

BILL ANALYSIS

C.S.H.B. 3859
By: Frank
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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. C.S.H.B. 3859 seeks to address 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.

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

C.S.H.B. 3859 amends the Human Resources Code to prohibit a governmental entity, from discriminating or taking adverse action, as defined by the bill, against a child welfare services provider, as defined by the bill. The bill defines governmental entity as the state, a municipality or other political subdivision of the state, an agency of the state or of a municipality or other political subdivision, or a single source continuum contractor in Texas. The bill prohibits a governmental entity or any person that contracts with the state or operates under governmental authority to refer or place children for child welfare services, as defined by the bill, from discriminating or taking adverse action against a child welfare services provider on the basis, wholly or partly, that the provider has acted according to sincerely held religious belief. This includes declining to 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; or providing children under the provider's control, care, guardianship, or direction with a religious education, including placement of children in private or parochial school; or declining to provide, facilitate, or refer a person for abortions, contraceptives, or drugs, devices, or services that are potentially abortion-inducing; or refusing 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 the bill.

C.S.H.B. 3859 protects a child welfare services provider from being required to provide any service that conflicts with the provider's sincerely held religious beliefs. The bill requires a governmental entity or any person that operates under governmental authority to refer or place children for child welfare services to ensure that a secondary child welfare services provider is available in that catchment area to provide a child welfare service that a primary services

provider declines to provide due to sincerely held religious beliefs. The bill requires a governmental entity or any person that operates under governmental authority to provide for one or more secondary services providers in a nearby catchment area, if there is an insufficient number of secondary service providers willing or available in that catchment area to provide those services. The bill defines "catchment area" as a geographic service area for providing child protective services or child welfare services identified as part of the foster care redesign under Section 264.126, Family Code.

C.S.H.B. 3859 entitles a child welfare services provider who successfully asserts a claim or defense under the bill's provisions to obtain declaratory relief under specified provisions of the Civil Practice and Remedies Code or injunctive relief to prevent the threatened or continued adverse action but 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. The bill authorizes a child welfare services provider to assert an actual or threatened violation of the bill's provisions as a claim or defense in a judicial or administrative proceeding and to obtain such relief. The bill waives sovereign and governmental immunity to suit but establishes that the bill's provisions do not waive or abolish sovereign immunity to suit under the Eleventh Amendment to the United States Constitution.

C.S.H.B. 3859 sets out provisions establishing the intended construction, interpretation, and effect of the bill's provisions with regard to other laws and rights. The bill's provisions expressly may not be construed to authorize a governmental entity to burden a person's free exercise of religion. The bill establishes that the protections of religious freedom afforded by its provisions are in addition to the protections provided under federal or state law and the constitutions of this state and the United States. The bill's provisions expressly may not be construed to supersede any law of the state that is equally as protective of religious beliefs as, or more protective of religious beliefs than, its provisions. The bill's provisions expressly may not be considered to narrow the meaning or application of any other law protecting religious beliefs. The bill's provisions expressly may not be construed to prevent law enforcement officers from exercising duties imposed on the officers under the Family Code and the Penal Code. The bill's provisions expressly may not be construed to allow a child welfare services 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. The bill's provisions expressly may not be construed to allow a child welfare services provider to deprive a minor of the rights, including the right to medical care, provided by specified provisions of the Family Code. The bill's provisions apply to any ordinance, rule, order, decision, practice, or other exercise of governmental authority and to an 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.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3859 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subtitle D, Title 2, Human Resources Code, is amended by adding Chapter 45 to read as follows:
CHAPTER 45. PROTECTION OF RIGHTS

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subtitle D, Title 2, Human Resources Code, is amended by adding Chapter 45 to read as follows:
CHAPTER 45. PROTECTION OF

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 renew, or canceling funding;

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

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

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

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

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

(A) assisting abused or neglected children;

(B) counseling children or parents;

(C) promoting foster parenting;

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

(E) recruiting foster parents;

RIGHTS OF CONSCIENCE FOR CHILD WELFARE SERVICES PROVIDERS

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

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

(2) "Catchment area" means a geographic service area for providing child protective services or child welfare services identified as part of the foster care redesign under Section 264.126, Family Code.

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

(A) assisting abused or neglected children;

(B) counseling children or parents;

(C) promoting foster parenting;

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

(E) recruiting foster parents;

(F) placing children in foster homes;
(G) licensing foster homes;
(H) promoting adoption or recruiting adoptive parents;
(I) assisting adoptions or supporting adoptive families;
(J) performing or assisting home studies;
(K) assisting kinship guardianships or kinship caregivers;
(L) providing family preservation services;
(M) providing family support services;
(N) providing temporary family reunification services;
(O) placing children in adoptive homes; and
(P) serving as a foster parent.

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

(4) "Governmental entity" means:

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

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

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

Sec. 45.003. APPLICABILITY.

Sec. 45.004. CHILD WELFARE SERVICES PROVIDERS PROTECTED.

Sec. 45.005. SECONDARY SERVICE PROVIDERS. (a) A child welfare services provider may not be required to provide any services that conflict with the provider's sincerely held religious beliefs.

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

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

(2) if there is an insufficient number of

(F) placing children in foster homes;
(G) licensing foster homes;
(H) promoting adoption or recruiting adoptive parents;
(I) assisting adoptions or supporting adoptive families;
(J) performing or assisting home studies;
(K) assisting kinship guardianships or kinship caregivers;
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(5) "Governmental entity" means:

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(1) ensure that a secondary child welfare services 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 service providers willing or available in that catchment area to provide those services, provide for one or more secondary service providers in an adjacent catchment area.

Sec. 45.006. PRIVATE RIGHT OF ACTION.

Sec. 45.007. REMEDIES.

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

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

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

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

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

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

(f) This chapter may not be construed to allow a child welfare services 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) This chapter may not be construed to allow a child welfare services provider to deprive a minor of the rights, including the right to medical care, provided by Chapters 32, 263, and 266, Family Code.

(h) This chapter may not be construed to prohibit the department from

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.

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(g) This chapter may not be construed to allow a child welfare services provider to deprive a minor of the rights, including the right to medical care, provided by Chapters 32, 263, and 266, Family Code.

(h) This chapter may not be construed to prohibit the department from:

(1) exercising its duty as the child's

obtaining necessary child welfare services from an alternate child welfare services provider.

45.010. INTERPRETATION.

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

managing conservator to make decisions in the child's best interest; or

(2) obtaining necessary child welfare services from an alternate child welfare services provider.

Sec. 45.010. INTERPRETATION.

SECTION 2. Same as introduced version.