

BILL ANALYSIS

C.S.H.B. 3864
By: Sanford
Juvenile Justice & Family Issues
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that the rights of conscience of child welfare services providers should be protected from discrimination or adverse action by a governmental entity if the provider declines to engage in activity that conflicts with the provider's sincerely held religious beliefs. C.S.H.B. 3864 intends to outline the proper rights of conscience for child welfare services providers and the manner in which those rights will be protected.

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. 3864 amends the Human Resources Code to prohibit 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 from discriminating or taking any adverse action against a child welfare services provider on the basis, wholly or partly, that the provider 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; that the provider provides or intends to provide children under the control, care, guardianship, or direction of the child welfare services 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 state law; or that the provider 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. The bill applies 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. The bill defines, among other terms, "governmental entity" as the state or a municipality or other political subdivision of the state or any agency of the state or of a municipality or other political subdivision of the state, including a department, bureau, board, commission, office, agency, council, court, and public institution of higher education.

C.S.H.B. 3864 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 entitles a provider who successfully asserts such a claim or defense to recover declaratory relief, injunctive relief to prevent the threatened or continued adverse action or effects of the action on the provider, compensatory damages for pecuniary and nonpecuniary losses, punitive

damages, and reasonable attorney's fees, court costs, and other reasonable expenses. The bill requires a child welfare services provider to bring an action to assert a claim for damages under the bill's provisions not later than the second anniversary of the date the provider actually knew of the violation.

C.S.H.B. 3864 waives and abolishes sovereign, governmental, and qualified immunity to suit and from liability to the extent liability is created under the bill's provisions and authorizes a claimant to sue a governmental entity or official for damages as specified by the bill. The bill establishes that its provisions do not waive or abolish sovereign immunity to suit and from liability under the Eleventh Amendment to the United States Constitution. The bill prohibits its provisions from being construed to authorize a governmental entity to burden a person's free exercise of religion, to supersede any state law that is equally as protective of religious beliefs as, or more protective of religious beliefs than, the bill's provisions, to narrow the meaning or application of any other law protecting religious beliefs, in a manner that allows a person to decline intake of a child into a welfare services program funded by the state, or to prevent law enforcement officers from exercising duties imposed on the officers under the Family Code and Penal Code. The bill establishes that the protections of religious freedom afforded by the bill's provisions are in addition to the protections provided under federal or state law and the federal and state constitutions. The bill requires its provisions to be liberally construed to effectuate its remedial and deterrent purposes.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3864 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 OF CONSCIENCE FOR CHILD WELFARE SERVICES PROVIDERS

Sec. 45.001. DEFINITIONS.

Sec. 45.002. APPLICABILITY.

Sec. 45.003. CHILD WELFARE SERVICES PROVIDERS PROTECTED.

Sec. 45.004. PRIVATE RIGHT OF ACTION.

Sec. 45.005. REMEDIES.

Sec. 45.006. TWO-YEAR LIMITATIONS PERIOD.

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 RIGHTS OF CONSCIENCE FOR CHILD WELFARE SERVICES PROVIDERS

Sec. 45.001. DEFINITIONS.

Sec. 45.002. APPLICABILITY.

Sec. 45.003. CHILD WELFARE SERVICES PROVIDERS PROTECTED.

Sec. 45.004. PRIVATE RIGHT OF ACTION.

Sec. 45.005. REMEDIES.

Sec. 45.006. TWO-YEAR LIMITATIONS PERIOD.

Sec. 45.007. IMMUNITY WAIVED.

Sec. 45.008. EFFECT ON RIGHTS.

(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.

Sec. 45.009. 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, 2015.

Sec. 45.007. IMMUNITY WAIVED.

Sec. 45.008. 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 in a manner that allows a person to decline intake of a child into a welfare services program funded by this state.

(f) 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.

Sec. 45.009. INTERPRETATION.

SECTION 2. Same as introduced version.