

HOUSE No. 1392

The Commonwealth of Massachusetts

PRESENTED BY:

David F. DeCoste

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to protect the religious beliefs and moral convictions of citizens of the Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>David F. DeCoste</i>	<i>5th Plymouth</i>	<i>1/18/2019</i>

HOUSE No. 1392

By Mr. DeCoste of Norwell, a petition (accompanied by bill, House, No. 1392) of David F. DeCoste for legislation to protect the religious beliefs and moral convictions of citizens of the Commonwealth. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act to protect the religious beliefs and moral convictions of citizens of the Commonwealth.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Section 1. Protected religious beliefs and moral convictions.

2 IN GENERAL.—The sincerely held religious beliefs or moral convictions protected by
3 this Chapter are the belief or conviction:

- 4 (1) regarding the sex of the two individuals who may enter into a marriage;
- 5 (2) that male (man) or female (woman) refer to an individual’s immutable biological
6 sex as objectively determined by anatomy and genetics by time of birth.

7 Section 2. Protections for persons, religious organizations, and private associations.

8 (a) Protections for Religious Organizations.—The State government shall not take
9 any discriminatory action against a religious organization wholly or partially on the basis that
10 such organization:

11 (1) solemnizes or declines to solemnize any marriage, or provides or declines to
12 provide services, accommodations, facilities, goods, or privileges for a purpose related to the
13 solemnization, formation, celebration, or recognition of any marriage, based upon or in a manner
14 consistent with a sincerely held religious belief or moral conviction described in Section 1.

15 (2) makes any employment-related decision, including but not limited to the decision
16 whether or not to hire, terminate, or discipline an individual whose conduct or religious beliefs
17 are inconsistent with those of the religious organization, based upon or in a manner consistent
18 with a sincerely held religious belief or moral conviction described in Section 1.

19 (3) makes any decision concerning the sale, rental, occupancy of, or terms and
20 conditions of occupying a dwelling or other housing under its control based upon or in a manner
21 consistent with a sincerely held religious belief or moral conviction described in Section 1.

22 (b) Protections for Religious Adoption Agencies.—The State government shall not
23 take any discriminatory action against a religious organization that advertises, provides, or
24 facilitates adoption or foster care, wholly or partially on the basis that such organization has
25 provided or declined to provide any adoption or foster-care service, or related service, based
26 upon or in a manner consistent with a sincerely held religious belief or moral conviction
27 described in Section 1.

28 (c) Protections for Foster and Adoptive Parents.—The State government shall not
29 take any discriminatory action against a person who the State grants custody of a foster or
30 adoptive child, or who seeks from the State custody of a foster or adoptive child, wholly or
31 partially on the basis that the person guides, instructs, or raises a child, or intends to guide,

32 instruct, or raise a child, based upon or in a manner consistent with a sincerely held religious
33 belief or moral conviction described in Section 1.

34 (d) Protections for Healthcare Providers.—The State Government shall not take any
35 discriminatory action against a person wholly or partially on the basis that the person declines to
36 participate in the provision of treatments, counseling, or surgeries related to sex reassignment or
37 gender identity transitioning or declines to participate in the provision of psychological,
38 counseling, or fertility services based upon a sincerely held religious belief or moral conviction
39 described in Section 1. This Section may not be construed to allow any person to deny visitation,
40 recognition of a designated representative for health care decision-making, or emergency
41 medical treatment necessary to cure an illness or injury as required by law.

42 (e) Protections for Providers of Certain Marriage-related Goods and Services.—The
43 State government shall not take any discriminatory action against a person wholly or partially on
44 the basis that the person has provided or declined to provide the following services,
45 accommodations, facilities, goods, or privileges for a purpose related to the solemnization,
46 formation, celebration, or recognition of any marriage, based upon or in a manner consistent with
47 a sincerely held religious belief or moral conviction described in Section 1:

48 (1) photography, poetry, videography, disc-jockey services, wedding planning,
49 printing, publishing, counseling, or similar marriage-related goods or services; or

50 (2) floral arrangements, dress making, cake or pastry artistry, assembly-hall or other
51 wedding-venue rentals, limousine or other car-service rentals, jewelry sales and services, or
52 similar marriage-related services, accommodations, facilities, or goods.

53 (f) Protections for Sex-Specific Policies in Intimate Facilities and Settings.—The
54 State government shall not take any discriminatory action against a person wholly or partially on
55 the basis that the person establishes sex-specific standards or policies concerning employee or
56 student dress or grooming, or concerning access to restrooms, spas, baths, showers, dressing
57 rooms, locker rooms, or other intimate facilities or settings, based upon or in a manner consistent
58 with a sincerely held religious belief or moral conviction described in Section 1.

