

SENATE CHAMBER
STATE OF OKLAHOMA

DISPOSITION

☐ FLOOR AMENDMENT

No. _____

☐ COMMITTEE AMENDMENT

(Date)

Mr./Madame President:

I move to amend Senate Bill No. 197, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

Senator Silk

Silk-MD-FS-Req#3449
3/8/2018 11:45 AM

(Floor Amendments Only) Date and Time Filed: _____

☐ Untimely

☐ Amendment Cycle Extended

☐ Secondary Amendment

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

FLOOR SUBSTITUTE
FOR

SENATE BILL NO. 197

By: Silk and Brecheen of the
Senate

and

Dunlap of the House

FLOOR SUBSTITUTE

An Act relating to freedom of conscience; creating the Protecting Freedom of Conscience from Government Discrimination Act; providing short title; stating protected beliefs and convictions; prohibiting state government from taking certain actions; specifying certain protected actions; authorizing certain recusal; establishing procedures for certain recusal; authorizing certain civil actions and relief; establishing statute of limitations for certain actions; construing provisions; stating applicability of act; defining terms; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1850 of Title 25, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Protecting Freedom of Conscience from Government Discrimination Act".

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1850.1 of Title 25, unless there
3 is created a duplication in numbering, reads as follows:

4 The sincerely held religious beliefs or moral convictions
5 protected by this act are the belief or conviction that:

6 1. Marriage is or should be recognized as the union of one man
7 and one woman;

8 2. Sexual relations are properly reserved to such a marriage;
9 and

10 3. The terms "male" or "female" refer to an individual's
11 immutable biological sex as objectively determined by anatomy and
12 genetics at time of birth.

13 SECTION 3. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 1850.2 of Title 25, unless there
15 is created a duplication in numbering, reads as follows:

16 A. The state government shall not take any discriminatory
17 action against a religious organization wholly or partially on the
18 basis that such organization:

19 1. Solemnizes or declines to solemnize any marriage, or
20 provides or declines to provide services, accommodations,
21 facilities, goods or privileges for a purpose related to the
22 solemnization, formation, celebration or recognition of any
23 marriage, based upon or in a manner consistent with a sincerely held
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1 religious belief or moral conviction described in Section 2 of this
2 act;

3 2. Makes any employment-related decision including, but not
4 limited to, the decision whether or not to hire, terminate or
5 discipline an individual whose conduct or religious beliefs are
6 inconsistent with those of the religious organization, based upon or
7 in a manner consistent with a sincerely held religious belief or
8 moral conviction described in Section 2 of this act; or

9 3. Makes any decision concerning the sale, rental, occupancy
10 of, or terms and conditions of occupying a dwelling or other housing
11 under its control, based upon or in a manner consistent with a
12 sincerely held religious belief or moral conviction described in
13 Section 2 of this act.

14 B. The state government shall not take any discriminatory
15 action against a religious organization that advertises, provides or
16 facilitates adoption or foster care, wholly or partially on the
17 basis that such organization has provided or declined to provide any
18 adoption or foster care service, or related service, based upon or
19 in a manner consistent with a sincerely held religious belief or
20 moral conviction described in Section 2 of this act.

21 C. The state government shall not take any discriminatory
22 action against a person who the state grants custody of a foster or
23 adoptive child, or who seeks from the state custody of a foster or
24 adoptive child, wholly or partially on the basis that the person

1 guides, instructs or raises a child, or intends to guide, instruct,
2 or raise a child based upon or in a manner consistent with a
3 sincerely held religious belief or moral conviction described in
4 Section 2 of this act.

5 D. The state government shall not take any discriminatory
6 action against a person wholly or partially on the basis that the
7 person declines to participate in the provision of treatments,
8 counseling, or surgeries related to sex reassignment or gender
9 identity transitioning or declines to participate in the provision
10 of psychological, counseling, or fertility services based upon a
11 sincerely held religious belief or moral conviction described in
12 Section 2 of this act. This subsection shall not be construed to
13 allow any person to deny visitation, recognition of a designated
14 representative for health care decision-making, or emergency medical
15 treatment necessary to cure an illness or injury as required by law.

16 E. The state government shall not take any discriminatory
17 action against a person wholly or partially on the basis that the
18 person has provided or declined to provide the following services,
19 accommodations, facilities, goods, or privileges for a purpose
20 related to the solemnization, formation, celebration, or recognition
21 of any marriage, based upon or in a manner consistent with a
22 sincerely held religious belief or moral conviction described in
23 Section 2 of this act:

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1 1. Photography, poetry, videography, disc-jockey services,
2 wedding planning, printing, publishing or similar marriage-related
3 goods or services; or

4 2. Floral arrangements, dress making, cake or pastry artistry,
5 assembly-hall or other wedding-venue rentals, limousine or other
6 car-service rentals, jewelry sales and services, or similar
7 marriage-related services, accommodations, facilities or goods.

