided, however, only declaratory relief and injunctive relief is available against a private person not acting under color of state law upon a successful assertion of a defense under this chapter.

Section 63‑10‑60. (A) Sovereign, governmental, and qualified immunities to suit and from liability are waived and abolished to the extent of liability created by Section 63‑10‑50, and a person may sue state government, except state courts, for damages allowed by that section.

(B) Notwithstanding subsection (A), this chapter does not waive or abolish sovereign immunity to suit and from liability under the Eleventh Amendment to the United States Constitution.

Section 63‑10‑70. (A) This chapter must 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.

(B)(1) 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.

(2) Nothing in this chapter may be construed to:

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

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

(c) prevent state government from providing, either directly or through an individual or entity not seeking protection under this chapter, any benefit or service authorized under state law.

(C) This chapter 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 chapter, unless a conflicting statute is expressly made exempt from the application of this chapter. This chapter 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 and moral convictions protected by this chapter.

Section 63‑10‑80. A person must bring an action to assert a claim under this chapter no later than two years after the date that the person knew or should have known that a discriminatory action was taken against that person.”

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, then such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 4. This act takes effect upon approval by the Governor.

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