

BILL ANALYSIS

S.B. 559
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

In 2016, the American Bar Association adopted an amendment to the Model Rules of Professional Conduct that added Rule 8.4(g). There is a concern that if the State Bar of Texas adopts this rule, attorneys could lose their license based on statements they have made that were not known to be or intended to be harassing or discriminatory, simply because someone might construe them that way. S.B. 559 seeks to address, preemptively, the growing attack on freedom of speech and expression of religious beliefs by prohibiting the state bar from adopting a rule that could limit a person's ability to obtain, maintain, or renew a law license based on the person's religious belief or burden a license applicant's or state bar member's free exercise of religion, freedom of speech about their faith, membership in any religious organization, or freedom of association.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 559 amends the Government Code to prohibit a rule, policy, or penalty under the State Bar Act from doing the following:

- limiting an applicant's ability to obtain a license to practice law in Texas, or a 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
- burdening the following of an applicant or state bar member:
 - free exercise of religion, regardless of whether the burden is caused by a rule or policy that applies generally to an applicant or member of the state bar;
 - freedom of speech or expression protected by the U.S. Constitution or Texas Constitution, including speech regarding a sincerely held religious belief, a political ideology, or a societal view, and of expressive conduct;
 - membership in any religious organization; or
 - freedom of association.

The bill exempts from the prohibition a state bar rule, policy, or penalty that results in such a limitation or burden and is essential to enforcing a compelling governmental purpose and narrowly tailored to accomplish that purpose or restricts wilful expressions of bias or prejudice in connection with an adjudicatory proceeding. The bill authorizes a person to assert that a rule, policy, or penalty violates the bill's provisions as a defense in an administrative hearing or as a claim or defense in a judicial proceeding under the Uniform Declaratory Judgments Act but

prohibits a person from making such an assertion as a defense to an allegation of sexual misconduct or to prosecution of an offense. A person may bring an action for injunctive relief for a violation of the bill's provisions.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.