

BILL ANALYSIS

Senate Research Center
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S.B. 892
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Health & Human Services
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Every year, thousands of single mothers and displaced children seek refuge in faith-based adoption and foster care agencies. Texas child welfare policy should increase the options available to at-risk mothers and displaced children, not disqualify faith-based providers with a proven track record of success.

In Texas, 25 percent of the adoption agencies and foster homes are faith-based.

S.B. 892 protects the status quo by protecting essential faith-based child welfare service providers that have served the disadvantaged children of Texas for decades and have a proven track record of serving the best interests of children.

S.B. 892 ensures the government cannot discriminate against faith-based adoption and foster care providers in licensing, contracting, or funding for:

1. Facilitating child welfare services in accord with sincere religious beliefs;
2. Providing children with a religious education; or
3. Declining to facilitate abortions or provide abortifacient drugs or devices.

As proposed, S.B. 892 amends current law relating to protection of the rights of conscience for child welfare services providers.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle D, Title 2, Human Resources Code, by adding Chapter 45, as follows:

CHAPTER 45. PROTECTION OF RIGHTS OF CONSCIENCE FOR CHILD WELFARE SERVICES PROVIDERS

Sec. 45.001. DEFINITIONS. Defines "adverse action," "child welfare services," "child welfare services provider," and "governmental entity."

Sec. 45.002. APPLICABILITY. (a) Provides that this chapter applies to any ordinance, rule, order, decision, practice, or other exercise of governmental authority.

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

Sec. 45.003. CHILD WELFARE SERVICES PROVIDERS PROTECTED. Prohibits a governmental entity or any person that contracts with this state or operates under governmental authority to refer or place children for child welfare services from discriminating or taking any adverse action against a provider on the basis, wholly or partly, that the provider:

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

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

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

(4) refuses to enter into a contract that is inconsistent with or would in any way interfere with or force a provider to surrender the rights created by this chapter.

Sec. 45.004. PRIVATE RIGHT OF ACTION. Authorizes a provider to assert an actual or threatened violation of this chapter as a claim or defense in a judicial or administrative proceeding and obtain the relief specified in Section 45.005.

Sec. 45.005. REMEDIES. (a) Provides that a provider who successfully asserts a claim or defense is entitled to recover certain declaratory or injunctive relief, compensatory damages, and expenses.

(b) Prohibits compensatory damages awarded from exceeding \$250,000 for each distinct controversy, without regard to the number of members or other persons associated with a provider who claim injury.

(c) Prohibits a person from bringing an action for damages or declaratory or injunctive relief against an individual, other than an action brought against an individual acting in the individual's official capacity.

Sec. 45.006. TWO-YEAR LIMITATIONS PERIOD. Requires a provider to bring an action to assert a claim for damages not later than the second anniversary of the date the provider actually knew of the violation of this chapter.

Sec. 45.007. IMMUNITY WAIVED. (a) Provides that sovereign and governmental immunity to suit and from liability are waived and abolished to the extent of liability created by Section 45.005, and authorizes a claimant to sue a governmental entity or official for damages allowed by that section.

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

Sec. 45.008. EFFECT ON RIGHTS; CONSTRUCTION OF LAW. (a) Prohibits this chapter from being construed to authorize a governmental entity to burden a person's free exercise of religion.

(b) Provides that the protections of religious freedom afforded by this chapter are in addition to the protections provided under federal or state law and the constitutions of Texas and the United States.

(c) Prohibits this chapter from being construed to supersede any Texas law that is equally as protective of religious belief as, or more protective of religious beliefs than, this chapter.

(d) Prohibits this chapter from being considered to narrow the meaning or application of any other law protecting religious beliefs.

(e) Prohibits this chapter from being construed to prevent law enforcement officers from exercising duties imposed on the officers under the Family Code and Penal Code.

(f) Prohibits this chapter from being construed to allow a provider to decline to provide, facilitate, or refer a person for child welfare services on the basis of that person's race, ethnicity, or national origin.

(g) Prohibits this chapter from being construed to allow a child welfare services provider to deprive a minor of the rights, including the right to medical care, provided by Chapters 32 (Consent to Treatment of Child by Non-Parent or Child), 263 (Review of Placement of Children Under Care of Department of Family and Protective Services), and 266 (Medical Care and Educational Services for Children in Foster Care), Family Code.

(h) Prohibits this chapter from being construed to prohibit the Department of Family and Protective Services from obtaining necessary child welfare services from an alternate provider.

Sec. 45.009. INTERPRETATION. Requires that this chapter be liberally construed to effectuate its remedial and deterrent purposes.

SECTION 2. Effective date: upon passage or September 1, 2017.