

By: Frank

H.B. No. 3859

A BILL TO BE ENTITLED

AN ACT

relating to the conscience rights of certain religious organizations and individuals.

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. (a) 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 can accommodate children from various cultural backgrounds. To that end, we expect 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.

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 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;

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

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

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

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

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

11 (A) assisting abused or neglected children;

12 (B) counseling children or parents;

13 (C) promoting foster parenting;

14 (D) providing foster homes, general residential
15 operations, residential care, adoptive homes, group homes, or
16 temporary group shelters for children;

17 (E) recruiting foster parents;

18 (F) placing children in foster homes;

19 (G) licensing foster homes;

20 (H) promoting adoption or recruiting adoptive
21 parents;

22 (I) assisting adoptions or supporting adoptive
23 families;

24 (J) performing or assisting home studies;

25 (K) assisting kinship guardianships or kinship
26 caregivers;

27 (L) providing family preservation services;

- 1 (M) providing family support services;
- 2 (N) providing temporary family reunification
- 3 services;
- 4 (O) placing children in adoptive homes; and
- 5 (P) serving as a foster parent.

6 (3) "Child welfare services provider" means a person,
7 other than a governmental entity, that provides, seeks to provide,
8 or applies for or receives a contract, subcontract, grant,
9 subgrant, or cooperative agreement to provide child welfare
10 services. The person is not required to be engaged exclusively in
11 child welfare services to be a child welfare services provider.

12 (4) "Governmental entity" means:

13 (A) this state or a municipality or other
14 political subdivision of this state;

15 (B) any agency of this state or of a municipality
16 or other political subdivision of this state, including a
17 department, bureau, board, commission, office, agency, council,
18 court, and public institution of higher education; or

19 (C) a single source continuum contractor in this
20 state.

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

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

27 Sec. 45.004. CHILD WELFARE SERVICES PROVIDERS PROTECTED. A

1 governmental entity or any person that contracts with this state or
2 operates under governmental authority to refer or place children
3 for child welfare services may not discriminate or take any adverse
4 action against a child welfare services provider on the basis,
5 wholly or partly, that the provider:

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

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

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

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

22 Sec. 45.005. SECONDARY SERVICE PROVIDERS. (a) A child
23 welfare services provider may not be required to provide any
24 services that conflict with the provider's sincerely held religious
25 beliefs.

26 (b) A governmental entity or any person that operates under
27 governmental authority to refer or place children for child welfare

1 services shall:

2 (1) ensure that a secondary service provider is
3 available in that catchment area to provide services described by
4 Subsection (a) to a child; or

5 (2) if there is an insufficient number of secondary
6 service providers willing or available in that catchment area to
7 provide those services, provide for one or more secondary service
8 providers in an adjacent catchment area.

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

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

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

18 (2) injunctive relief to prevent the threatened or
19 continued adverse action.

20 (b) A person may not bring an action for declaratory or
21 injunctive relief against an individual, other than an action
22 brought against an individual acting in the individual's official
23 capacity.

24 Sec. 45.008. IMMUNITY WAIVED. (a) Sovereign and
25 governmental immunity to suit is waived.

26 (b) Notwithstanding Subsection (a), this chapter does not
27 wave or abolish sovereign immunity to suit and from liability

1 under the Eleventh Amendment to the United States Constitution.

2 Sec. 45.009. EFFECT ON RIGHTS; CONSTRUCTION OF LAW. (a)

3 This chapter may not be construed to authorize a governmental
4 entity to burden a person's free exercise of religion.

5 (b) The protections of religious freedom afforded by this
6 chapter are in addition to the protections provided under federal
7 or state law and the constitutions of this state and the United
8 States.

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

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

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

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

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

25 (h) This chapter may not be construed to prohibit the
26 department from obtaining necessary child welfare services from an
27 alternate child welfare services provider.

1 45.010. INTERPRETATION. This chapter shall be liberally
2 construed to effectuate its remedial and deterrent 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, 2017.