

SUBJECT: Protecting religious rights for child welfare services providers.

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 8 ayes — Cook, Craddick, Geren, Guillen, Kuempel, Meyer, Paddie,
Smithee

3 nays — Farrar, Oliveira, E. Rodriguez

1 absent — K. King

1 present not voting — Giddings

WITNESSES: For — Randy Daniels, Buckner Children & Family Services; Sara Ramirez, Catholic Diocese of Austin; Cecilia Wood, Center for the Preservation of American Ideals; Lynn Harms, Children's Home of Lubbock; Gus Reyes, Christian Life Commission of Texas Baptists; Chelsey Youman, First Liberty Institute; Bethany Reese, Texas Baptist Home; Jennifer Allmon, The Texas Catholic Conference of Bishops; Sherri Statler; (*Registered, but did not testify*: Frank Rynd, Archdiocese of Galveston-Houston; David Hardage, Baptist General Convention of Texas; Tim Ottinger, Catholic Health Association of Texas; Kyleen Wright, Texans for Life; Jenny Andrews, Texas Alliance for Life; Joe Pojman, Texas Alliance for Life; Elisabeth Wheatley, Texas Alliance for Life; Jennifer Walker, Texas Baptist Home for Children; Emma Little, Texas Home School Coalition; Anna Little, Texas Home School Coalition; John Seago, Texas Right to Life; Nicole Hudgens, Texas Values Action; Jonathan Saenz, Texas Values Action; Michael Geary, The Texas Conservative Coalition; and six individuals)

Against — Rebecca Robertson, ACLU of Texas; Laura Ratzel, Adoption Advocates; Erin Smith, Adoption Advocates; Ash Hall, Equality Texas; Chuck Smith, Equality Texas; Denise Brogan-Kator, Family Equality Council; Will Francis, National Association of Social Workers-Texas Chapter; Katherine Barillas, One Voice Texas; Kate Murphy, Texans Care for Children; Katherine Miller, Texas Freedom Network; Joshua Houston,

Texas Impact; Lauryn Farris, Transgender Education Network of Texas; Chuck Freeman, Texas Unitarian Universalist Justice Ministry; and 10 individuals; (*Registered, but did not testify*: Catherine Lisa Humphrey, Anti-Defamation League; Tom Noonan, Austin CVB; Joey Gidseg, Austin Justice Coalition; Keller Davis, Createscape Coworking; Danny Fetonte, DSA; Joe Collin Acock, Equality Texas; Bradley O'Furey, Equality Texas; Robert Salcido, Equality Texas; Leah Gonzalez, Healthy Futures of Texas; Elizabeth Baskin, Human Rights Campaign; Bailey Morrison, Human Rights Campaign; Carla Blakey, Julie Fleming, and Courtney Szigetvari, Left Up To Us; Zoe Fay-Stindt, Literary Women in Action; Blake Rocap, NARAL Pro-Choice Texas; Anna Nguyen, PFLAG Austin; Lucy Stein, Progress Texas; Shannon Noble, Texas Counseling Association; John Elford, Texas Freedom Network; Susan Bradley, Vicki Clark Bradley, Yolanda Griego, and Reuben Leslie, Texas State Employees Union; Mary Harris, TFN; John Burleson, Travis County Resistance; Larry Bethune, University Baptist Church; and 74 individuals)

On — Brantley Starr, Office of Attorney General; (*Registered, but did not testify*: Audrey Carmical, Department of Family and Protective Services)

DIGEST:

CSHB 3859 would add a new chapter to the Human Resources Code entitled Protection of Rights of Conscience for Child Welfare Services Providers. The stated legislative intent of the chapter would be to maintain a diverse network of service providers that offered a range of foster capacity options and that accommodated children from various cultural backgrounds. The intent would state that decisions regarding the placement of children would continue to be made in the best interest of the child and which person would be able to provide for the child's physical, psychological, and emotional needs and development.

The bill would define child welfare services to include a variety of services, including recruiting foster parents and placing children in foster or adoptive homes; counseling children or parents; and providing residential care.

It would 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 would 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;
- provides or intends to provide children under the control, care, guardianship, or direction of the provider with a religious education, including placing the children in a private or parochial school;
- has declined or would decline to provide, facilitate, or refer a person for abortions, contraceptives, or drugs, devices, or services that were potentially abortion-inducing; or
- refused to enter into a contract that was inconsistent with or would in any way interfere with or force a provider to surrender the rights created by the new chapter.

Adverse action would mean any action that directly or indirectly adversely affected the person against whom the adverse action was taken, placed the person in a worse position than the person was in before the adverse action was taken, or was likely to deter a reasonable person from acting or refusing to act.

As adverse action would include:

- denying an application for, refusing to renew, or canceling funding;
- declining to enter into, refusing to renew, or canceling a contract;
- declining to issue, refusing to renew, or canceling a license;
- terminating, suspending, demoting, or reassigning a person, and
- limiting the ability of a person to engage in child welfare services.

A child welfare services provider, as defined in the bill, could not be

required to provide any service that conflicted with the provider's sincerely held religious beliefs.

Secondary providers. The bill would require a governmental entity or any person that operated under governmental authority to refer or place children for child welfare services to ensure that a secondary provider was available in that catchment, or geographic, area or a nearby catchment area.

Legal claims. A child welfare services provider would be allowed to assert an actual or threatened violation of the rights contained in the chapter as a claim or defense in a judicial or administrative proceeding and would be entitled to recover declaratory or injunctive relief.

The bill would waive sovereign and governmental immunity to suit but would establish that its provisions do not waive or abolish sovereign immunity to suit under the 11th Amendment to the U.S. Constitution.

The bill would set out provisions establishing the intended consequences, interpretations, and effect of the bill's provisions with regard to other laws and rights.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

NOTES:

The Legislative Budget Board said it could not determine the fiscal implications of the bill because it is unknown how many child welfare providers would decline to provide services to individuals and then use the cause of action in response to adverse action by DFPS.