

1 SB261
2 165797-1
3 By Senators Allen and Waggoner
4 RFD: Judiciary
5 First Read: 17-MAR-15

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8 SYNOPSIS: This bill would establish the Alabama Child
9 Care Provider Inclusion Act.

10 This bill would prohibit the state from
11 discriminating against a child care service
12 provider on the basis that the provider declines to
13 provide a child care service that conflicts with
14 the religious beliefs of the provider.

15 This bill would prohibit the state from
16 refusing to license or renew the license of a
17 provider of a child care service on the basis that
18 the provider declines to carry out an activity that
19 conflicts with the religious beliefs of the
20 provider.

21 This bill would also expressly authorize
22 civil remedies for enforcement including attorneys'
23 fees.

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25 A BILL
26 TO BE ENTITLED
27 AN ACT

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2 To establish the Alabama Child Care Provider
3 Inclusion Act; to prohibit the state from discriminating
4 against or refusing to license a provider of child care
5 services licensed by the state on the basis that the provider
6 declines to provide a child care service or carry out an
7 activity that conflicts with the religious beliefs of the
8 provider; and to provide for civil remedies.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. This act may be cited as the Alabama
11 Child Care Provider Inclusion Act of 2015.

12 Section 2. The Legislature finds all of the
13 following:

14 (1) Alabama provides state licensed child care
15 services through various state, charitable, religious, and
16 private organizations.

17 (2) Religious organizations, in particular, have a
18 lengthy and distinguished history of providing child care
19 services that predate government involvement.

20 (3) Religious organizations have long been and
21 should continue to contract with and be licensed by the state
22 to provide child care services.

23 (4) The faith of the people of the United States has
24 always played a vital role in efforts to serve the most
25 vulnerable and this act seeks to ensure that people of any
26 faith, or no faith at all, are free to serve children and

1 families who are in need in ways consistent with the
2 communities that first inspired their service.

3 (5) Religious organizations display particular
4 excellence when providing child care services.

5 (6) Religious organizations cannot provide certain
6 child care services, such as foster care placements and
7 adoption, without receiving a state contract or license.

8 (7) Child care service providers, both individuals
9 and organizations, have the inherent, fundamental, and
10 inalienable right to free exercise of religion protected by
11 the First Amendment to the United States Constitution.

12 (8) The Alabama Religious Freedom Amendment,
13 Amendment 622 to the Constitution of Alabama of 1901, now
14 appearing as Section 3.01 of the Official Recompilation of the
15 Constitution of Alabama of 1901, as amended, protects the free
16 exercise of religion rights of Alabama citizens by prohibiting
17 the government from burdening the freedom of religion of a
18 person unless the burden is in furtherance of a compelling
19 governmental interest and is done in the least restrictive
20 means.

21 (9) The right to free exercise of religion for child
22 care service providers includes the freedom to refrain from
23 conduct that conflicts with their sincerely held religious
24 beliefs.

25 (10) Children and families benefit greatly from the
26 child care services provided by religious organizations.

1 (11) Ensuring that religious organizations can
2 continue to provide child care services will benefit the
3 children and families that receive those services.

4 (12) The state provides licensed child care services
5 through individual child care service providers with varying
6 religious beliefs.

7 (13) Many individual child care service providers
8 maintain sincerely held religious beliefs that relate to their
9 work and the providers should not be forced to choose between
10 their livelihood and adherence to those beliefs or
11 convictions.

12 (14) Because state and private entities provide
13 child care services through many entities, each with varying
14 religious beliefs or no religious beliefs, the religiously
15 compelled inability of the entities to provide certain
16 services will not prevent any particular individual from
17 alternative equal access to child care services.

18 (15) There is no compelling reason to require a
19 child care service provider to violate its sincerely held
20 religious beliefs in providing any service, since alternative
21 access to the services is equally available.

22 (16) This act implements remedial measures that are
23 congruent and proportional to protecting the constitutional
24 rights of child care service providers guaranteed under the
25 First, Fifth, and Fourteenth Amendments to the United States
26 Constitution.

1 (17) This act is not intended to limit or deny the
2 eligibility of any individual to adopt a child or participate
3 in foster care.

4 Section 3. For the purposes of this act, the
5 following terms shall have the following meanings:

6 (1) ADVERSE ACTION. With respect to a child care
7 service provider, any action that materially alters the terms
8 or conditions of a contract or license of the provider under a
9 state program, including any of the following:

- 10 a. Refusing to enter into a contract.
- 11 b. Refusing to renew a contract.
- 12 c. Canceling a contract.
- 13 d. Taking an enforcement action against the entity.
- 14 e. Refusing to issue a license.
- 15 f. Refusing to renew a license.
- 16 g. Canceling a license.

17 (2) CHILD CARE PROGRAM. A program under the Alabama
18 Child Care Act of 1971, Chapter 7, Title 38, Code of Alabama
19 1975.

20 (3) CHILD CARE SERVICE PROVIDER or PROVIDER. An
21 organization, corporation, group, entity, or individual that
22 provides, seeks to provide, or applies for or receives a
23 license or contract for an institution, agency, center, home,
24 or facility as defined in the Alabama Child Care Act of 1971,
25 Chapter 7, Title 38, Code of Alabama 1975.

26 (4) CHILD CARE SERVICE. A social service provided
27 to, or on behalf of, a child, including assisting abused,

1 neglected, or troubled children, counseling children or
2 parents, promoting foster parenting, providing foster homes or
3 temporary group shelters for children, recruiting foster
4 parents, placing children in foster homes, licensing foster
5 homes, promoting adoption, recruiting adoptive parents,
6 assisting adoptions, supporting adoptive families, assisting
7 kinship guardianships, assisting kinship caregivers, providing
8 family preservation services, providing family support
9 services, providing time limited family reunification service,
10 and any other activity or service pursuant to the Alabama
11 Child Care Act of 1971, Chapter 7, Title 38, Code of Alabama
12 1975.

13 Section 4. The purposes of this act are as follows:

14 (1) To prohibit governmental entities from
15 discriminating or taking an adverse action against a child
16 care service provider on the basis that the provider declines
17 to provide a child care service that conflicts, or under
18 circumstances that conflict, with the sincerely held religious
19 beliefs of the provider.

20 (2) To protect the exercise of religion of child
21 care service providers and to ensure that governmental
22 entities will not be able to force those providers, either
23 directly or indirectly, to discontinue all or some of their
24 child care services because they decline to provide a child
25 care service that conflicts, or under circumstances that
26 conflict, with their sincerely held religious beliefs.

1 (3) To provide relief to child care service
2 providers whose rights have been violated.

3 Section 5. (a) The state may not refuse to license
4 or otherwise discriminate or take an adverse action against
5 any provider that is licensed by or required to be licensed by
6 the state for a child care program on the basis that the
7 provider declines to carry out an activity under the program
8 that conflicts with, or under circumstances that conflict
9 with, the sincerely held religious beliefs of the provider.

10 (b) If a provider under subsection (a) declines to
11 provide, facilitate, or refer for a child welfare service, the
12 decision of the provider may not limit the ability of another
13 provider to provide, facilitate, or refer for those services.

14 Section 6. A provider injured by a violation of
15 subsection (a) of Section 5 may obtain all appropriate relief,
16 including declaratory relief, injunctive relief, and damages,
17 with respect to that violation, including reasonable
18 attorneys' fees and costs.

19 Section 7. This act shall become effective
20 immediately following its passage and approval by the
21 Governor, or its otherwise becoming law.