

By: Frank, Cook, Dale, et al.

H.B. No. 3859

Substitute the following for H.B. No. 3859:

By: Cook

C.S.H.B. No. 3859

A BILL TO BE ENTITLED

AN ACT

relating to protection of the rights of conscience for child welfare services providers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle D, Title 2, Human Resources Code, is amended by adding Chapter 45 to read as follows:

CHAPTER 45. PROTECTION OF RIGHTS OF CONSCIENCE FOR

CHILD WELFARE SERVICES PROVIDERS

Sec. 45.001. LEGISLATIVE INTENT. It is the intent of the legislature to maintain a diverse network of service providers that offer a range of foster capacity options and that accommodate children from various cultural backgrounds. To that end, the legislature expects reasonable accommodations to be made by the state to allow people of diverse backgrounds and beliefs to be a part of meeting the needs of children in the child welfare system. Decisions regarding the placement of children shall continue to be made in the best interest of the child, including which person is best able to provide for the child's physical, psychological, and emotional needs and development.

Sec. 45.002. DEFINITIONS. In this chapter:

(1) "Adverse action" means any action that directly or indirectly adversely affects the person against whom the adverse action is taken, places the person in a worse position than the person was in before the adverse action was taken, or is likely to

1 deter a reasonable person from acting or refusing to act. An adverse
2 action includes:

3 (A) denying an application for, refusing to
4 renew, or canceling funding;

5 (B) declining to enter into, refusing to renew,
6 or canceling a contract;

7 (C) declining to issue, refusing to renew, or
8 canceling a license;

9 (D) terminating, suspending, demoting, or
10 reassigning a person; and

11 (E) limiting the ability of a person to engage in
12 child welfare services.

13 (2) "Catchment area" means a geographic service area
14 for providing child protective services or child welfare services
15 identified as part of the foster care redesign under Section
16 264.126, Family Code.

17 (3) "Child welfare services" means social services
18 provided to or on behalf of children, including:

19 (A) assisting abused or neglected children;

20 (B) counseling children or parents;

21 (C) promoting foster parenting;

22 (D) providing foster homes, general residential
23 operations, residential care, adoptive homes, group homes, or
24 temporary group shelters for children;

25 (E) recruiting foster parents;

26 (F) placing children in foster homes;

27 (G) licensing foster homes;

- 1 (H) promoting adoption or recruiting adoptive
2 parents;
- 3 (I) assisting adoptions or supporting adoptive
4 families;
- 5 (J) performing or assisting home studies;
- 6 (K) assisting kinship guardianships or kinship
7 caregivers;
- 8 (L) providing family preservation services;
- 9 (M) providing family support services;
- 10 (N) providing temporary family reunification
11 services;
- 12 (O) placing children in adoptive homes; and
- 13 (P) serving as a foster parent.

14 (4) "Child welfare services provider" means a person,
15 other than a governmental entity, that provides, seeks to provide,
16 or applies for or receives a contract, subcontract, grant,
17 subgrant, or cooperative agreement to provide child welfare
18 services. The person is not required to be engaged exclusively in
19 child welfare services to be a child welfare services provider.

20 (5) "Governmental entity" means:

21 (A) this state or a municipality or other
22 political subdivision of this state;

23 (B) any agency of this state or of a municipality
24 or other political subdivision of this state, including a
25 department, bureau, board, commission, office, agency, council,
26 and public institution of higher education; or

27 (C) a single source continuum contractor in this

1 state.

2 Sec. 45.003. APPLICABILITY. (a) This chapter applies to
3 any ordinance, rule, order, decision, practice, or other exercise
4 of governmental authority.

5 (b) This chapter applies to an act of a governmental entity,
6 in the exercise of governmental authority, granting or refusing to
7 grant a government benefit to a child welfare services provider.

