

1-1 By: Frank, et al. (Senate Sponsor - Perry) H.B. No. 3859
 1-2 (In the Senate - Received from the House May 11, 2017;
 1-3 May 11, 2017, read first time and referred to Committee on Health &
 1-4 Human Services; May 17, 2017, reported favorably by the following
 1-5 vote: Yeas 6, Nays 3; May 17, 2017, sent to printer.)

1-6 COMMITTEE VOTE

| | Yea | Nay | Absent | PNV |
|------|-----|-----|--------|-----|
| 1-7 | | | | |
| 1-8 | X | | | |
| 1-9 | | X | | |
| 1-10 | X | | | |
| 1-11 | X | | | |
| 1-12 | X | | | |
| 1-13 | | X | | |
| 1-14 | X | | | |
| 1-15 | X | | | |
| 1-16 | | X | | |

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to protection of the rights of conscience for child
 1-20 welfare services providers.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Subtitle D, Title 2, Human Resources Code, is
 1-23 amended by adding Chapter 45 to read as follows:

1-24 CHAPTER 45. PROTECTION OF RIGHTS OF CONSCIENCE FOR
 1-25 CHILD WELFARE SERVICES PROVIDERS

1-26 Sec. 45.001. LEGISLATIVE INTENT. It is the intent of the
 1-27 legislature to maintain a diverse network of service providers that
 1-28 offer a range of foster capacity options and that accommodate
 1-29 children from various cultural backgrounds. To that end, the
 1-30 legislature expects reasonable accommodations to be made by the
 1-31 state to allow people of diverse backgrounds and beliefs to be a
 1-32 part of meeting the needs of children in the child welfare system.
 1-33 Decisions regarding the placement of children shall continue to be
 1-34 made in the best interest of the child, including which person is
 1-35 best able to provide for the child's physical, psychological, and
 1-36 emotional needs and development.

1-37 Sec. 45.002. DEFINITIONS. In this chapter:

1-38 (1) "Adverse action" means any action that directly or
 1-39 indirectly adversely affects the person against whom the adverse
 1-40 action is taken, places the person in a worse position than the
 1-41 person was in before the adverse action was taken, or is likely to
 1-42 deter a reasonable person from acting or refusing to act. An adverse
 1-43 action includes:

1-44 (A) denying an application for, refusing to
 1-45 renew, or canceling funding;

1-46 (B) declining to enter into, refusing to renew,
 1-47 or canceling a contract;

1-48 (C) declining to issue, refusing to renew, or
 1-49 canceling a license;

1-50 (D) terminating, suspending, demoting, or
 1-51 reassigning a person; and

1-52 (E) limiting the ability of a person to engage in
 1-53 child welfare services.

1-54 (2) "Catchment area" means a geographic service area
 1-55 for providing child protective services or child welfare services.

1-56 (3) "Child welfare services" means social services
 1-57 provided to or on behalf of children, including:

1-58 (A) assisting abused or neglected children;

1-59 (B) counseling children or parents;

1-60 (C) promoting foster parenting;

1-61 (D) providing foster homes, general residential

2-1 operations, residential care, adoptive homes, group homes, or
 2-2 temporary group shelters for children;
 2-3 (E) recruiting foster parents;
 2-4 (F) placing children in foster homes;
 2-5 (G) licensing foster homes;
 2-6 (H) promoting adoption or recruiting adoptive
 2-7 parents;
 2-8 (I) assisting adoptions or supporting adoptive
 2-9 families;
 2-10 (J) performing or assisting home studies;
 2-11 (K) assisting kinship guardianships or kinship
 2-12 caregivers;
 2-13 (L) providing family preservation services;
 2-14 (M) providing family support services;
 2-15 (N) providing temporary family reunification
 2-16 services;
 2-17 (O) placing children in adoptive homes; and
 2-18 (P) serving as a foster parent.
 2-19 (4) "Child welfare services provider" means a person,
 2-20 other than a governmental entity, that provides, seeks to provide,
 2-21 or applies for or receives a contract, subcontract, grant,
 2-22 subgrant, or cooperative agreement to provide child welfare
 2-23 services. The person is not required to be engaged exclusively in
 2-24 child welfare services to be a child welfare services provider.
 2-25 (5) "Governmental entity" means:
 2-26 (A) this state or a municipality or other
 2-27 political subdivision of this state;
 2-28 (B) any agency of this state or of a municipality
 2-29 or other political subdivision of this state, including a
 2-30 department, bureau, board, commission, office, agency, council,
 2-31 and public institution of higher education; or
 2-32 (C) a single source continuum contractor in this
 2-33 state providing services identified under Section 264.126, Family
 2-34 Code.
 2-35 Sec. 45.003. APPLICABILITY. (a) This chapter applies to
 2-36 any ordinance, rule, order, decision, practice, or other exercise
 2-37 of governmental authority.
 2-38 (b) This chapter applies to an act of a governmental entity,
 2-39 in the exercise of governmental authority, granting or refusing to
 2-40 grant a government benefit to a child welfare services provider.
 2-41 Sec. 45.004. CHILD WELFARE SERVICES PROVIDERS PROTECTED. A
 2-42 governmental entity or any person that contracts with this state or
 2-43 operates under governmental authority to refer or place children
 2-44 for child welfare services may not discriminate or take any adverse
 2-45 action against a child welfare services provider on the basis,
 2-46 wholly or partly, that the provider:
 2-47 (1) has declined or will decline to provide,
 2-48 facilitate, or refer a person for child welfare services that
 2-49 conflict with, or under circumstances that conflict with, the
 2-50 provider's sincerely held religious beliefs;
 2-51 (2) provides or intends to provide children under the
 2-52 control, care, guardianship, or direction of the provider with a
 2-53 religious education, including through placing the children in a
 2-54 private or parochial school or otherwise providing a religious
 2-55 education in accordance with the laws of this state;
 2-56 (3) has declined or will decline to provide,
 2-57 facilitate, or refer a person for abortions, contraceptives, or
 2-58 drugs, devices, or services that are potentially
 2-59 abortion-inducing; or
 2-60 (4) refuses to enter into a contract that is
 2-61 inconsistent with or would in any way interfere with or force a
 2-62 provider to surrender the rights created by this chapter.
 2-63 Sec. 45.005. SECONDARY SERVICES PROVIDERS AND REFERRALS.
 2-64 (a) A child welfare services provider may not be required to
 2-65 provide any service that conflicts with the provider's sincerely
 2-66 held religious beliefs.
 2-67 (b) A governmental entity or any person that operates under
 2-68 governmental authority to refer or place children for child welfare
 2-69 services shall:

