

BILL ANALYSIS

H.B. 3940
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The American Bar Association recently adopted an amendment to the Model Rules of Professional Conduct that creates concern that, if the amendment is adopted by the State Bar of Texas, attorneys could lose their license solely because of statements they have made regarding controversial political, religious, or social viewpoints; because of their service on boards of various religious or other charitable institutions; or because of their speaking at public events. H.B. 3940 seeks to address these concerns by prohibiting the State Bar of Texas from adopting or imposing a rule that forces a person to choose between practicing law and freely expressing their religious beliefs or associating with whom they choose.

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

H.B. 3940 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 an applicant's or state bar member's 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 regarding a sincerely held religious belief, 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. 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, 2021.