

SUBJECT: Rights of certain religious organizations, individuals relating to marriage

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 8 ayes — Cook, Farney, Geren, Harless, Huberty, Kuempel, Minjarez,  
Smithee

1 nay — Farrar

4 absent — Giddings, Craddick, Oliveira, Sylvester Turner

SENATE VOTE: On final passage, May 12 — 21–9 (Garcia, Hinojosa, Menéndez,  
Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini)

WITNESSES: *(On House companion bill, HB 3567)*

For — Billy Sutherland, Calvary Baptist Church; Gregory Young, Chosen Generation Radio, Family Christian Center Bandera Texas; Agustin Reyes, Christian Life Commission, Texas Baptists; Dana Hodges, Concerned Women for America of Texas; Kyle Henderson, First Baptist Athens, Texas Baptists; Brent Taylor, First Baptist Church Carrollton; Shannon Talley, First Baptist Church, McAllen; Kris Segrest, First Baptist Church, Wylie; Thad Murphy, Forestburg Baptist Church; John Postel, God and Country Church Fellowship; Steve Riggles, Grace Community Church, Grace International Churches and Ministries; Danny Forshee, Great Hills Baptist Church; Bryan Payne, Harvest Bible Chapel of Austin; Ericka McCutcheon, Joint Heirs Fellowship Church; Justin Butterfield, Liberty Institute; David Turner, Little Cypress Baptist; Tony Pittman, Oakmeadows Community Worship Center; Charles Kimbley, Southern Baptist of Texas, Ethics and Religious Liberty Committee; Gary Ledbetter, Southern Baptists of Texas; Charles Burchett, Texas Advisory Committee to the United Commission on Civil Rights, Sabine Neches Baptist Area, Somebody Cares America, First Baptist Church of Kirbyville; Bob Jones, Texas Black Clergy Network; Jeff Patterson, Texas Catholic Conference of Bishops; David Welch, Texas Pastor Council Action; Charles Flowers, the Gathering of Pastors and Leaders, San Antonio Association of Churches, San Antonio Human Rights Coalition;

Khanh Huynh, Vietnamese Baptist Church; Steven Branson, Village Parkway Baptist Church; and 10 individuals; (*Registered, but did not testify*: Father Francis, Anglican Catholic Church, St. Philip's Parish Austin, Texas; James King, Assembly of Yahweh Churches in Texas; Isaac Duke, Brazos Covenant Ministries; Larry Tarver, Clearfork Baptist Church; Jeffrey Strickland, Colleyville Assembly of God; Lanora Read, Cindy Asmussen, Ann Hettinger, and Cecilia Wood, Concerned Women for America of Texas; Glenna Hodge, Conservative Republicans of Texas; Paula Moore, CWA Texas; Marida Favia del Core Borromeo, Exotic Wildlife Association; Johnny Burk, Father's House of Fannett, Inc.; Donald Wills, First Baptist Church of Fort Worth; Bubba Stahl, First Baptist Church, Kingsland, TX; Angela Smith, Fredericksburg Tea Party; Alton Smith, Global Network of Christian Ministries; Scott Jones, Grace Church of Humble, the Global Network of Christian Ministries; Billy Burton, Grace International Ministries of Texas; Darrell Mathis, Hilltop Family Church; Kie Bowman, Hyde Park Baptist Church; John McCrutcheon, Joint Heirs Fellowship Church; Ed Jennings, Lake Area Pastors Counsel; Matthew Miller, Lone Star Cowboy Church Montgomery; Scot Wall, Magnolia Bible Church, Greater Houston Bible Church Association; Keith Collier, Southern Baptists of Texas; Bruce Ammons, Sugar Creek Baptist Church; Nathan Keller, Sugar Land Family Church; Jack Berg, Sunvalley Baptist Church; Pat Carlson, Texas Eagle Forum; Jeremy Newman, Texas Home School Coalition; Jonathan Saenz, Texas Values Action; Kyle Clayton, the Church at Quail Creek; Kevin Herrin, the Fellowship of Texas City; Allan Parker, the Justice Foundation; Ronnie Bates, the Light Community Fellowship; Glenn Holland, the Net Fellowship Church, Corpus Christi, TX; Jennifer Allmon, the Texas Catholic Conference of Bishops; Marty Reid, Trinity Family Church; Cody Haynes, TXAP; and 28 individuals)

Against — Chuck Smith, Equality Texas; Katherine Miller, Texas Freedom Network; Jay Brim and Joshua Houston, Texas Impact; Chuck Freeman, Texas Unitarian Universalist Justice Ministry; Jarell Wilson, University United Methodist Church; Jim Rigby; Heather Ross; Kyle Walker; (*Registered, but did not testify*: Victor Cornell, American Civil Liberties Union of Texas; Amanda Williams, Lilith Fund; Jeffrey Knoll,

and Jeff Davis, Log Cabin Republicans of Austin; Drew Stanley, Naral Pro Choice Texas; Susan Pintchovski, National Council of Jewish Women - Austin; Ana DeFrates, National Latina Institute for Reproductive Health; Lucy Stein, Progress Texas; Matthew Slaughter, Secular Texas; Peggy Morton, Texas Unitarian Universalist Justice Ministry; Jan Soifer, Travis County Democratic Party; and 35 individuals)

