

Chapter 1152

H.B. No. 3859

AN ACT

relating to protection of the rights of conscience for child welfare services providers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

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

Sec. 45.001. LEGISLATIVE INTENT. 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 accommodate children from various cultural backgrounds. To that end, the legislature expects 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. Decisions regarding the placement of children shall continue to be made in the best interest of the child, including which person is best able to provide for the child's physical, psychological, and emotional needs and development.

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

1 deter a reasonable person from acting or refusing to act. An adverse
2 action includes:

3 (A) denying an application for, refusing to
4 renew, or canceling funding;

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

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

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

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

13 (2) "Catchment area" means a geographic service area
14 for providing child protective services or child welfare services.

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

17 (A) assisting abused or neglected children;

18 (B) counseling children or parents;

19 (C) promoting foster parenting;

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

23 (E) recruiting foster parents;

24 (F) placing children in foster homes;

25 (G) licensing foster homes;

26 (H) promoting adoption or recruiting adoptive
27 parents;

- 1 (I) assisting adoptions or supporting adoptive
- 2 families;
- 3 (J) performing or assisting home studies;
- 4 (K) assisting kinship guardianships or kinship
- 5 caregivers;
- 6 (L) providing family preservation services;
- 7 (M) providing family support services;
- 8 (N) providing temporary family reunification
- 9 services;
- 10 (O) placing children in adoptive homes; and
- 11 (P) serving as a foster parent.

12 (4) "Child welfare services provider" means a person,

13 other than a governmental entity, that provides, seeks to provide,

14 or applies for or receives a contract, subcontract, grant,

15 subgrant, or cooperative agreement to provide child welfare

16 services. The person is not required to be engaged exclusively in

17 child welfare services to be a child welfare services provider.

18 (5) "Governmental entity" means:

19 (A) this state or a municipality or other

20 political subdivision of this state;

21 (B) any agency of this state or of a municipality

22 or other political subdivision of this state, including a

23 department, bureau, board, commission, office, agency, council,

24 and public institution of higher education; or

25 (C) a single source continuum contractor in this

26 state providing services identified under Section 264.126, Family

27 Code.

1 Sec. 45.003. APPLICABILITY. (a) This chapter applies to
2 any ordinance, rule, order, decision, practice, or other exercise
3 of governmental authority.

4 (b) This chapter applies to an act of a governmental entity,
5 in the exercise of governmental authority, granting or refusing to
6 grant a government benefit to a child welfare services provider.

7 Sec. 45.004. CHILD WELFARE SERVICES PROVIDERS PROTECTED. A
8 governmental entity or any person that contracts with this state or
9 operates under governmental authority to refer or place children
10 for child welfare services may not discriminate or take any adverse
11 action against a child welfare services provider on the basis,
12 wholly or partly, that the provider:

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

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

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

26 (4) refuses to enter into a contract that is
27 inconsistent with or would in any way interfere with or force a

1 provider to surrender the rights created by this chapter.

2 Sec. 45.005. SECONDARY SERVICES PROVIDERS AND REFERRALS.

3 (a) A child welfare services provider may not be required to
4 provide any service that conflicts with the provider's sincerely
5 held religious beliefs.

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

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

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

16 (c) A child welfare services provider who declines to
17 provide a child welfare service as authorized by this section
18 shall:

19 (1) provide to the person seeking the service written
20 information directing the person to:

21 (A) the web page on the department's Internet
22 website that includes a list of other licensed child welfare
23 services providers; or

24 (B) other information sources that identify
25 other licensed child welfare services providers who provide the
26 service being denied;

27 (2) refer the applicant to another licensed child

1 welfare services provider who provides the service being denied; or
2 (3) refer the applicant to the department or to a
3 single source continuum contractor to identify and locate a
4 licensed child welfare services provider who provides the service
5 being denied.

6 Sec. 45.006. PRIVATE RIGHT OF ACTION. A child welfare
7 services provider may assert an actual or threatened violation of
8 this chapter as a claim or defense in a judicial or administrative
9 proceeding and obtain the relief specified in Section 45.007.

10 Sec. 45.007. REMEDIES. (a) A child welfare services
11 provider who successfully asserts a claim or defense under this
12 chapter is entitled to recover:

13 (1) declaratory relief under Chapter 37, Civil
14 Practice and Remedies Code; or

15 (2) injunctive relief to prevent the threatened or
16 continued adverse action.

17 (b) A person may not bring an action for declaratory or
18 injunctive relief against an individual, other than an action
19 brought against an individual acting in the individual's official
20 capacity.

21 Sec. 45.008. IMMUNITY WAIVED. (a) Sovereign and
22 governmental immunity to suit are waived.

23 (b) Notwithstanding Subsection (a), this chapter does not
24 wave or abolish sovereign immunity to suit under the Eleventh
25 Amendment to the United States Constitution.

26 Sec. 45.009. EFFECT ON RIGHTS; CONSTRUCTION OF LAW. (a)
27 This chapter may not be construed to authorize a governmental

1 entity to burden a person's free exercise of religion.

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

6 (c) This chapter may not be construed to supersede any law
7 of this state that is equally as protective of religious beliefs as,
8 or more protective of religious beliefs than, this chapter.