3-1 (1) ensure that a secondary child welfare services
3-2 provider is available in that catchment area to provide a service
3-3 described by Subsection (a) to a child; or
3-4 (2) if there is an insufficient number of secondary
3-5 services providers willing or available in that catchment area to
3-6 provide that service, provide for one or more secondary services
3-7 providers in a nearby catchment area.
3-8 (c) A child welfare services provider who declines to
3-9 provide a child welfare service as authorized by this section
3-10 shall:
3-11 (1) provide to the person seeking the service written
3-12 information directing the person to:
3-13 (A) the web page on the department's Internet
3-14 website that includes a list of other licensed child welfare
3-15 services providers; or
3-16 (B) other information sources that identify
3-17 other licensed child welfare services providers who provide the
3-18 service being denied;
3-19 (2) refer the applicant to another licensed child
3-20 welfare services provider who provides the service being denied; or
3-21 (3) refer the applicant to the department or to a
3-22 single source continuum contractor to identify and locate a
3-23 licensed child welfare services provider who provides the service
3-24 being denied.
3-25 Sec. 45.006. PRIVATE RIGHT OF ACTION. A child welfare
3-26 services provider may assert an actual or threatened violation of
3-27 this chapter as a claim or defense in a judicial or administrative
3-28 proceeding and obtain the relief specified in Section 45.007.
3-29 Sec. 45.007. REMEDIES. (a) A child welfare services
3-30 provider who successfully asserts a claim or defense under this
3-31 chapter is entitled to recover:
3-32 (1) declaratory relief under Chapter 37, Civil
3-33 Practice and Remedies Code; or
3-34 (2) injunctive relief to prevent the threatened or
3-35 continued adverse action.
3-36 (b) A person may not bring an action for declaratory or
3-37 injunctive relief against an individual, other than an action
3-38 brought against an individual acting in the individual's official
3-39 capacity.
3-40 Sec. 45.008. IMMUNITY WAIVED. (a) Sovereign and
3-41 governmental immunity to suit are waived.
3-42 (b) Notwithstanding Subsection (a), this chapter does not
3-43 wave or abolish sovereign immunity to suit under the Eleventh
3-44 Amendment to the United States Constitution.
3-45 Sec. 45.009. EFFECT ON RIGHTS; CONSTRUCTION OF LAW. (a)
3-46 This chapter may not be construed to authorize a governmental
3-47 entity to burden a person's free exercise of religion.
3-48 (b) The protections of religious freedom afforded by this
3-49 chapter are in addition to the protections provided under federal
3-50 or state law and the constitutions of this state and the United
3-51 States.
3-52 (c) This chapter may not be construed to supersede any law
3-53 of this state that is equally as protective of religious beliefs as,
3-54 or more protective of religious beliefs than, this chapter.
3-55 (d) This chapter may not be considered to narrow the meaning
3-56 or application of any other law protecting religious beliefs.
3-57 (e) This chapter may not be construed to prevent law
3-58 enforcement officers from exercising duties imposed on the officers
3-59 under the Family Code and the Penal Code.
3-60 (f) This chapter may not be construed to allow a child
3-61 welfare services provider to decline to provide, facilitate, or
3-62 refer a person for child welfare services on the basis of that
3-63 person's race, ethnicity, or national origin.
3-64 (g) This chapter may not be construed to allow a child
3-65 welfare services provider to deprive a minor of the rights,
3-66 including the right to medical care, provided by Chapters 32, 263,
3-67 and 266, Family Code.
3-68 (h) This chapter may not be construed to prohibit the
3-69 department from:

4-1 (1) exercising its duty as the child's managing
4-2 conservator to make decisions in the child's best interest; or
4-3 (2) obtaining necessary child welfare services from an
4-4 alternate child welfare services provider.

4-5 Sec. 45.010. INTERPRETATION. This chapter shall be
4-6 liberally construed to effectuate its remedial and deterrent
4-7 purposes.

4-8 SECTION 2. This Act takes effect immediately if it receives
4-9 a vote of two-thirds of all the members elected to each house, as
4-10 provided by Section 39, Article III, Texas Constitution. If this
4-11 Act does not receive the vote necessary for immediate effect, this
4-12 Act takes effect September 1, 2017.

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