

By: Zedler

H.B. No. 1035

A BILL TO BE ENTITLED

AN ACT

relating to protecting freedom of conscience from government discrimination.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 5, Civil Practice and Remedies Code, is amended by adding Chapter 110A to read as follows:

CHAPTER 110A. FREE TO BELIEVE ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 110A.001. DEFINITIONS. In this chapter:

(1) "Discriminatory action" means any action taken by a governmental entity to:

(A) withhold, reduce, exclude, terminate, materially alter the terms or conditions of, or otherwise make unavailable or deny any grant, contract, subcontract, cooperative agreement, guarantee, loan, scholarship, license, certification, accreditation, custody award or agreement, diploma, grade, recognition, or other similar benefit, position, or status from or to a person;

(B) withhold, reduce, exclude, terminate, materially alter the terms or conditions of, or otherwise make unavailable or deny an entitlement or benefit provided under a state benefit program from or to a person;

(C) alter in any way the tax treatment of, cause any tax, penalty, or payment assessment against, or deny, delay,

1 revoke, or otherwise make unavailable a tax exemption of a person;

2 (D) disallow, deny, or otherwise make  
3 unavailable a tax deduction for any charitable contribution made to  
4 or by a person;

5 (E) impose, levy, or assess a monetary fine, fee,  
6 penalty, or injunction against a person; or

7 (F) refuse to hire or promote, force the  
8 resignation of, fire, demote, sanction, discipline, materially  
9 alter the terms or conditions of employment of, or retaliate or take  
10 other adverse employment action against a person who is employed or  
11 commissioned by a governmental entity.

12 (2) "Governmental entity" means:

13 (A) this state;

14 (B) a board, bureau, commission, council,  
15 department, or other agency of this state, including an institution  
16 of higher education as defined by Section 61.003, Education Code;

17 (C) the Texas Supreme Court, the Texas Court of  
18 Criminal Appeals, a state judicial agency, the State Bar of Texas,  
19 or a court in this state;

20 (D) a political subdivision of this state,  
21 including a county, municipality, or special district or authority;

22 (E) an officer, employee, or agent of an entity  
23 described by Paragraphs (A)-(D); or

24 (F) a private person suing under or attempting to  
25 enforce a law, rule, order, or ordinance adopted by an entity  
26 described by Paragraphs (A)-(D).

27 (3) "Person" has the meaning assigned by Section

1 311.005, Government Code.

2 (4) "Religious organization" means:

3 (A) a house of worship, including a church,  
4 synagogue, shrine, mosque, or temple;

5 (B) a religious group, corporation, association,  
6 school or educational institution, ministry, order, society, or  
7 similar entity, regardless of whether the entity is integrated or  
8 affiliated with a church or other house of worship; or

9 (C) an officer, owner, employee, manager,  
10 religious leader, member of the clergy, or minister of an entity or  
11 organization described in this subdivision.

12 (5) "State benefit program" means any program  
13 administered or funded by a governmental entity that provides cash,  
14 payments, grants, contracts, loans, or in-kind assistance.

15 Sec. 110A.002. SHORT TITLE. This chapter may be cited as  
16 the Free to Believe Act.

17 Sec. 110A.003. SINCERELY HELD RELIGIOUS BELIEFS OR MORAL  
18 CONVICTIONS. The sincerely held religious beliefs or moral  
19 convictions protected by this chapter are a belief or conviction  
20 that:

21 (1) marriage is or should be recognized as the union of  
22 one man and one woman; and

23 (2) the terms "male," "man," "female," and "woman"  
24 refer to an individual's immutable biological sex as objectively  
25 determined by anatomy and genetics at the time of birth.

26 Sec. 110A.004. CONSTRUCTION OF CHAPTER. (a) This chapter  
27 shall be construed in favor of a broad protection of the free

1 exercise of religious beliefs and moral convictions to the maximum  
2 extent allowed by this chapter and the state and federal  
3 constitutions.

4 (b) The protections of free exercise of religious beliefs  
5 and moral convictions afforded by this chapter are in addition to  
6 the protections provided under federal or state law and the state  
7 and federal constitutions.

8 (c) This chapter may not be construed to preempt or repeal a  
9 state or local law that is equally or more protective of the free  
10 exercise of religious beliefs or moral convictions or to narrow the  
11 meaning or application of a state or local law protecting the free  
12 exercise of religious beliefs or moral convictions.

13 (d) This chapter may not be construed to prevent a  
14 governmental entity from providing, either directly or through a  
15 person who is not seeking protection under this chapter, any  
16 benefit or service authorized under state law.

