

By: Perry

S.B. No. 892

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, general residential
8 operations, residential care, adoptive homes, group homes, or
9 temporary group shelters for children;

10 (E) recruiting foster parents;

11 (F) placing children in foster homes;

12 (G) licensing foster homes;

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

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

17 (J) performing or assisting home studies;

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

20 (L) providing family preservation services;

21 (M) providing family support services;

22 (N) providing temporary family reunification
23 services;

24 (O) placing children in adoptive homes; and

25 (P) serving as a foster parent.

26 (3) "Child welfare services provider" means a person,
27 other than a governmental entity, that provides, seeks to provide,

1 or applies for or receives a contract, subcontract, grant,
2 subgrant, or cooperative agreement to provide child welfare
3 services. The person is not required to be engaged exclusively in
4 child welfare services to be a child welfare services provider.

5 (4) "Governmental entity" means:

6 (A) this state or a municipality or other
7 political subdivision of this state;

8 (B) any agency of this state or of a municipality
9 or other political subdivision of this state, including a
10 department, bureau, board, commission, office, agency, council,
11 court, and public institution of higher education; or

12 (C) a single source continuum contractor in this
13 state.

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

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

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

26 (1) has declined or will decline to provide,
27 facilitate, or refer a person for child welfare services that

1 conflict with, or under circumstances that conflict with, the
2 provider's sincerely held religious beliefs;

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

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

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

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

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

22 (1) declaratory relief under Chapter 37, Civil
23 Practice and Remedies Code;

24 (2) injunctive relief to prevent the threatened or
25 continued adverse action;

26 (3) compensatory damages for pecuniary and
27 nonpecuniary losses; and

1 (4) reasonable attorney's fees, court costs, and other
2 reasonable expenses.

3 (b) Compensatory damages awarded under Subsection (a)(3)
4 may not exceed \$250,000 for each distinct controversy, without
5 regard to the number of members or other persons associated with a
6 child welfare services provider who claim injury under this
7 chapter.

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

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

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

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

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

27 (b) The protections of religious freedom afforded by this

1 chapter are in addition to the protections provided under federal
2 or state law and the constitutions of this state and the United
3 States.

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

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

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

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

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

20 (h) This chapter may not be construed to prohibit the
21 department from obtaining necessary child welfare services from an
22 alternate child welfare services provider.

23 Sec. 45.009. INTERPRETATION. This chapter shall be
24 liberally construed to effectuate its remedial and deterrent
25 purposes.

26 SECTION 2. This Act takes effect immediately if it receives
27 a vote of two-thirds of all the members elected to each house, as

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1 provided by Section 39, Article III, Texas Constitution. If this
2 Act does not receive the vote necessary for immediate effect, this
3 Act takes effect September 1, 2017.