

BILL ANALYSIS

Senate Research Center

H.B. 3859
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Health & Human Services
5/16/2017
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties note that many providers of child welfare services in Texas act according to their sincerely held religious beliefs. Concerns have been raised that these providers may experience adverse or retaliatory actions from state agencies or other governmental entities for exercising their religious beliefs while providing those services. H.B. 3859 addresses these concerns by providing certain protections for these child welfare services providers to maintain a diverse network of service providers and families to accommodate children of diverse cultural backgrounds and beliefs to meet the needs of children in the child welfare system.

H.B. 3859 amends current law relating to protection of the rights of conscience for child welfare services providers.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle D, Title 2, Human Resources Code, by adding Chapter 45, as follows:

CHAPTER 45. PROTECTION OF RIGHTS OF CONSCIENCE FOR CHILD WELFARE SERVICES PROVIDERS

Sec. 45.001. LEGISLATIVE INTENT. Sets forth legislative intent.

Sec. 45.002. DEFINITIONS. Defines "adverse action," "catchment area," "child welfare services," "child welfare services provider," and "governmental entity."

Sec. 45.003. APPLICABILITY. (a) Provides that this chapter applies to any ordinance, rule, order, decision, practice, or other exercise of governmental authority.

(b) Provides that this chapter applies to any act of a governmental entity, in the exercise of governmental authority, granting or refusing to grant a government benefit to a child welfare services provider (provider).

Sec. 45.004. CHILD WELFARE SERVICES PROVIDERS PROTECTED. Prohibits a governmental entity or any person that contracts with this state or operates under governmental authority to refer or place children for child welfare services from discriminating or taking any adverse action against a provider on the basis, wholly or partly, that the provider:

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

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

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

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

Sec. 45.005. **SECONDARY SERVICES PROVIDERS AND REFERRALS.** (a) Prohibits a provider from being required to provide any service that conflicts with the provider's sincerely held religious beliefs.

(b) Requires a governmental entity or any person that operates under governmental authority to refer or place children for child welfare services to:

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

(2) if there is an insufficient number of secondary services providers willing or available in that catchment area to provide that service, provide for one or more secondary services providers in a nearby catchment area.

(c) Requires a provider who declines to provide a child welfare service as authorized by this section to:

(1) provide to the person seeking the service written information directing the person to the web page on the Department of Family and Protective Services' (DFPS's) Internet website that includes a list of other licensed providers or other information sources that identify other licensed providers who provide the service being denied;

(2) refer the applicant to another licensed provider who provides the service being denied; or

(3) refer the applicant to DFPS or to a single source continuum contractor to identify and locate a licensed provider who provides the service being denied.

Sec. 45.006. **PRIVATE RIGHT OF ACTION.** Authorizes a provider to assert an actual or threatened violation of this chapter as a claim or defense in a judicial or administrative proceeding and obtain the relief specified in Section 45.007.

Sec. 45.007. **REMEDIES.** (a) Provides that a provider who successfully asserts a claim or defense under this chapter is entitled to recover declaratory relief under Chapter 37 (Declaratory Judgments), Civil Practice and Remedies Code, or injunctive relief to prevent the threatened or continued adverse action.

(b) Prohibits a person from bringing an action for declaratory or injunctive relief against an individual, other than an action brought against an individual acting in the individual's official capacity.

Sec. 45.008. **IMMUNITY WAIVED.** (a) Provides that sovereign and governmental immunity to suit are waived.

(b) Provides that, notwithstanding Subsection (a), this chapter does not waive or abolish sovereign immunity to suit under the Eleventh Amendment to the United States Constitution.

Sec. 45.009. EFFECT ON RIGHTS; CONSTRUCTION OF LAW. (a) Prohibits this chapter from being construed to authorize a governmental entity to burden a person's free exercise of religion.

(b) Provides that the protections of religious freedom afforded by this chapter are in addition to the protections provided under federal or state law in addition to the protections provided under federal or state law and the constitutions of this state and the United States.

(c) Prohibits this chapter from being construed to supersede any law of this state that is equally as protective of religious beliefs as, or more protective of religious beliefs than, this chapter.

(d) Prohibits this chapter from being considered to narrow the meaning or application of any other law protecting religious beliefs.

(e) Prohibits this chapter from being construed to prevent law enforcement officers from exercising duties imposed on the officers under the Family Code and the Penal Code.

(f) Prohibits this chapter from being construed to allow a provider to decline to provide, facilitate, or refer a person for child welfare services on the basis of that person's race, ethnicity, or national origin.

(g) Prohibits this chapter from being construed to allow a provider to deprive a minor of the rights, including the right to medical care, provided by Chapters 32 (Consent to Treatment of Child by Non-Parent or Child), 263 (Review of Placement of Children Under Care of Department of Family and Protective Services), and 266 (Medical Care and Educational Services for Children in Foster Care), Family Code.

(h) Prohibits this chapter from being construed to prohibit DFPS from exercising its duty as the child's managing conservator to make decisions in the child's best interest or obtaining necessary child welfare services from an alternate provider.

Sec. 45.010. INTERPRETATION. Requires that this chapter be liberally construed to effectuate its remedial and deterrent purposes.

SECTION 2. Effective date: upon passage or September 1, 2017.