

HUMAN RESOURCES CODE

TITLE 2. HUMAN SERVICES AND PROTECTIVE SERVICES IN GENERAL
SUBTITLE D. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES; CHILD
WELFARE AND PROTECTIVE SERVICES
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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1152 (H.B. [3859](#)), Sec. 1, eff. September 1, 2017.

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

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

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

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

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

(E) limiting the ability of a person to engage in

child welfare services.

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

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

- (A) assisting abused or neglected children;
- (B) counseling children or parents;
- (C) promoting foster parenting;
- (D) providing foster homes, general residential operations, residential care, adoptive homes, group homes, or temporary group shelters for children;
- (E) recruiting foster parents;
- (F) placing children in foster homes;
- (G) licensing foster homes;
- (H) promoting adoption or recruiting adoptive parents;
- (I) assisting adoptions or supporting adoptive families;
- (J) performing or assisting home studies;
- (K) assisting kinship guardianships or kinship caregivers;
- (L) providing family preservation services;
- (M) providing family support services;
- (N) providing temporary family reunification services;
- (O) placing children in adoptive homes; and
- (P) serving as a foster parent.

(4) "Child welfare services provider" means a person, other than a governmental entity, that provides, seeks to provide, or applies for or receives a contract, subcontract, grant, subgrant, or cooperative agreement to provide child welfare services. The person is not required to be engaged exclusively in child welfare services to be a child welfare services provider.

(5) "Governmental entity" means:

- (A) this state or a municipality or other political subdivision of this state;
- (B) any agency of this state or of a municipality

or other political subdivision of this state, including a department, bureau, board, commission, office, agency, council, and public institution of higher education; or

(C) a single source continuum contractor in this state providing services identified under Section 264.153, Family Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 1152 (H.B. 3859), Sec. 1, eff. September 1, 2017.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 11.001, eff. September 1, 2021.

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

(b) This chapter applies 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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1152 (H.B. 3859), Sec. 1, eff. September 1, 2017.

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

(1) 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;

(2) provides or intends to provide children under the control, care, guardianship, or direction of the 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 the laws of this state;

(3) 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; or

(4) refuses to enter into a contract that is inconsistent with or would in any way interfere with or force a provider to surrender the rights created by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 1152 (H.B. 3859), Sec. 1, eff. September 1, 2017.

Sec. 45.005. SECONDARY SERVICES PROVIDERS AND REFERRALS.

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

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

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

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

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

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

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

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

(2) refer the applicant to another licensed child welfare services provider who provides the service being denied; or

(3) refer the applicant to the department or to a

single source continuum contractor to identify and locate a licensed child welfare services provider who provides the service being denied.

Added by Acts 2017, 85th Leg., R.S., Ch. 1152 (H.B. 3859), Sec. 1, eff. September 1, 2017.

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

Added by Acts 2017, 85th Leg., R.S., Ch. 1152 (H.B. 3859), Sec. 1, eff. September 1, 2017.

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

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

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

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

Added by Acts 2017, 85th Leg., R.S., Ch. 1152 (H.B. 3859), Sec. 1, eff. September 1, 2017.

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

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

Added by Acts 2017, 85th Leg., R.S., Ch. 1152 (H.B. 3859), Sec. 1, eff. September 1, 2017.

Sec. 45.009. 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 to prevent law enforcement officers from exercising duties imposed on the officers under the Family Code and the Penal Code.

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

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

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

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

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

Added by Acts 2017, 85th Leg., R.S., Ch. 1152 (H.B. 3859), Sec. 1, eff. September 1, 2017.

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

Added by Acts 2017, 85th Leg., R.S., Ch. 1152 (H.B. 3859), Sec. 1, eff. September 1, 2017.