On — Brantley Starr, Office of the Attorney General

**BACKGROUND:** Family Code, ch. 2 contains provisions related to the marriage relationship.

**DIGEST:** SB 2065 would add new language to the Family Code that would prevent religious organizations, employees, and clergy from being required to solemnize any marriage that would cause the organization or individual to violate a sincerely held religious belief. Religious organizations, employees, and clergy also would not be required to provide services, accommodations, facilities, goods, or privileges for a purpose related to the solemnization, formation, or celebration of any marriage if it would cause the organization or individual to violate a sincerely held religious belief.

The protections would cover:

- a religious organization;
- an organization supervised or controlled by or in connection with a religious organization;
- an individual employed by a religious organization while acting in the scope of that employment; or
- a clergy or minister.

A refusal to provide services, accommodations, facilities, goods, or privileges would not be the basis for a civil or criminal cause of action or any other action by the state or a political subdivision to penalize or withhold benefits or privileges, including tax exemptions or governmental contracts, grants, or licenses, from any protected organization or

individual.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

**SUPPORTERS  
SAY:**

SB 2065 would provide legal protections for clergy members and church employees who declined to perform marriages that were against their sincerely held religious beliefs. Ministers must be allowed to follow the dictates of their faith and should not be required to perform weddings if doing so would violate those beliefs. Similarly, churches or their affiliated organizations should not be coerced by threat of litigation into opening their facilities for a marriage if it is in violation of their sincerely held beliefs.

The state's existing statutory protections for religious freedom under Civil Practice and Remedies Code, sec. 110 likely would result in dismissal of a lawsuit filed against a church over denial of marriage services. However, the legal costs of fighting such a lawsuit could bankrupt a smaller congregation.

The legal protections provided by the bill could become important with a U.S. Supreme Court case involving same-sex marriage pending. Regardless of how the U.S. Supreme Court rules, however, certain religious organizations and ministers will continue to believe in the sanctity of traditional marriage between one man and one woman and should not be compelled to violate those beliefs. Moreover, the bill would not prevent a same-sex couple — should such marriages become legal in Texas — from being married by a clergy member who agreed to participate.

The bill's legal protections would extend only to the solemnization, formation, or celebration of a marriage. Concerns that the bill would extend legal protections to businesses that are run by individuals with strongly held religious beliefs are misplaced because those businesses do not perform marriages.

A church would be unlikely to use the law to refuse to allow a wedding involving an interracial couple, as some have suggested. In fact, doing so could risk the religious organization's tax-exempt status under a 1983 U.S. Supreme Court ruling.

Concerns about actions of a religiously affiliated hospital or nursing home are also misplaced, as the bill is not intended to be used in connection with a situation that does not involve a marriage ceremony. Hospitals would be covered by the bill to the extent that they had a chapel where a wedding might be performed.

It is unlikely that the bill would create a cause of action for a minister who disagreed with doctrinal decisions of his denomination. It would not be appropriate for the state to get involved in ecclesiastical disputes.

**OPPONENTS  
SAY:**

SB 2065 is unnecessary because the First Amendment protects the religious freedoms of churches and clergy members. It is commonly accepted practice for certain religions to refuse to marry individuals who previously have been divorced or to require couples to receive religious counseling before marrying. In addition, Civil Practice and Remedies Code, sec. 110.003 prohibits a government agency from substantially burdening a person's free exercise of religion unless the agency demonstrates its action is the least restrictive means of furthering a compelling governmental interest.

The bill contains broad language providing legal protection to "an organization supervised or controlled by or in connection with a religious organization." This language could provide cover for secular or commercial entities to discriminate against individuals based on sexual orientation or gender identity.

An organization might be able to use the bill to deny services to an interracial couple based on sincerely held religious beliefs. The state should not offer protection to religious organizations if doing so would deny individuals equal protection under the Constitution's 14th

Amendment.

It also is unclear whether hospitals or nursing homes that are affiliated with religious organizations could use the bill to refuse to allow a spouse the right to visit or make medical decisions for a loved one.

There is no urgent need for the bill because same-sex couples are not allowed to marry in Texas. Even if same-sex marriages became legal in the Texas, these couples likely would want to be married by clergy members who embraced their unions and would not try to coerce a clergy member who was opposed.

OTHER  
OPPONENTS  
SAY:

SB 2065 could provide a cause of action for clergy members who have a doctrinal conflict with their own denomination concerning marriage. The bill should be amended to include language stating that it would not create a cause of action and that a civil court would be required to defer to the highest ecclesial authority of the religious organization on all ecclesiastical questions.

NOTES:

The House companion bill, HB 3567 by Sanford, was reported favorably by the House Committee on State Affairs on April 27 and placed on the May 12 General State Calendar but was not considered.