8 Sec. 45.004. CHILD WELFARE SERVICES PROVIDERS PROTECTED. A
9 governmental entity or any person that contracts with this state or
10 operates under governmental authority to refer or place children
11 for child welfare services may not discriminate or take any adverse
12 action against a child welfare services provider on the basis,
13 wholly or partly, that the provider:

14 (1) has declined or will decline to provide,
15 facilitate, or refer a person for child welfare services that
16 conflict with, or under circumstances that conflict with, the
17 provider's sincerely held religious beliefs;

18 (2) provides or intends to provide children under the
19 control, care, guardianship, or direction of the provider with a
20 religious education, including through placing the children in a
21 private or parochial school or otherwise providing a religious
22 education in accordance with the laws of this state;

23 (3) has declined or will decline to provide,
24 facilitate, or refer a person for abortions, contraceptives, or
25 drugs, devices, or services that are potentially
26 abortion-inducing; or

27 (4) refuses to enter into a contract that is

1 inconsistent with or would in any way interfere with or force a
2 provider to surrender the rights created by this chapter.

3 Sec. 45.005. SECONDARY SERVICES PROVIDERS. (a) A child
4 welfare services provider may not be required to provide any
5 service that conflicts with the provider's sincerely held religious
6 beliefs.

7 (b) A governmental entity or any person that operates under
8 governmental authority to refer or place children for child welfare
9 services shall:

10 (1) ensure that a secondary child welfare services
11 provider is available in that catchment area to provide a service
12 described by Subsection (a) to a child; or

13 (2) if there is an insufficient number of secondary
14 services providers willing or available in that catchment area to
15 provide that service, provide for one or more secondary services
16 providers in a nearby catchment area.

17 Sec. 45.006. PRIVATE RIGHT OF ACTION. A child welfare
18 services provider may assert an actual or threatened violation of
19 this chapter as a claim or defense in a judicial or administrative
20 proceeding and obtain the relief specified in Section 45.007.

21 Sec. 45.007. REMEDIES. (a) A child welfare services
22 provider who successfully asserts a claim or defense under this
23 chapter is entitled to recover:

24 (1) declaratory relief under Chapter 37, Civil
25 Practice and Remedies Code; or

26 (2) injunctive relief to prevent the threatened or
27 continued adverse action.

1 (b) A person may not bring an action for declaratory or
2 injunctive relief against an individual, other than an action
3 brought against an individual acting in the individual's official
4 capacity.

5 Sec. 45.008. IMMUNITY WAIVED. (a) Sovereign and
6 governmental immunity to suit are waived.

7 (b) Notwithstanding Subsection (a), this chapter does not
8 waive or abolish sovereign immunity to suit under the Eleventh
9 Amendment to the United States Constitution.

10 Sec. 45.009. EFFECT ON RIGHTS; CONSTRUCTION OF LAW. (a)
11 This chapter may not be construed to authorize a governmental
12 entity to burden a person's free exercise of religion.

13 (b) The protections of religious freedom afforded by this
14 chapter are in addition to the protections provided under federal
15 or state law and the constitutions of this state and the United
16 States.

17 (c) This chapter may not be construed to supersede any law
18 of this state that is equally as protective of religious beliefs as,
19 or more protective of religious beliefs than, this chapter.

20 (d) This chapter may not be considered to narrow the meaning
21 or application of any other law protecting religious beliefs.

22 (e) This chapter may not be construed to prevent law
23 enforcement officers from exercising duties imposed on the officers
24 under the Family Code and the Penal Code.

25 (f) This chapter may not be construed to allow a child
26 welfare services provider to decline to provide, facilitate, or
27 refer a person for child welfare services on the basis of that

1 person's race, ethnicity, or national origin.

2 (g) This chapter may not be construed to allow a child
3 welfare services provider to deprive a minor of the rights,
4 including the right to medical care, provided by Chapters 32, 263,
5 and 266, Family Code.

6 (h) This chapter may not be construed to prohibit the
7 department from:

8 (1) exercising its duty as the child's managing
9 conservator to make decisions in the child's best interest; or

10 (2) obtaining necessary child welfare services from an
11 alternate child welfare services provider.

12 Sec. 45.010. INTERPRETATION. This chapter shall be
13 liberally construed to effectuate its remedial and deterrent
14 purposes.

15 SECTION 2. This Act takes effect immediately if it receives
16 a vote of two-thirds of all the members elected to each house, as
17 provided by Section 39, Article III, Texas Constitution. If this
18 Act does not receive the vote necessary for immediate effect, this
19 Act takes effect September 1, 2017.