

By: Sanford, Krause, Miller of Fort Bend,
Keough, Riddle, et al.

H.B. No. 3864

Substitute the following for H.B. No. 3864:

By: Dutton

C.S.H.B. No. 3864

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

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

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

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

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

(E) limiting the ability of a person to engage in

1 child welfare services.

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

4 (A) assisting abused or neglected children;

5 (B) counseling children or parents;

6 (C) promoting foster parenting;

7 (D) providing foster homes, residential care,
8 group homes, or temporary group shelters for children;

9 (E) recruiting foster parents;

10 (F) placing children in foster homes;

11 (G) licensing foster homes;

12 (H) promoting adoption or recruiting adoptive
13 parents;

14 (I) assisting adoptions or supporting adoptive
15 families;

16 (J) performing or assisting home studies;

17 (K) assisting kinship guardianships or kinship
18 caregivers;

19 (L) providing family preservation services;

20 (M) providing family support services; and

21 (N) providing temporary family reunification
22 services.

23 (3) "Child welfare services provider" means a person
24 that provides, seeks to provide, or applies for or receives a
25 contract, subcontract, grant, subgrant, or cooperative agreement
26 to provide child welfare services. The person is not required to be
27 engaged exclusively in child welfare services to be a child welfare

1 services provider.

2 (4) "Governmental entity" means:

3 (A) this state or a municipality or other
4 political subdivision of this state; or

5 (B) any agency of this state or of a municipality
6 or other political subdivision of this state, including a
7 department, bureau, board, commission, office, agency, council,
8 court, and public institution of higher education.

9 Sec. 45.002. APPLICABILITY. (a) This chapter applies to
10 any ordinance, rule, order, decision, practice, or other exercise
11 of governmental authority.

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

15 Sec. 45.003. CHILD WELFARE SERVICES PROVIDERS PROTECTED. A
16 governmental entity or any person that contracts with this state or
17 operates under governmental authority to refer or place children
18 for child welfare services may not discriminate or take any adverse
19 action against a child welfare services provider on the basis,
20 wholly or partly, that the provider:

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

25 (2) provides or intends to provide children under the
26 control, care, guardianship, or direction of the child welfare
27 services provider with a religious education, including through

1 placing the children in a private or parochial school or otherwise
2 providing a religious education in accordance with the laws of this
3 state; or

4 (3) has declined or will decline to provide,
5 facilitate, or refer a person for abortions, contraceptives, or
6 drugs, devices, or services that are potentially
7 abortion-inducing.

8 Sec. 45.004. PRIVATE RIGHT OF ACTION. A child welfare
9 services provider may assert an actual or threatened violation of
10 this chapter as a claim or defense in a judicial or administrative
11 proceeding and obtain the relief specified in Section 45.005.

12 Sec. 45.005. REMEDIES. A child welfare services provider
13 who successfully asserts a claim or defense under this chapter is
14 entitled to recover:

15 (1) declaratory relief;

16 (2) injunctive relief to prevent the threatened or
17 continued adverse action or effects of the action on the child
18 welfare services provider;

19 (3) compensatory damages for pecuniary and
20 nonpecuniary losses;

21 (4) punitive damages; and

22 (5) reasonable attorney's fees, court costs, and other
23 reasonable expenses.

24 Sec. 45.006. TWO-YEAR LIMITATIONS PERIOD. A child welfare
25 services provider must bring an action to assert a claim for damages
26 under this chapter not later than the second anniversary of the date
27 the provider actually knew of the violation of this chapter.

1 Sec. 45.007. IMMUNITY WAIVED. (a) Sovereign,
2 governmental, and qualified immunity to suit and from liability are
3 waived and abolished to the extent of liability created by Section
4 45.005, and a claimant may sue a governmental entity or official for
5 damages allowed by that section.

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

9 Sec. 45.008. EFFECT ON RIGHTS; CONSTRUCTION OF LAW. (a)
10 This chapter may not be construed to authorize a governmental
11 entity to burden a person's free exercise of religion.

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

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

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

21 (e) This chapter may not be construed in a manner that
22 allows a person to decline intake of a child into a welfare services
23 program funded by this state.

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

27 Sec. 45.009. INTERPRETATION. This chapter shall be

1 liberally construed to effectuate its remedial and deterrent
2 purposes.

3 SECTION 2. This Act takes effect immediately if it receives
4 a vote of two-thirds of all the members elected to each house, as
5 provided by Section 39, Article III, Texas Constitution. If this
6 Act does not receive the vote necessary for immediate effect, this
7 Act takes effect September 1, 2015.