

State of South Dakota

NINETY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2017

686Y0610

HOUSE ENGROSSED NO. **SB 149** - 3/2/2017

Introduced by: Senator Solano and Representative Haugaard

1 FOR AN ACT ENTITLED, An Act to provide certain protections to faith-based or religious
2 child-placement agencies.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 26-6 be amended by adding a NEW SECTION to read:

5 Terms used in this Act mean:

- 6 (1) "Child-placement agency," a private organization that receives and places children
7 in foster homes or for adoption, with or without compensation, as a regular activity
8 of that organization or that performs those services as an adjunct to other regular
9 activities;
- 10 (2) "State benefit program," any program administered or funded by the state or by any
11 agent on behalf of the state that provides cash, payments, grants, contracts, loans or
12 in-kind assistance;
- 13 (3) "State,":
- 14 (a) The State of South Dakota or any political subdivision thereof;
- 15 (b) Any agency of the State of South Dakota or of a political subdivision of the



1 state including any department, bureau, board, commission, council, court, or
2 public institution of higher education;

3 (c) Any person acting under the authority of state law.

4 Section 2. That chapter 26-6 be amended by adding a NEW SECTION to read:

5 For the purposes of this Act, the term, adverse action, means any action that directly or
6 indirectly adversely affects a child-placement agency or organization seeking to become a child-
7 placement agency, places the child-placement agency or organization in a worse position than
8 it was in before the action was taken, or is likely to deter a child-placement agency or
9 organization from acting or refusing to act. The term includes, without limitation, the following:

- 10 (1) Altering in any way the tax treatment of, or causing any tax, penalty, or payment to
11 be assessed against, or denying, delaying, revoking, or otherwise making unavailable
12 an exemption from taxation;
- 13 (2) Disallowing, denying, or otherwise making unavailable a deduction for state tax
14 purposes of any charitable contribution made to an organization;
- 15 (3) Denying an application for, refusing to renew, or canceling any benefit from a state
16 benefit program or other funding;
- 17 (4) Declining to enter into, refusing to renew, or canceling a contract;
- 18 (5) Declining to issue, refusing to renew, or canceling a license;
- 19 (6) Imposing, levying, or assessing a monetary fine, fee, penalty, damages, award, or
20 injunction;
- 21 (7) Taking any enforcement action;
- 22 (8) Discriminating against an organization in regard to participation in a state benefit
23 program;
- 24 (9) Limiting the ability of a person to engage in child-placement services; or

1 (10) Taking any action that materially alters the terms or conditions of funding or a
2 contract or license.

3 Section 3. That chapter 26-6 be amended by adding a NEW SECTION to read:

4 No child-placement agency may be required to provide any service that conflicts with, or
5 provide any service under circumstances that conflict with any sincerely-held religious belief
6 or moral conviction of the child-placement agency that shall be contained in a written policy,
7 statement of faith, or other document adhered to by a child-placement agency.

8 If a child-placement agency declines to provide any services, the child-placement agency
9 shall provide in writing information advising the applicant of the Department of Social Services
10 website and a list of licensed child-placement agencies with contact information.

11 Section 4. That chapter 26-6 be amended by adding a NEW SECTION to read:

12 The state may not discriminate or take any adverse action against a child-placement agency
13 or an organization seeking to become a child-placement agency on the basis, wholly or partly,
14 that the child-placement agency has declined or will decline to provide any service that conflicts
15 with, or provide any service under circumstances that conflict with the agency's written
16 sincerely-held religious belief or moral conviction of the child-placement agency.

17 The state may not enter into a contract that is inconsistent with, would in any way interfere
18 with, or would in any way require an organization to surrender any right created in this Act.

19 Section 5. That chapter 26-6 be amended by adding a NEW SECTION to read:

20 Any faith-based or religious child-placement agency or organization that seeks to become
21 a child-placement agency is eligible, on the same basis as any other child-placement agency or
22 organization, to receive a license or participate in a state benefit program. The state may not
23 discriminate against a faith-based or religious organization on the basis, wholly or partly, of the
24 organization's religious character or affiliation.