59 (g) Protections for State Employee Speech.—The State government shall not take any
60 discriminatory action against a state employee wholly or partially on the basis that such
61 employee lawfully speaks or engages in expressive conduct based upon or in a manner consistent
62 with a sincerely held religious belief or moral conviction described in Section 1 so long as:

63 (1) if the employee’s speech or expressive conduct occurs in the workplace, that
64 speech or expressive conduct is consistent with the time, place, manner, and frequency of any
65 other expression of a religious, political, or moral belief or conviction allowed; or

66 (2) if the employee’s speech or expressive conduct occurs outside the workplace, that
67 speech or expressive conduct is in the employee’s personal capacity and outside the course of
68 performing work duties.

69 (h) Protections for State Employees or Officials That License or Solemnize
70 Marriages.—

71 (1) Any person employed or acting on behalf of the State government who has
72 authority to authorize or license marriages, including but not limited to clerks, registers of deeds,
73 or their deputies, may seek recusal from authorizing or licensing lawful marriages based upon or
74 in a manner consistent with a sincerely held religious belief or moral conviction described in

75 Section 1. Any person making such recusal shall provide prior written notice to the [State
76 Registrar], and the State government shall not take any discriminatory action against that person
77 wholly or partially on the basis of such recusal. The [State Registrar] shall take all necessary
78 steps to ensure that the authorization and licensing of any legally valid marriage is not impeded
79 or delayed as a result of any recusal.

80 (2) Any person employed or acting on behalf of the State government who has
81 authority to perform or solemnize marriages, including but not limited to judges, magistrates,
82 justices of the peace, or their deputies, may seek recusal from performing or solemnizing lawful
83 marriages based upon or in a manner consistent with a sincerely held religious belief or moral
84 conviction described in Section 1. Any person making such recusal shall provide prior written
85 notice to the [State Agency], and the State government shall not take any discriminatory action
86 against that person wholly or partially on the basis of such recusal. The [State Agency] shall take
87 all necessary steps to ensure that the performance or solemnization of any legally valid marriage
88 is not impeded or delayed as a result of any recusal.

89 Section 3. Prohibited discriminatory actions.

90 (a) Discriminatory Action Defined.—As used in this Chapter, discriminatory action
91 means and includes any action taken by the State government to:

92 (1) alter in any way the tax treatment of, or cause any tax, penalty, or payment to be
93 assessed against, or deny, delay, revoke, or otherwise make unavailable an exemption from
94 taxation of any person referred to in Section 2 of this Chapter;

95 (2) disallow, deny, or otherwise make unavailable a deduction for state tax purposes
96 of any charitable contribution made to or by such person;

97 (3) withhold, reduce, exclude, terminate, materially alter the terms or conditions of,
98 or otherwise make unavailable or deny any state grant, contract, subcontract, cooperative
99 agreement, guarantee, loan, scholarship, or other similar benefit from or to such person;

100 (4) withhold, reduce, exclude, terminate, materially alter the terms or conditions of,
101 or otherwise make unavailable or deny any entitlement or benefit under a state benefit program
102 from or to such person;

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

105 (6) withhold, reduce, exclude, terminate, materially alter the terms or conditions of,
106 or otherwise make unavailable or deny any license, certification, accreditation, custody award or
107 agreement, diploma, grade, recognition, or other similar benefit, position, or status from or to any
108 person.

109 (7) refuse to hire or promote, force to resign, fire, demote, sanction, discipline, materially
110 alter the terms or conditions of employment, or retaliate or take other adverse employment action
111 against a person employed or commissioned by the State government.

112 (b) Accreditation, Licensure, Certification.—The State government shall consider
113 accredited, licensed, or certified any person that would otherwise be accredited, licensed, or
114 certified, respectively, for any purposes under state law but for a determination against such
115 person wholly or partially on the basis that the person believes, speaks, or acts in accordance
116 with a sincerely held religious belief or moral conviction described in Section 1.

117 Section 4. Claim or defense against state action.

118 (a) Cause of Action and Defense.—A person may assert a violation of this Chapter as
119 a claim against the State government in any judicial or administrative proceeding or as a defense
120 in any judicial or administrative proceeding without regard to whether the proceeding is brought
121 by or in the name of the State government, any private person, or any other party.

122 (b) Administrative Remedies Not Required.—Notwithstanding any other provision of
123 law, an action under this Chapter may be commenced, and relief may be granted, in a court of
124 the State without regard to whether the person commencing the action has sought or exhausted
125 available administrative remedies.

126 Section 5. Remedies.

127 Any person who successfully asserts a claim or defense under this Chapter may recover:

128 (1) declaratory relief;

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

131 (3) compensatory damages for pecuniary and non-pecuniary losses;

132 (4) reasonable attorneys' fees and costs; and

133 (5) any other appropriate relief;

134 except only declaratory relief and injunctive relief shall be available against a private
135 person not acting under color of state law upon a successful assertion of a defense under this
136 Chapter.

