

BILL ANALYSIS

Senate Research Center
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S.B. 247
By: Perry
State Affairs
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2016, the American Bar Association (ABA) adopted an amendment to the Model Rules of Professional Conduct Rule 8.4(g). If Texas were to adopt this overreaching rule, many attorneys feel they could lose their license based on statements that were not actually known to be or intended as harassing or discriminatory, simply because someone might construe it that way.

While discriminatory behavior by a lawyer is already prohibited in Texas, a pattern is forming where individuals with certain sincerely held beliefs are facing expulsions from their careers and livelihoods.

This bill is a preemptive action to address the growing attack on freedom of speech and expression of religious beliefs. This bill seeks to ensure that no attorney or State Bar applicant is excluded from seeking a law license or renewal of a law license based on their faith and that no person loses their law license based on their faith. If the person comes in front of the State Bar based on their speech or conduct, this bill provides a defense to losing their license as long as their conduct or speech is based on sincerely held religious beliefs. This bill does not protect a person from being fired or sued.

The proposed legislation amends the Government Code, Chapter 81, regarding attorney licenses, prohibiting the State Bar from adopting a rule that could:

- limit a person's ability to obtain or renew a law license based on the person's religious belief; or
- burden an applicant's or State Bar member's exercise of religion, freedom of speech about their faith, membership in any religious organization, or freedom of association.

Finally, the bill creates administrative and judicial relief for any person who has been burdened in violation of this bill. The bill allows the person claiming harm to assert the alleged violation as a defense in an administrative hearing; as a claim or defense in a judicial proceeding under Chapter 37, Civil Practice and Remedies Code; or to request injunctive relief.

As proposed, S.B. 247 amends current law relating to discrimination against or burdening certain constitutional rights of an applicant for or holder of a license to practice law in this state.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the State Bar of Texas is modified in SECTION 1 (Section 81.02401, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter B, Chapter 81, Government Code, by adding Section 81.02401, as follows:

Sec. 81.02401. CERTAIN RULES AND POLICIES PROHIBITED; ADMINISTRATIVE OR INJUNCTIVE RELIEF. (a) Prohibits a rule or policy adopted or a penalty imposed under Chapter 81 (State Bar) from:

(1) limiting an applicant's ability to obtain a license to practice law in Texas, or a State Bar of Texas (state bar) member's ability to maintain or renew the license, based on a sincerely held religious belief of the applicant or state bar member; or

(2) burdening an applicant's or state bar member's free exercise of religion, regardless of whether the burden is the result of a rule or policy generally applicable to all applicants or state bar members; freedom of speech regarding a sincerely held religious belief; membership in any religious organization; or freedom of association.

(b) Provides that Subsection (a) does not apply to a state bar rule or policy adopted or penalty imposed under Chapter 81 that results in a limitation or burden described by Subsection (a) if the rule, policy, or penalty is essential to enforcing a compelling governmental purpose, and narrowly tailored to accomplish that purpose.

(c) Authorizes a person to assert that a state bar rule or policy adopted or penalty imposed under Chapter 81 violates Subsection (a) as a defense in an administrative hearing or as a claim or defense in a judicial proceeding under Chapter 37 (Declaratory Judgments), Civil Practice and Remedies Code, except that the person may not assert the violation as a defense to an allegation of sexual misconduct or prosecution of an offense.

(d) Authorizes a person to bring an action for injunctive relief for a violation of Subsection (a).

SECTION 2. Effective date: upon passage or September 1, 2021.