8 F. The state government shall not take any discriminatory
9 action against a person wholly or partially on the basis that the
10 person establishes sex-specific standards or policies concerning
11 employee or student dress or grooming, or concerning access to
12 restrooms, spas, baths, showers, dressing rooms, locker rooms, or
13 other intimate facilities or settings, based upon or in a manner
14 consistent with a sincerely held religious belief or moral
15 conviction described in Section 2 of this act.

16 G. The state government shall not take any discriminatory
17 action against a state employee wholly or partially on the basis
18 that such employee lawfully speaks or engages in expressive conduct
19 based upon or in a manner consistent with a sincerely held religious
20 belief or moral conviction described in Section 2 of this act, so
21 long as:

22 1. If the employee's speech or expressive conduct occurs in the
23 workplace, that speech or expressive conduct is consistent with the
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1 time, place, manner and frequency of any other expression of a
2 religious, political, or moral belief or conviction allowed; or

3 2. If the employee's speech or expressive conduct occurs
4 outside the workplace, that speech or expressive conduct is in the
5 employee's personal capacity and outside the course of performing
6 work duties.

7 H. 1. Any person employed or acting on behalf of the state
8 government who has authority to authorize or license marriages
9 including, but not limited to, clerks, registrars of deeds or their
10 deputies, may seek recusal from authorizing or licensing lawful
11 marriages based upon or in a manner consistent with a sincerely held
12 religious belief or moral conviction described in Section 2 of this
13 act. Any person making such recusal shall provide prior written
14 notice to the Administrative Office of the Courts who shall keep a
15 record of such recusal, and the state government shall not take any
16 discriminatory action against that person wholly or partially on the
17 basis of such recusal. The person who is recusing himself or
18 herself shall take all necessary steps to ensure that the
19 authorization and licensing of any legally valid marriage is not
20 impeded or delayed as a result of any recusal.

21 2. Any person employed or acting on behalf of the state
22 government who has authority to perform or solemnize marriages
23 including, but not limited to, judges, magistrates, justices of the
24 peace or their deputies, may seek recusal from performing or

1 solemnizing lawful marriages based upon or in a manner consistent
2 with a sincerely held religious belief or moral conviction described
3 in Section 2 of this act. Any person making such recusal shall
4 provide prior written notice to the Administrative Office of the
5 Courts, and the state government shall not take any discriminatory
6 action against that person wholly or partially on the basis of such
7 recusal. The Administrative Office of the Courts shall take all
8 necessary steps to ensure that the performance or solemnization of
9 any legally valid marriage is not impeded or delayed as a result of
10 any recusal.

11 SECTION 4. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 1850.3 of Title 25, unless there
13 is created a duplication in numbering, reads as follows:

14 A. As used in this act, discriminatory action includes any
15 action taken by the state government to:

16 1. Alter in any way the tax treatment of, or cause any tax,
17 penalty, or payment to be assessed against, or deny, delay, revoke,
18 or otherwise make unavailable an exemption from taxation of any
19 person referred to in Section 3 of this act;

20 2. Disallow, deny or otherwise make unavailable a deduction for
21 state tax purposes of any charitable contribution made to or by such
22 person;

23 3. Withhold, reduce, exclude, terminate, materially alter the
24 terms or conditions of, or otherwise make unavailable or deny any

1 state grant, contract, subcontract, cooperative agreement,
2 guarantee, loan, scholarship, or other similar benefit from or to
3 such person;

4 4. Withhold, reduce, exclude, terminate, materially alter the
5 terms or conditions of, or otherwise make unavailable or deny any
6 entitlement or benefit under a state benefit program from or to such
7 person;

8 5. Impose, levy or assess a monetary fine, fee, penalty or
9 injunction;

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

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

19 B. The state government shall consider accredited, licensed or
20 certified any person that would otherwise be accredited, licensed or
21 certified, respectively, for any purposes under state law but for a
22 determination against such person wholly or partially on the basis
23 that the person believes, speaks or acts in accordance with a
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1 sincerely held religious belief or moral conviction described in
2 Section 2 of this act.

3 SECTION 5. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1850.4 of Title 25, unless there
5 is created a duplication in numbering, reads as follows:

6 A. A person may assert a violation of this act as a claim
7 against the state government in any judicial or administrative
8 proceeding or as defense in any judicial or administrative
9 proceeding without regard to whether the proceeding is brought by or
10 in the name of the state government, any private person or any other
11 party.

12 B. An action under this act may be commenced, and relief may be
13 granted, in a court of the state without regard to whether the
14 person commencing the action has sought or exhausted available
15 administrative remedies.