17 (e) This chapter applies to and in case of conflict  
18 supersedes each statute of this state that impinges on the free  
19 exercise of religious beliefs or moral convictions protected by  
20 this chapter. This chapter also applies to and in case of conflict  
21 supersedes an ordinance, rule, regulation, order, opinion,  
22 decision, practice, or other exercise of a governmental entity's  
23 authority that impinges on the free exercise of religious beliefs  
24 or moral convictions protected by this chapter.

25 Sec. 110A.005. APPLICABILITY. This chapter is excluded  
26 from the application of Chapter 110.

1        SUBCHAPTER B. DISCRIMINATORY ACTION BY GOVERNMENTAL ENTITY

2                                PROHIBITED

3        Sec. 110A.051. ACTIVITIES OF RELIGIOUS ORGANIZATION. A  
4 governmental entity may not take any discriminatory action against  
5 a religious organization wholly or partly because the organization,  
6 based on or in a manner consistent with a sincerely held religious  
7 belief or moral conviction protected by this chapter:

8                (1) makes an employment-related decision, including a  
9 decision to terminate, to discipline, or not to hire an individual  
10 whose conduct or religious beliefs are inconsistent with the  
11 beliefs of the religious organization; or

12                (2) makes a decision concerning the sale, rental, or  
13 occupancy of, or the terms and conditions of occupying, a dwelling  
14 or other housing under the religious organization's control.

15        Sec. 110A.052. SEX REASSIGNMENT OR GENDER IDENTITY  
16 TRANSITIONING. (a) A governmental entity may not take any  
17 discriminatory action against a person wholly or partly because the  
18 person, based on or in a manner consistent with a sincerely held  
19 religious belief or moral conviction protected by this chapter,  
20 declines to participate in providing:

21                (1) treatment, counseling, or surgery related to sex  
22 reassignment or gender identity transitioning; or

23                (2) psychological, counseling, or fertility services.

24                (b) This section may not be construed to allow a person to  
25 deny visitation, recognition of a designated representative for  
26 health care decision-making, or emergency medical treatment  
27 necessary to cure an illness or injury as required by law.

1       Sec. 110A.053. MARRIAGE-RELATED GOODS AND SERVICES. A  
2 governmental entity may not take any discriminatory action against  
3 a person wholly or partly because the person, based on or in a  
4 manner consistent with a sincerely held religious belief or moral  
5 conviction protected by this chapter, has provided or declined to  
6 provide the following for a purpose related to the solemnization,  
7 formation, celebration, or recognition of a marriage:

8           (1) photography, poetry, videography, disc jockey  
9 services, wedding planning, printing, publishing, or similar  
10 marriage-related goods or services; or

11           (2) floral arrangements, dressmaking, cake or pastry  
12 artistry, assembly hall or other wedding venue rentals, limousine  
13 or other car service rentals, jewelry sales and services, or  
14 similar marriage-related services, accommodations, facilities,  
15 goods, or privileges.

16       Sec. 110A.054. EMPLOYEE AND STUDENT POLICIES. A  
17 governmental entity may not take any discriminatory action against  
18 a person wholly or partly because the person, based on or in a  
19 manner consistent with a sincerely held religious belief or moral  
20 conviction protected by this chapter, establishes sex-specific  
21 standards or policies concerning:

22           (1) employee or student dress or grooming; or

23           (2) access to restrooms, spas, baths, showers,  
24 dressing rooms, locker rooms, or other intimate facilities or  
25 settings.

26       Sec. 110A.055. GOVERNMENTAL EMPLOYEE SPEECH OR CONDUCT. A  
27 governmental entity may not take any discriminatory action against

1 an employee wholly or partly because the employee lawfully speaks  
2 or engages in expressive conduct, based on or in a manner consistent  
3 with a sincerely held religious belief or moral conviction  
4 protected by this chapter, so long as:

5           (1) if the speech or expressive conduct occurs in the  
6 workplace, the speech or expressive conduct is consistent with the  
7 time, place, manner, and frequency of any other expression of a  
8 religious, political, or moral belief or conviction that would be  
9 protected; or

10           (2) if the speech or expressive conduct occurs outside  
11 the workplace, the speech or expressive conduct is in the  
12 employee's personal capacity and outside the course of performing  
13 work duties.

14           Sec. 110A.056. RECUSAL FROM MARRIAGE LICENSING. (a) A  
15 person employed by or acting on behalf of a governmental entity who  
16 has authority to authorize or license marriages, including a county  
17 clerk or deputy county clerk, may seek recusal from authorizing or  
18 licensing lawful marriages, based on or in a manner consistent with  
19 a sincerely held religious belief or moral conviction protected by  
20 this chapter.

