

By: Sanford

H.B. No. 1805

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 other than a governmental entity, that provides, seeks to provide,
25 or applies for or receives a contract, subcontract, grant,
26 subgrant, or cooperative agreement to provide child welfare
27 services. The person is not required to be engaged exclusively in

1 child welfare services to be a child welfare services provider.

2 (4) "Governmental entity" means:

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

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; or

9 (C) a single source continuum contractor in this
10 state.

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

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

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

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

27 (2) provides or intends to provide children under the

1 control, care, guardianship, or direction of the provider with a
2 religious education, including through placing the children in a
3 private or parochial school or otherwise providing a religious
4 education in accordance with the laws of this state;

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

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

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

16 Sec. 45.005. REMEDIES. (a) A child welfare services
17 provider who successfully asserts a claim or defense under this
18 chapter is entitled to recover:

19 (1) declaratory relief under Chapter 37, Civil
20 Practice and Remedies Code;

21 (2) injunctive relief to prevent the threatened or
22 continued adverse action;

23 (3) compensatory damages for pecuniary and
24 nonpecuniary losses; and

25 (4) reasonable attorney's fees, court costs, and other
26 reasonable expenses.

27 (b) Compensatory damages awarded under Subsection (a)(3)

1 may not exceed \$250,000 for each distinct controversy, without
2 regard to the number of members or other persons associated with a
3 child welfare services provider who claim injury under this
4 chapter.

5 (c) A person may not bring an action for damages or
6 declaratory or injunctive relief against an individual, other than
7 an action brought against an individual acting in the individual's
8 official capacity.

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

13 Sec. 45.007. IMMUNITY WAIVED. (a) Sovereign and
14 governmental immunity to suit and from liability are waived and
15 abolished to the extent of liability created by Section 45.005, and
16 a claimant may sue a governmental entity or official for damages
17 allowed by that section.

18 (b) Notwithstanding Subsection (a), this chapter does not
19 wave or abolish sovereign immunity to suit and from liability
20 under the Eleventh Amendment to the United States Constitution.

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

24 (b) The protections of religious freedom afforded by this
25 chapter are in addition to the protections provided under federal
26 or state law and the constitutions of this state and the United
27 States.

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

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

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

9 (f) This chapter may not be construed to allow a child
10 welfare services provider to decline to provide, facilitate, or
11 refer a person for child welfare services on the basis of that
12 person's race, ethnicity, or national origin.

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

17 (h) This chapter may not be construed to prohibit the
18 department from obtaining necessary child welfare services from an
19 alternate child welfare services provider.

20 Sec. 45.009. INTERPRETATION. This chapter shall be
21 liberally construed to effectuate its remedial and deterrent
22 purposes.

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