16 SECTION 6. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1850.5 of Title 25, unless there
18 is created a duplication in numbering, reads as follows:

19 An aggrieved person shall first seek injunctive relief to
20 prevent or remedy a violation of this act or the effects of a
21 violation of this act. If injunctive relief is granted by the court
22 and the injunction is thereafter violated, the aggrieved party may
23 then seek the following:

- 24 1. Compensatory damages for pecuniary and nonpecuniary losses;

1 2. Reasonable attorney fees and costs; and

2 3. Any other appropriate relief, except that only declaratory
3 relief and injunctive relief shall be available against a private
4 person not acting under color of state law upon a successful
5 assertion of a claim or defense under this act.

6 SECTION 7. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1850.6 of Title 25, unless there
8 is created a duplication in numbering, reads as follows:

9 A person shall bring an action to assert a claim under this act
10 not later than two (2) years after the date that the person knew or
11 should have known that a discriminatory action was taken against
12 that person.

13 SECTION 8. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 1850.7 of Title 25, unless there
15 is created a duplication in numbering, reads as follows:

16 A. This act shall be construed in favor of a broad protection
17 of free exercise of religious beliefs and moral convictions, to the
18 maximum extent permitted by the state and federal constitutions.

19 B. The protection of free exercise of religious beliefs and
20 moral convictions afforded by this act are in addition to the
21 protections provided under federal law, state law, and the state and
22 federal constitutions. Nothing in this act shall be construed to
23 preempt or repeal any state or local law that is equally or more
24 protective of free exercise of religious beliefs or moral

1 convictions. Nothing in this act shall be construed to narrow the
2 meaning or application of any state or local law protecting free
3 exercise of religious beliefs or moral convictions. Nothing in this
4 act shall be construed to prevent the state government from
5 providing, either directly or through an individual or entity not
6 seeking protection under this act, any benefit or service authorized
7 under state law.

8 C. This act applies to, and in cases of conflict supersedes,
9 each statute of the state that impinges upon the free exercise of
10 religious beliefs and moral convictions protected by this act,
11 unless a conflicting statute is expressly made exempt from the
12 application of this act. This act also applies to, and in cases of
13 conflict supersedes, any ordinance, rule, regulation, order,
14 opinion, decision, practice or other exercise of the state
15 government's authority that impinges upon the free exercise of
16 religious beliefs or moral convictions protected by this act.

17 SECTION 9. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 1850.8 of Title 25, unless there
19 is created a duplication in numbering, reads as follows:

20 As used in this act:

21 1. "State benefit program" means any program administered or
22 funded by the state, or by any agent on behalf of the state,
23 providing cash, payments, grants, contracts, loans or in-kind
24 assistance;

1 2. "State government" means:

2 a. the State of Oklahoma or a political subdivision of
3 the state,

4 b. any agency of the state or of a political subdivision
5 of the state, including a department, bureau, board,
6 commission, council, court or public institution of
7 higher education,

8 c. any person acting under color of state law, and

9 d. any private party or third party suing under or
10 enforcing a law, ordinance, rule or regulation of the
11 state or political subdivision of the state;

12 3. "Person" means:

13 a. a natural person, in his or her individual capacity,
14 regardless of religious affiliation or lack thereof,
15 or in his or her capacity as a member, officer, owner,
16 volunteer, employee, manager, religious leader, clergy
17 or minister of any entity described in this section,

18 b. a religious organization,

19 c. a sole proprietorship, or closely held company,
20 partnership, association, organization, firm,
21 corporation, cooperative, trust, society or other
22 closely held entity operating with a sincerely held
23 religious belief or moral conviction described in this
24 act, or

1 d. cooperatives, ventures or enterprises comprised of two
2 or more individuals or entities described in this
3 subsection;

4 4. "Religious organization" means:

- 5 a. a house of worship including, but not limited to,
6 churches, synagogues, shrines, mosques and temples,
7 b. a religious group, corporation, association, school or
8 educational institution, ministry, order, society or
9 similar entity, regardless of whether it is integrated
10 or affiliated with a church or other house of worship,
11 and
12 c. an officer, owner, employee, manager, religious
13 leader, clergy or minister of an entity or
14 organization described in this paragraph; and

15 5. "Adoption or foster care" or "adoption or foster care
16 service" means social services provided to or on behalf of children,
17 including:

- 18 a. assisting abused or neglected children,
19 b. teaching children and parents occupational, homemaking
20 and other domestic skills,
21 c. promoting foster parenting,
22 d. providing foster homes, residential care, group homes
23 or temporary group shelters for children,
24 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, and
- n. providing temporary family reunification services.

SECTION 10. This act shall become effective November 1, 2018.

56-2-3449 MD 3/8/2018 11:45:08 AM