

SUBJECT: Preventing adverse government actions based on religious affiliations

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 7 ayes — Phelan, Harless, Holland, P. King, Parker, Smithee, Springer
4 nays — Deshotel, Guerra, Raymond, E. Rodriguez
1 absent — Hernandez
1 present not voting — Hunter

SENATE VOTE: On final passage, May 16 — 19-12 (Alvarado, Hinojosa, Johnson, Menéndez, Miles, Powell, Rodríguez, Seliger, Watson, West, Whitmire, Zaffirini)

WITNESSES: *On House companion bill, HB 3172:*
For — Ken DeHart, Celebration Church; James Whitt and Tamika Sanders, Coming Out, Inc.; Autumn Stroup, Family Policy Alliance; Angela Smith, Fredericksburg Tea Party; Nicole Hudgens, Mary Castle, and David Walls, Texas Values; Jonathan Saenz, Texas Values Action; Jason Vaughn, Texas Young Republicans; and 21 individuals;
(*Registered, but did not testify:* Adam Cahn, Cahnman's Musings; Rhonda Sepulveda, Catholic Charities of the Archdiocese of Galveston Houston; Beverly Roberts, Concerned Women for America; Charles Flowers, Faith Outreach Center, International; Steve Washburn, First Baptist Church Pflugerville; Matt Long, Fredericksburg Tea Party; Danny Forshee, Great Hills Baptist Church; Reynaldo Gonzalez, Iglesia Cristiana Aposento Alto; Marta Tovar, Jordan River Church; Sandra Gonzalez and Jorge Tovar, Laredo Prayer Task Force; Crystal Main, NE Tarrant Tea Party; Gary Forbes, NETTP; Karen McDaniel, Precinct Chair of #514; James Dickey, Terry Holcomb, and Alma Jackson, Republican Party of Texas; Patrick Von Dohlen, San Antonio Family Association; Cindy Asmussen, Southern Baptists of Texas Convention; Mark Dorazio, State Republican Executive Committee; Philip Sevilla, Texas Leadership Institute for Public Advocacy; David Welch, Texas Pastor Council; Sheila Hemphill,

Texas Right To Know; Cynthia Brehm, The Republican Party of Bexar County; Jennifer Allmon, The Texas Catholic Conference of Bishops; and 120 individuals)

Against — Emilie Kopp, Bonobo Interactive; Rachel Hill and Samantha Smoot, Equality Texas; Billy Simmons, Gay and Lesbian Alliance of North Texas; Alicia Weigel, InterACT Advocates; Jessica Shortall, Texas Competes; Joshua Houston, Texas Impact; Mike Hendrix, Texas State LGBTQ Chamber; Finnigan Jones, Trans-Cendence International; and 12 individuals; (*Registered, but did not testify*: Brad Pritchett and Drucilla Tigner, ACLU of Texas; Lisa Humphrey and Lily Smullen, AntiDefamation League; Angela Hale, American Society of Association Executives, Texas Welcomes All, Visit Austin, Visit Fort Worth; Jennifer Rodriguez, Apple, Inc.; Tom Noonan, Austin Convention and Visitors Bureau; Brie Franco, City of Austin; Clifford Sparks, City of Dallas; Andy Segovia, City of San Antonio; Priscilla Camacho, Dallas Regional Chamber, Metro 8 Chambers of Commerce; Andrea Reyes and Claudia Yoli Ferla, Deeds Not Words; Daniel Womack, Dow; Holt Lackey and Marcella Sutton, Equality Texas; Gordy Carmona, Gay and Lesbian Alliance of North Texas; Dana Harris, Greater Austin Chamber of Commerce; Sarah Warbelow, Human Rights Campaign; Sandy Dochen, IBM; Susanne Kerns, Informed Parents of Austin; Jay Barksdale, IrvingLas Colinas Chamber of Commerce; Katy Perkins, Kingsman Consulting; Brenda Koegler, League of Women Voters of Texas; Erika Galindo, Lilith Fund for Reproductive Equity; Lisa Hermes, McKinney Chamber of Commerce; Rachel Leader, NAMI Austin; Aimee Arrambide, Emily Martin, and Blake Rocap, NARAL Pro-Choice Texas; Greg Hansch and Alissa Sughrue, National Alliance on Mental Illness (NAMI) Texas; Will Francis, National Association of Social Workers-Texas Chapter; Holli Davies, North Texas Commission; Erica Anthony-Benavides, Our Revolution Texas; Cece Cox, Resource Center-Dallas; Amy Waggoner, Salesforce; Jackie Padgett, Silicon Labs; Josh Cogan, Stonewall Democrats of Dallas; David Edmonson, TechNet; Dwight Harris, Texas American Federation of Teachers; Adrian Warren, Texas Association for Lesbian, Gay, Bisexual, and Transgender Issues in Counseling; Derek Robertson, Texas Association of Counselor Education

and Supervision; Jan Friese, Texas Counseling Association; Joey Gidseg, Texas Democrats with Disabilities; Carisa Lopez and Katherine Miller, Texas Freedom Network; Elizabeth Ballew, Texas Handmaids; Trace Finley, United Corpus Christi Chamber of Commerce; Phillip Jones, VisitDallas; and 133 individuals)

DIGEST: SB 1978 would prohibit a governmental entity from taking any adverse action against any person based wholly or partly on the person's membership in, affiliation with, or contribution, donation, or other support provided to a religious organization.

