

## **CHILD PLACING AGENCIES CAN DECLINE SERVICES BASED ON SINCERELY HELD RELIGIOUS BELIEFS**

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

Analysis available at  
<http://www.legislature.mi.gov>

**House Bill 4188 as enacted**  
**Public Act 53 of 2015**  
**Sponsor: Rep. Andrea LaFontaine**

**House Bill 4189 as enacted**  
**Public Act 54 of 2015**  
**Sponsor: Rep. Harvey Santana**

**House Bill 4190 as enacted**  
**Public Act 55 of 2015**  
**Sponsor: Rep. Eric Leutheuser**

**House Committee: Families, Children, and Seniors**  
**Senate Committee: Families, Seniors, and Human Services**  
**Complete to 8-18-16**

**BRIEF SUMMARY:** Taken together, as enacted, the bills specify the following:

- To the fullest extent permitted by state and federal law, a child placing agency (for adoption or foster care) cannot be required to provide any services if those services conflicted with the agency's "sincerely held religious beliefs" contained in a written policy, statement of faith, or other document adhered to by the agency. This also applies to providing services under circumstances that conflict with such policies, statements and documents.
- The term "services" includes any service a child placing agency provides, except foster care case management and adoption services provided under a contract with the Department of Health and Human Services. However, if the department makes a referral to an agency for foster care management or adoption services under a contract, the agency could decide not to accept the referral if the services would conflict with the agency's sincerely held religious beliefs. (This is described in more detail later.) A placing agency could assert a defense in an administrative or judicial proceeding based on these provisions.
- To the fullest extent permitted by state and federal law, the state or a local unit of government would be prohibited from taking an "adverse action" against a child placing agency on the basis that the agency has declined or will decline to provide services that conflict with, or provide services under circumstances that conflict with, those sincerely held beliefs.
- The term "**adverse action**" includes, but not be limited to, denying an agency's application for funding, refusing to renew the agency's funding, canceling the agency's funding, declining to enter into a contract with the agency, refusing to renew a contract with the agency, canceling a contract with the agency, refusing to issue or renew a license, canceling a license, taking an enforcement action against the agency, discriminating against the agency in regard to participating in a

government program, and taking any action that materially alters the terms or conditions of an agency's funding, contract, or license.

- Each bill contains an enacting section stating: *It is the intent of the legislature to protect child placing agencies' free exercise of religion protected by the United States Constitution and the State Constitution of 1963. [The legislation] is not intended to limit or deny any person's right to adopt a child or participate in foster care.*

**House Bill 4188** amends Public Act 116 of 1973 (MCL 722.124e and 124f), which regulates child care organizations, to apply to child placing agencies involved in both foster care and adoption services.

**House Bill 4189** amends the Adoption Code (which is Chapter X of the Probate Code of 1939, MCL 710.23g) to apply to child placing agencies engaged in adoption services.

**House Bill 4190** amends the Social Welfare Act (MCL 400.5a) to specifically prohibit the state Department of Health and Human Services from taking an adverse action against a child placing agency.

**FISCAL IMPACT:** The bills should have a negligible fiscal impact on the state and local units of government or on the judiciary.

## **DETAILED SUMMARY OF HOUSE BILL 4188**

Declining Services: If a child placing agency declines to provide services, it must provide information in writing advising the applicant of the department's website, the Michigan Adoption Resource Exchange or a similar website, and a list of adoption or foster care service providers with contact information. The agency also must do one of the following:

- Promptly refer the applicant to another child placing agency that is willing and able to provide the declined services.
- Promptly refer the applicant to the webpage on the website of the Department of Health and Human Services that identifies other licensed child placement agencies. If an agency declines to provide services, its decision would not limit the ability of another child placing agency to provide those services.

Declining Referral. As noted above, if the DHHA made a referral to a child placing agency for foster care case management or adoption services under a contract with the agency, the agency could decide not to accept the referral if the services would conflict with the agency's sincerely held religious beliefs contained in a written policy, statement of faith, or other document adhered to by the agency. Before accepting a referral for services under a contract with the Department, the agency would have the sole discretion to decide whether to engage in activities and perform services related to that referral. The Department could not control the agency's decision.

A child placing agency accepts a referral by doing either of the following:

- Submitting to the department a written agreement to perform the services related to the particular child or particular individuals that the department referred to the agency.
- Engaging in any other activity that resulted in the department's being obligated to pay the agency for services related to the particular child or particular individuals that the department referred to the agency.

The state or a local unit of government could not take an adverse action against a child placing agency on the basis that it had decided to accept or not accept a referral.

A child placing agency's decision not to accept a referral that could not be a factor in determining whether a placement in connection with the referral was in the best interest of the child.

A placing agency could assert a defense in an administrative or judicial proceeding based on the provisions described above.

### **Legislative Findings and Declarations**

House Bill 4188 contains a lengthy list of findings and declarations that, generally speaking, aim at providing a rationale, and constitutional and other legal support, for the provisions of the bill. These include, among other things, the finding or declaration that child placing agencies have the right to the free exercise of religion and that this right includes the freedom to abstain from conduct that conflicts with sincerely held religious beliefs.

Legislative Analyst: E. Best  
Fiscal Analyst: Viola Bay Wild

---

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.