21           (b) A person making a recusal under this section shall  
22 provide written notice to the vital statistics unit of the  
23 Department of State Health Services before the recusal. The vital  
24 statistics unit shall keep a record of the recusal.

25           (c) A person making a recusal under this section shall take  
26 all necessary steps to ensure that the authorization and licensing  
27 of a legally valid marriage is not impeded or delayed as a result of

1 the recusal.

2 (d) A governmental entity may not take any discriminatory  
3 action against a person described by Subsection (a) wholly or  
4 partly because of the recusal.

5 Sec. 110A.057. RECUSAL FROM MARRIAGE PERFORMANCE. (a) A  
6 person employed by or acting on behalf of a governmental entity who  
7 has authority to perform or solemnize marriages, including a judge,  
8 magistrate, or justice of the peace, may seek recusal from  
9 performing or solemnizing lawful marriages, based on or in a manner  
10 consistent with a sincerely held religious belief or moral  
11 conviction protected by this chapter.

12 (b) A person making a recusal under this section shall  
13 provide written notice to the Office of Court Administration of the  
14 Texas Judicial System before the recusal.

15 (c) The Office of Court Administration of the Texas Judicial  
16 System shall take all necessary steps to ensure that the  
17 performance or solemnization of any legally valid marriage is not  
18 impeded or delayed as a result of any recusal under this section.

19 (d) A governmental entity may not take any discriminatory  
20 action against a person described by Subsection (a) wholly or  
21 partly because of the recusal.

22 Sec. 110A.058. ACCREDITATION, LICENSING, AND  
23 CERTIFICATION. A governmental entity shall consider a person  
24 accredited, licensed, or certified if the person would be  
25 accredited, licensed, or certified, respectively, under state law  
26 except for a determination against the person wholly or partly  
27 because the person believes, speaks, or acts in accordance with a



1 sincerely held religious belief or moral conviction protected by  
2 this chapter.

3 SUBCHAPTER C. PROCEDURES

4 Sec. 110A.101. SOVEREIGN IMMUNITY WAIVED. Sovereign  
5 immunity to suit and from liability is waived and abolished to the  
6 extent of liability created by Section 110A.103. A person may sue a  
7 governmental entity for damages allowed by that section.

8 Sec. 110A.102. CLAIM OR DEFENSE BASED ON DISCRIMINATORY  
9 ACTION. (a) A person may assert a violation of Subchapter B as a  
10 claim against a governmental entity in a judicial or administrative  
11 proceeding or as a defense in a judicial or administrative  
12 proceeding without regard to whether the proceeding is brought by  
13 or in the name of the governmental entity, a private person, or  
14 another party.

15 (b) An action under this chapter may be commenced, and  
16 relief may be granted, in a court of this state without regard to  
17 whether the person commencing the action has sought or exhausted  
18 available administrative remedies.

19 Sec. 110A.103. INJUNCTIVE RELIEF; DAMAGES. (a) An aggrieved  
20 person must first seek injunctive relief to prevent or remedy a  
21 violation of this chapter or the effects of a violation of this  
22 chapter.

23 (b) Subject to Subsections (c) and (d), if a court has  
24 granted injunctive relief and the injunction is violated, only then  
25 may the aggrieved person seek:

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

1           (2) reasonable attorney's fees and court costs; and

2           (3) any other appropriate relief.

3           (c) Only declaratory relief and injunctive relief are  
4 available against a private person not acting under the authority  
5 of a governmental entity on a successful assertion of a claim or  
6 defense under this chapter.

7           (d) Liability of a governmental entity for compensatory  
8 damages under Subsection (b)(1) may not exceed \$500,000 for all  
9 claims arising out of a single occurrence. A person is not entitled  
10 to recover exemplary damages or prejudgment interest under this  
11 chapter.

12           Sec. 110A.104. TWO-YEAR LIMITATIONS PERIOD. A person must  
13 bring an action to assert a claim under this chapter not later than  
14 two years after the date the person knew or should have known that a  
15 discriminatory action was taken against that person.

16           SECTION 2. The change in law made by this Act applies only  
17 to a cause of action that accrues on or after the effective date of  
18 this Act. A cause of action that accrues before the effective date  
19 of this Act is governed by the law applicable to the cause of action  
20 immediately before that date, and that law is continued in effect  
21 for that purpose.

22           SECTION 3. This Act takes effect September 1, 2019.