1 Section 6. That chapter 26-6 be amended by adding a NEW SECTION to read:

2 A faith-based or religious child-placement agency that enters into a contract with the state
3 or participates in a state benefit program for child-placement services shall retain the agency's
4 independence from the state, including the child-placement agency's control over the definition,
5 development, practice, and expression of the agency's written religious beliefs and moral
6 convictions; the agency's hiring and employment practices; and decisions as to whether any
7 child-placement service conflicts with any sincerely-held religious belief or moral conviction
8 of the agency.

9 Section 7. That chapter 26-6 be amended by adding a NEW SECTION to read:

10 No provision of this Act may be construed to allow a child-placement agency to decline to
11 provide a service on the basis of a person's race, ethnicity, or national origin. Due regard shall
12 be afforded to the Indian Child Welfare Act (25 U.S.C. §§ 1901-1963), as amended to
13 January 1, 2017, if that Act is applicable.

14 Section 8. That chapter 26-6 be amended by adding a NEW SECTION to read:

15 A person may assert a violation of this Act as a claim against the state in any judicial or
16 administrative proceeding or as a defense in any judicial or administrative proceeding without
17 regard to whether the proceeding is brought by or in the name of the state, a private person, or
18 any other party. Notwithstanding any other provisions of law, an action under the provisions of
19 this Act may be commenced, and relief may be granted, in a court of the state without regard
20 to whether the person commencing the action has sought or exhausted any available
21 administrative remedies.

22 Section 9. That chapter 26-6 be amended by adding a NEW SECTION to read:

23 Any person who successfully asserts a claim or defense pursuant to this Act may recover the
24 following:

- 1 (1) Declaratory relief;
- 2 (2) Injunctive relief to prevent or remedy a violation of the provisions of this Act or the
- 3 effects of that violation; and
- 4 (3) Any other relief authorized by law.

5 Section 10. That chapter 26-6 be amended by adding a NEW SECTION to read:

6 A person may sue the state for the relief allowed pursuant to this Act. However, no provision
7 of this Act otherwise waives the sovereign immunity of the state.

8 Section 11. That chapter 26-6 be amended by adding a NEW SECTION to read:

9 The provisions of this Act shall be construed in favor of a broad protection of free exercise
10 of religious beliefs and moral convictions, to the maximum extent afforded by the federal and
11 state constitutions. The protection of free exercise of religious beliefs and moral convictions
12 afforded by this Act is in addition to the protections provided under federal law, state law, and
13 the federal and state constitutions. Nothing in this section may be construed to:

- 14 (1) Preempt or repeal any state or local law that is equally or more protective of free
- 15 exercise of religious beliefs or moral convictions;
- 16 (2) Narrow the meaning or application of any state or local law protecting free exercise
- 17 of religious beliefs or moral convictions; or
- 18 (3) Prevent the state from providing, either directly or through an individual or entity not
- 19 seeking protection under this Act, any benefit or service authorized under state law.

20 Section 12. That chapter 26-6 be amended by adding a NEW SECTION to read:

21 The provisions of this Act apply to, and in cases of conflict, supersede any other provision
22 of law that impinges upon the free exercise of religious beliefs and moral convictions protected
23 pursuant to this Act, unless a conflicting law is expressly made exempt from the application of
24 the provisions of this Act.

1 Section 13. That chapter 26-6 be amended by adding a NEW SECTION to read:

2 To assert a claim under the provisions of this Act, a person shall bring an action no later than
3 two years after the date the person knew or should have known that discrimination occurred or
4 an adverse action was taken against the person.

5 Section 14. That chapter 26-6 be amended by adding a NEW SECTION to read:

6 The provisions of this Act apply to any foster care or adoption placement for which a child-
7 placement agency has received funding for that particular placement comprised in part of a
8 federal subsidy only to the fullest extent allowed under federal law.

9 Section 15. That chapter 26-6 be amended by adding a NEW SECTION to read:

10 If a child-placement agency declines to provide any services under section 3 of this Act, the
11 child-placement agency's decision does not limit the ability of another child-placement agency
12 to provide those services and shall not be a factor in determining whether a placement in
13 connection with the service is in the best interest of the child.