

BILL ANALYSIS

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S.B. 444
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2016, four counselors across the country were expelled or terminated from counseling programs after referring same-sex clients to a willing counselor, colleague, or alternate program. The counselors referred these clients because of a sincerely held religious belief regarding marriage between one man and one woman.

Additionally, in 2016, the American Bar Association (ABA) adopted an amendment to the Model Ethics of Professional Conduct Rule 8.4(g). Under this overreaching rule, attorneys could lose their license based on statements that were not actually known to be or intended as harassing or discriminatory, simply because someone might construe it that way. Such activities that could entail losing a license include participating in panel discussions or conversations that touch on controversial political, religious, and social viewpoints, serving on boards of various religious or other charitable institutions, and speaking at public events.

While discriminatory behavior by a lawyer is already prohibited in Texas, a pattern is forming where individuals with certain sincerely held beliefs are facing expulsions from their careers and livelihoods. These mandates are going so far as to suppress a person's right to free speech and freedom to express his or her religious belief-in a troubling way.

These troubling situations for counselors and attorneys have sparked fear in persons of faith in other occupations where they could eventually lose their ability to make a living based on their religious beliefs. There are currently 65 professions that require an occupational license in the state of Texas. Due to the high volume of professions requiring a license in the state, there are certainly many individuals holding or attempting to attain such licenses who hold sincerely held religious beliefs.

This bill is a preemptive action to address the growing attack on freedom of speech and expression of religious beliefs. The bill seeks to ensure that no person is excluded from seeking an occupational license based on their faith and that no person loses their professional license based on their faith. If the person comes in front of their occupational licensing board based on their speech or conduct, this bill provides a defense to losing their license as long as their conduct or speech is based on sincerely held religious beliefs. This bill does not protect a person from being fired or sued.

The proposed legislation amends the Occupations Code, Chapter 57, regarding occupational licenses to prohibit any occupational licensing board from adopting a rule that could limit a person's ability to obtain a professional license based on the person's religious belief; could prohibit a professional's exercise of religion, freedom of speech about their faith, or freedom of association based on membership of any religious organization; or could abridge a person's exercise of religion, even if the burden results from a rule of general applicability.

The bill does not apply to emergency physicians or those providing medical services when the treatment is necessary to prevent death of imminent serious bodily injury and peace officers.

Finally, the bill creates administrative and judicial relief for any person who has been burdened in violation of this bill. The bill allows the person claiming harm to assert the alleged violation as a defense in an administrative hearing, as a claim or defense in a judicial proceeding under

Chapter 37, Civil Practice and Remedies Code, or common-law requests for injunctive relief against government officials.

As proposed, S.B. 444 amends current law relating to discrimination by a state agency against an applicant for or holder of an occupational license.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to a state agency that issues a license or otherwise regulates a business, occupation, or profession is modified in SECTION 1 (Section 57.003, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 57, Occupations Code, by adding Sections 57.003 and 57.004, as follows:

Sec. 57.003. CERTAIN RULES OR POLICIES PROHIBITED. (a) Prohibits a state agency that issues a license or otherwise regulates a business, occupation, or profession from adopting any rule, regulation, or policy or imposing a penalty that:

(1) limits an applicant's ability to obtain, maintain, or renew a license based on a sincerely held religious belief of the applicant; or

(2) burdens an applicant's or a license holder's free exercise of religion, regardless of whether the burden is the result of a rule generally applicable to all applicants or license holders, freedom of speech regarding a sincerely held religious belief, or membership in any religious organization.

(b) Provides that Subsection (a) does not apply to the licensing or regulation of peace officers by the Texas Commission on Law Enforcement.

(c) Provides that Subsection (a) does not prohibit a state agency from taking any action to ensure that the standard of care or practice for the applicable business, occupation, or profession is satisfied.

(d) Prohibits this section from being construed to authorize a license holder to refuse to provide a medical service within the scope of the person's license that is necessary to prevent death or imminent serious bodily injury, or limit any right, privilege, or protection granted to any person under the constitution and laws of this state and the United States.

Sec. 57.004. ADMINISTRATIVE OR JUDICIAL RELIEF. (a) Authorizes a person to assert that a state agency rule, regulation, or policy, or a penalty imposed by the agency, violates Section 57.003 as a defense in an administrative hearing or as a claim or defense in a judicial proceeding under Chapter 37 (Declaratory Judgments), Civil Practice and Remedies Code, except that the person may not assert the violation as a defense to an allegation of sexual misconduct, or prosecution of an offense.

(b) Authorizes a person to bring an action for injunctive relief against a violation of Section 57.003.

SECTION 2. Effective date: upon passage or September 1, 2019.