Adverse action. An adverse action would be any action taken by a governmental entity to:

- withhold, reduce, exclude, terminate, or otherwise deny any grant, contract, subcontract, cooperative agreement, loan, scholarship, license, registration, accreditation, employment, or other similar status from or to a person;
- withhold, reduce, exclude, terminate, or otherwise deny any benefit provided under a benefit program from or to a person;
- alter in any way the tax treatment of, cause any tax, penalty, or payment assessment against, or deny, delay, or revoke a tax exemption of a person;
- disallow a tax deduction for any charitable contribution made to or by a person;
- deny admission to, equal treatment in, or eligibility for a degree from an educational program or institution to a person; or
- withhold, reduce, exclude, terminate, or otherwise deny access to a property, educational institution, speech forum, or charitable fundraising campaign from or to a person.

Governmental entities. Governmental entities would include:

- the state and its boards, commissions, councils, departments, or other agencies in the executive branch, including a public institution of higher education;

- the Legislature or a legislative agency;
- a state judicial agency or the State Bar of Texas;
- a political subdivision, including a county, municipality, or special district or authority; and
- an officer, employee, or agent of any of these governmental entities.

The bill would not apply to prohibitions on government contracts with companies that boycott Israel and restrictions on certain state investments in those companies.

Definitions. The bill would use the definition of "person" in Government Code sec. 311.005, which includes corporations, organizations, and associations, except the term would not include:

- an employee of a governmental entity acting within the employee's scope of employment;
- a contractor of a governmental entity acting within the scope of the contract; or
- an individual or a medical or residential custodial health care facility while the individual was providing medically necessary services to prevent another individual's death or imminent serious physical injury.

The bill would use the definition in Civil Practice and Remedies Code sec. 110.011(b), which states that an organization is a "religious organization" if:

- its primary purpose and function is religious, it is a religious school organized primarily for religious and educational purposes, or it is a religious charity organized primarily for religious and charitable purposes; and
- it does not engage in activities that would disqualify it from tax exempt status under sec. 501(c)(3) of the Internal Revenue Code of 1986, as it existed on August 30, 1999.

Available relief. A person could assert an actual or threatened violation of the bill's prohibition on adverse action as a claim or defense in a judicial or administrative proceeding and obtain injunctive relief, declaratory relief, and court costs and reasonable attorney's fees. A person could commence an action and relief could be granted regardless of whether the person had sought or exhausted available administrative remedies.

A person who alleged a violation of a prohibited adverse action could sue the governmental entity for the relief provided by the bill. Sovereign or governmental immunity would be waived and abolished to the extent of liability for that relief.

Attorney general action. The attorney general could bring an action for injunctive or declaratory relief against a governmental entity to enforce compliance with the bill. That authority could not be construed to deny, impair, or otherwise affect any authority of the attorney general or a governmental entity acting under other law to institute or intervene in a proceeding. The attorney general could not recover expenses incurred in bringing, instituting, or intervening in an action.

Interpretation. The bill could not be construed to prevent a governmental entity from providing, either directly or through a person who was not seeking protection under the bill, any benefit or service authorized under state or federal law.

The bill could not be construed to preempt a state or federal law that was equally or more protective of the free exercise of religious beliefs or to narrow the meaning or application of a state or federal law protecting the free exercise of religious beliefs.

The 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, 2019.

SUPPORTERS
SAY:

SB 1978 would ensure that governmental entities could not discriminate against individuals and businesses exercising their right to religious

freedom as expressed through their membership in or contribution to a religious organization. This would protect the First Amendment rights of all Texans, regardless of their political views or lifestyle, to support religious organizations without fear that it could impact their ability to work or do business with a governmental entity.

The bill is a reasonable response to concerns that governmental entities could undermine the rights of individuals and businesses by making contracting decisions based on those individuals' and businesses' support of certain religious nonprofits. Government should not use its power over Texans' ability to earn a living to deny a contract, loan, license, accreditation, or employment to a person based on the person's affiliation with a religious organization.

The bill could be not be used to cloak discriminatory activity because the bill's protections would not extend to religious groups that engaged in racial discrimination or other activities that would disqualify them from federal tax-exempt status.

OPPONENTS
SAY:

SB 1978 could force local elected officials to do business with a person or business that supported religious organizations that the city believed were discriminatory against people who may not conform to certain religious beliefs. City councils should be allowed to make contracting decisions that reflect the values of their citizens without interference from state government.

The bill is unnecessary because the First Amendment and the Texas Religious Freedom Restoration Act already prevent a government agency from substantially burdening a person's free exercise of religion.

Passage of the bill could carry economic consequences for the state, as it would send a message that Texas did not value inclusion. This could drive businesses, special events, and tourists away from Texas to other states.