137 Section 6. Immunity waived.

138 (a) Sovereign, governmental, and qualified immunities to suit and from liability are
139 waived and abolished to the extent of liability created by Section 5 of this Chapter, and a person
140 may sue the State government, except state courts, for damages allowed by that Section.

141 (b) Notwithstanding Subsection (a), this Chapter does not waive or abolish sovereign
142 immunity to suit and from liability under the Eleventh Amendment to the United States
143 Constitution.

144 Section 7. Rules of construction.

145 (a) Broad Construction.—This Chapter shall be construed in favor of a broad
146 protection of free exercise of religious beliefs and moral convictions, to the maximum extent
147 permitted by the state and federal constitutions.

148 (b) No Preemption, Repeal, or Narrow construction.—The protection of free exercise
149 of religious beliefs and moral convictions afforded by this Chapter are in addition to the
150 protections provided under federal law, state law, and the state and federal constitutions. Nothing
151 in this Chapter shall be construed to preempt or repeal any state or local law that is equally or
152 more protective of free exercise of religious beliefs or moral convictions. Nothing in this Chapter
153 shall be construed to narrow the meaning or application of any state or local law protecting free
154 exercise of religious beliefs or moral convictions. And nothing in this Chapter shall be construed
155 to prevent the State government from providing, either directly or through an individual or entity
156 not seeking protection under this Chapter, any benefit or service authorized under state law.

157 (c) Supersede Other State Law.—This Chapter applies to, and in cases of conflict
158 supersedes, each statute of the State that impinges upon the free exercise of religious beliefs and
159 moral convictions protected by this Chapter, unless a conflicting statute is expressly made

160 exempt from the application of this Chapter. This Chapter also applies to, and in cases of conflict
161 supersedes, any ordinance, rule, regulation, order, opinion, decision, practice, or other exercise of
162 the State government’s authority that impinges upon the free exercise of religious beliefs and
163 moral convictions protected by this Chapter.

164 (d) Severability.—If any provision of this Chapter or any application of such
165 provision to any particular person or circumstance is held to be invalid under law, the remainder
166 of this Chapter and the application of its provisions to any other person or circumstance shall not
167 be affected.

168 Section 8. Two-year limitations period.

169 A person must bring an action to assert a claim under this Chapter not later than two
170 years after the date that the person knew or should have known that a discriminatory action was
171 taken against that person.

172 Section 9. Definitions.

173 In this Chapter:

174 (a) State benefit program.—The term “state benefit program” means any program
175 administered or funded by the State, or by any agent on behalf of the State, providing cash,
176 payments, grants, contracts, loans, or in-kind assistance.

177 (b) State government.—The term “State government” means:

178 (1) the State or a political subdivision of the State;

179 (2) any agency of the State or of a political subdivision of the State, including a
180 department, bureau, board, commission, council, court, or public institution of higher education;

181 (3) any person acting under color of state law; and

182 (4) any private person suing under or attempting to enforce a law, rule, or regulation
183 adopted by the State or a political subdivision of the State.

184 (c) Person.—The term “person” means:

185 (1) a natural person, in his or her individual capacity, regardless of religious
186 affiliation or lack thereof, or in his or her capacity as a member, officer, owner, volunteer,
187 employee, manager, religious leader, clergy, or minister of any entity described in this Section;

188 (2) a religious organization;

189 (3) a sole proprietorship, partnership, trust, closely held corporation, or other closely
190 held entity operating with a sincerely held religious belief or moral conviction described in
191 Section 1; or

192 (4) cooperatives, ventures, or enterprises comprised of two or more individuals or
193 entities described in this subsection regardless of non-profit or for-profit status.

194 (d) Religious organization.—The term “religious organization” means:

195 (1) a house of worship, including but not limited to churches, synagogues, shrines,
196 mosques, and temples;

197 (2) a religious group, corporation, association, school or educational institution, ministry,
198 order, society, or similar entity, regardless of whether it is integrated or affiliated with a church
199 or other house of worship.

200 (3) an officer, owner, employee, manager, religious leader, clergy, or minister of an entity
201 or organization described in this subsection.

202 (e) Adoption or Foster Care.—The term “adoption or foster care” or “adoption or
203 foster-care service” means social services provided to or on behalf of children, including:

204 (1) assisting abused or neglected children;

205 (2) teaching children and parents occupational, homemaking, and other domestic skills;

206 (3) promoting foster parenting;

207 (4) providing foster homes, residential care, group homes, or temporary group
208 shelters for children;

209 (5) recruiting foster parents;

210 (6) placing children in foster homes;

211 (7) licensing foster homes;

212 (8) promoting adoption or recruiting adoptive parents;

213 (9) assisting adoptions or supporting adoptive families;

214 (10) performing or assisting home studies;

215 (11) assisting kinship guardianships or kinship caregivers;

- 216 (12) providing family preservation services;
- 217 (13) providing family support services; and
- 218 (14) providing temporary family reunification services.