

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

1 renew, or canceling funding;

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

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

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

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

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

12 (A) assisting abused or neglected children;

13 (B) counseling children or parents;

14 (C) promoting foster parenting;

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

18 (E) recruiting foster parents;

19 (F) placing children in foster homes;

20 (G) licensing foster homes;

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

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

25 (J) performing or assisting home studies;

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

1                   (L) providing family preservation services;

2                   (M) providing family support services;

3                   (N) providing temporary family reunification  
4 services;

5                   (O) placing children in adoptive homes; and

6                   (P) serving as a foster parent.

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

14           (4) "Governmental entity" means:

15                   (A) this state or a municipality or other  
16 political subdivision of this state;

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

22                   (C) a single source continuum contractor in this  
23 state.

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

27       (b) This chapter applies to an act of a governmental

1 entity, in the exercise of governmental authority, granting or  
2 refusing to grant a government benefit to a child welfare  
3 services provider.

4 Sec. 45.004. CHILD WELFARE SERVICES PROVIDERS PROTECTED.

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

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

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

19 (3) has declined or will decline to provide,  
20 facilitate, or refer a person for abortions, contraceptives, or  
21 drugs, devices, or services that are potentially abortion-  
22 inducing; or

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

26 Sec. 45.005. SECONDARY SERVICE PROVIDERS. (a) A child  
27 welfare services provider may not be required to provide any

1 services that conflict with the provider's sincerely held  
2 religious beliefs.

3 (b) A governmental entity or any person that operates  
4 under governmental authority to refer or place children for  
5 child welfare services shall:

6 (1) ensure that a secondary service provider is  
7 available in that catchment area to provide services described  
8 by Subsection (a) to a child; or

9 (2) if there is an insufficient number of secondary  
10 service providers willing or available in that catchment area to  
11 provide those services, provide for one or more secondary  
12 service providers in an adjacent catchment area.

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

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

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

23 (2) injunctive relief to prevent the threatened or  
24 continued adverse action.

25 (b) A person may not bring an action for declaratory or  
26 injunctive relief against an individual, other than an action  
27 brought against an individual acting in the individual's

1 official capacity.

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

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

7 Sec. 45.009. EFFECT ON RIGHTS; CONSTRUCTION OF LAW. (a)  
8 This chapter may not be construed to authorize a governmental  
9 entity to burden a person's free exercise of religion.

10 (b) The protections of religious freedom afforded by this  
11 chapter are in addition to the protections provided under  
12 federal or state law and the constitutions of this state and the  
13 United States.

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

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

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

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

27 (g) This chapter may not be construed to allow a child

1 welfare services provider to deprive a minor of the rights,  
2 including the right to medical care, provided by Chapters 32,  
3 263, and 266, Family Code.

4 (h) This chapter may not be construed to prohibit the  
5 department from obtaining necessary child welfare services from  
6 an alternate child welfare services provider.

7 45.010. INTERPRETATION. This chapter shall be liberally  
8 construed to effectuate its remedial and deterrent purposes.

9 SECTION 2. This Act takes effect immediately if it  
10 receives a vote of two-thirds of all the members elected to each  
11 house, as provided by Section 39, Article III, Texas  
12 Constitution. If this Act does not receive the vote necessary  
13 for immediate effect, this Act takes effect September 1, 2017.