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

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

14 (f) This chapter may not be construed to allow a child
15 welfare services provider to decline to provide, facilitate, or
16 refer a person for child welfare services on the basis of that
17 person's race, ethnicity, or national origin.

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

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

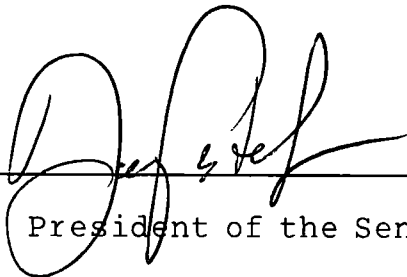
24 (1) exercising its duty as the child's managing
25 conservator to make decisions in the child's best interest; or

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

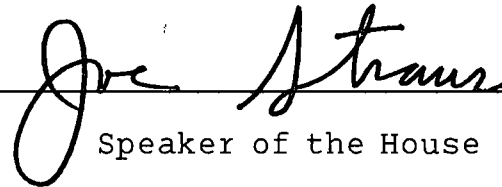
1 Sec. 45.010. INTERPRETATION. This chapter shall be
2 liberally construed to effectuate its remedial and deterrent
3 purposes.

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

H.B. No. 3859



President of the Senate



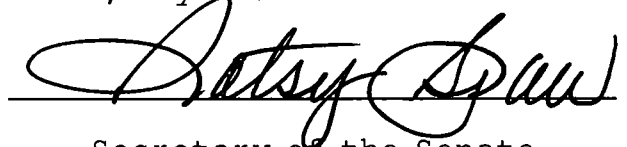
Speaker of the House

I certify that H.B. No. 3859 was passed by the House on May 10, 2017, by the following vote: Yeas 93, Nays 49, 3 present, not voting.



Chief Clerk of the House

I certify that H.B. No. 3859 was passed by the Senate on May 22, 2017, by the following vote: Yeas 21, Nays 10.



Secretary of the Senate

APPROVED: 6-14-2017

Date



Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
3 PM O'CLOCK

JUN 15 2017



Secretary of State

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 16, 2017

TO: Honorable Charles Schwertner, Chair, Senate Committee on Health & Human Services

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB3859 by Frank (Relating to protection of the rights of conscience for child welfare services providers.), **As Engrossed**

The fiscal implications of the bill cannot be determined at this time as it is unknown how many child welfare service providers will decline to provide services to individuals under the circumstances described in the bill and then use the cause action in response to adverse action by the Department of Family and Protective Services (DFPS).

The bill would add Chapter 45 to Title 2 of the Human Resources Code which would create a cause of action for child welfare services provider against a state agency if that state agency were to discriminate or take any adverse action against the provider on the basis that the provider declined to provide services to an individual on the basis of the provider's sincerely held religious beliefs, provides or intends to provide religious education, declined to provide health care or referrals that is related to certain contraceptive services, or refused to enter into a contract inconsistent with their rights under that chapter. The bill would also create a private cause of action for any provider suffering a violation or threatened violation, waiving sovereign immunity from suit with regard to the extent of liability created by the proposed chapter.

A significant portion of child care services providers are faith-based organizations, making the pool of potential litigants large. In cases where DFPS purchases services from the child welfare services provider, such protected action described in the bill could give rise to contractual issues. In addition, if a Single Source Continuum Contractors (SSCC) in a Foster Care Redesign catchment exercises the newly created accommodations for sincerely held religious beliefs, the agency would be required to create and maintain a duplicative legacy system in the region to provide services for any child not receiving services through the SSCC. Due to these reasons, DFPS cannot determine the fiscal implications of this bill.

The Office of Court Administration anticipates no significant fiscal impact resulting from this bill.

The bill would take effect immediately if it receives a vote of two-thirds of all members elected to each house. Otherwise, the bill would take effect on September 1, 2017.

Local Government Impact

According to the Texas Municipal League, the fiscal impact to municipalities cannot be determined due to the indeterminate potential liability municipalities may incur.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 530 Family and Protective Services, Department of

LBB Staff: UP, KCA, EP, JLi, AG, JGA, MH, CG, KVe

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

April 23, 2017

TO: Honorable Byron Cook, Chair, House Committee on State Affairs

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB3859 by Frank (Relating to protection of the rights of conscience for child welfare services providers.), **Committee Report 1st House, Substituted**

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LBB Staff: UP, JLi, AG, EP, JGA, MH, CG, KVe

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

March 28, 2017

TO: Honorable Byron Cook, Chair, House Committee on State Affairs

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB3859 by Frank (Relating to the conscience rights of certain religious organizations and individuals.), **As Introduced**

The fiscal implications of the bill cannot be determined at this time as it is unknown how many child welfare service providers will decline to provide services to individuals under the circumstances described in the bill and then use the cause action in response to adverse action by the Department of Family and Protective Services (DFPS).

The bill would add Chapter 45 to Title 2 of the Family Code which would create a cause of action for child welfare services provider against a state agency if that state agency were to discriminate or take any adverse action against the provider on the basis that the provider declined to provide services to an individual on the basis of the provider's sincerely held religious beliefs, provides or intends to provide religious education, declined to provide health care or referrals that is related to certain contraceptive services, or refused to enter into a contract inconsistent with their rights under that chapter. The bill would also create a private cause of action for any provider suffering a violation or threatened violation, waiving sovereign immunity from suit with regard to the extent of liability created by the proposed chapter.

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