

By: Schaefer

H.B. No. 2779

A BILL TO BE ENTITLED

1 AN ACT

2 relating to protecting freedom of conscience from government  
3 discrimination.

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

5 SECTION 1. Title 5, Civil Practice and Remedies Code, is  
6 amended by adding Chapter 110A to read as follows:

7 CHAPTER 110A. FREE TO BELIEVE ACT

8 SUBCHAPTER A. GENERAL PROVISIONS

9 Sec. 110A.001. DEFINITIONS. In this chapter:

10 (1) "Adoption or foster care" or "adoption or foster  
11 care service" means a social service provided to or in behalf of a  
12 child, including:

13 (A) assisting an abused or neglected child;

14 (B) teaching a child and parent occupational,  
15 homemaking, and other domestic skills;

16 (C) promoting foster parenting;

17 (D) providing a foster home, residential  
18 child-care facility, foster group home, or temporary foster group  
19 shelter for a child;

20 (E) recruiting foster parents;

21 (F) placing a child in a foster home;

22 (G) licensing foster homes;

23 (H) promoting adoption or recruiting adoptive  
24 parents;

- 1                   (I) assisting an adoption or supporting an  
2 adoptive family;
- 3                   (J) performing or assisting a home study;
- 4                   (K) assisting a kinship provider;
- 5                   (L) providing family preservation services;
- 6                   (M) providing family support services; and
- 7                   (N) providing temporary family reunification  
8 services.

9                   (2) "Discriminatory action" means any action taken by  
10 a governmental entity to:

11                   (A) withhold, reduce, exclude, terminate,  
12 materially alter the terms or conditions of, or otherwise make  
13 unavailable or deny any grant, contract, subcontract, cooperative  
14 agreement, guarantee, loan, scholarship, license, certification,  
15 accreditation, custody award or agreement, diploma, grade,  
16 recognition, or other similar benefit, position, or status from or  
17 to a person;

18                   (B) withhold, reduce, exclude, terminate,  
19 materially alter the terms or conditions of, or otherwise make  
20 unavailable or deny an entitlement or benefit provided under a  
21 state benefit program from or to a person;

22                   (C) alter in any way the tax treatment of, cause  
23 any tax, penalty, or payment assessment against, or deny, delay,  
24 revoke, or otherwise make unavailable a tax exemption of a person;

25                   (D) disallow, deny, or otherwise make  
26 unavailable a tax deduction for any charitable contribution made to  
27 or by a person;

1                   (E) impose, levy, or assess a monetary fine, fee,  
2 penalty, or injunction against a person; or

3                   (F) refuse to hire or promote, force to resign,  
4 fire, demote, sanction, discipline, materially alter the terms or  
5 conditions of employment, or retaliate or take other adverse  
6 employment action against a person who is employed or commissioned  
7 by a governmental entity.

8                   (3) "Governmental entity" means:

9                   (A) this state;

10                   (B) a board, bureau, commission, council,  
11 department, or other agency of this state, including an institution  
12 of higher education as defined by Section 61.003, Education Code;

13                   (C) the Texas Supreme Court, the Texas Court of  
14 Criminal Appeals, a state judicial agency, the State Bar of Texas,  
15 or a court in this state;

16                   (D) a political subdivision of this state,  
17 including a county, municipality, or special district or authority;

18                   (E) an officer, employee, or agent of an entity  
19 described by Paragraphs (A)-(D); or

20                   (F) a private person suing under or attempting to  
21 enforce a law, rule, order, or ordinance adopted by an entity  
22 described by Paragraphs (A)-(D).

23                   (4) "Person" has the meaning assigned by Section  
24 311.005, Government Code.

25                   (5) "Religious organization" means:

26                   (A) a house of worship, including a church,  
27 synagogue, shrine, mosque, or temple;

1           (B) a religious group, corporation, association,  
2 school or educational institution, ministry, order, society, or  
3 similar entity, regardless of whether the entity is integrated or  
4 affiliated with a church or other house of worship; or

5           (C) an officer, owner, employee, manager,  
6 religious leader, member of the clergy, or minister of an entity or  
7 organization described in this subdivision.

8           (6) "State benefit program" means any program  
9 administered or funded by a governmental entity that provides cash,  
10 payments, grants, contracts, loans, or in-kind assistance.

11           Sec. 110A.002. SHORT TITLE. This chapter may be cited as  
12 the Free to Believe Act.

13           Sec. 110A.003. SINCERELY HELD RELIGIOUS BELIEFS OR MORAL  
14 CONVICTIONS. The sincerely held religious beliefs or moral  
15 convictions protected by this chapter are a belief or conviction  
16 that:

17           (1) marriage is or should be recognized as the union of  
18 one man and one woman; and

19           (2) the terms "male," "man," "female," and "woman"  
20 refer to an individual's immutable biological sex as objectively  
21 determined by anatomy and genetics at the time of birth.

22           Sec. 110A.004. CONSTRUCTION OF CHAPTER. (a) This chapter  
23 shall be construed in favor of a broad protection of the free  
24 exercise of religious beliefs and moral convictions to the maximum  
25 extent allowed by this chapter and the state and federal  
26 constitutions.

27           (b) The protections of free exercise of religious beliefs

1 and moral convictions afforded by this chapter are in addition to  
2 the protections provided under federal or state law and the state  
3 and federal constitutions.

4 (c) This chapter may not be construed to preempt or repeal a  
5 state or local law that is equally or more protective of the free  
6 exercise of religious beliefs or moral convictions or to narrow the  
7 meaning or application of a state or local law protecting the free  
8 exercise of religious beliefs or moral convictions.

9 (d) This chapter may not be construed to prevent a  
10 governmental entity from providing, either directly or through a  
11 person who is not seeking protection under this chapter, any  
12 benefit or service authorized under state law.

13 (e) This chapter applies to and in case of conflict  
14 supersedes each statute of this state that impinges on the free  
15 exercise of religious beliefs or moral convictions protected by  
16 this chapter. This chapter also applies to and in case of conflict  
17 supersedes an ordinance, rule, regulation, order, opinion,  
18 decision, practice, or other exercise of a governmental entity's  
19 authority that impinges on the free exercise of religious beliefs  
20 or moral convictions protected by this chapter.

21 Sec. 110A.005. APPLICABILITY. This chapter is excluded  
22 from the application of Chapter 110.

23 SUBCHAPTER B. DISCRIMINATORY ACTION BY GOVERNMENTAL ENTITY

24 PROHIBITED

25 Sec. 110A.051. ACTIVITIES OF RELIGIOUS ORGANIZATION. A  
26 governmental entity may not take any discriminatory action against  
27 a religious organization wholly or partly because the organization,

1 based on or in a manner consistent with a sincerely held religious  
2 belief or moral conviction protected by this chapter:

3 (1) makes an employment-related decision, including a  
4 decision to terminate, to discipline, or not to hire an individual  
5 whose conduct or religious beliefs are inconsistent with the  
6 beliefs of the religious organization; or

7 (2) makes a decision concerning the sale, rental, or  
8 occupancy of, or the terms and conditions of occupying, a dwelling  
9 or other housing under the religious organization's control.

10 Sec. 110A.052. ADOPTION OR FOSTER CARE. (a) A governmental  
11 entity may not take any discriminatory action against a religious  
12 organization that advertises, provides, or facilitates adoption or  
13 foster care wholly or partly because the organization has provided  
14 or declined to provide an adoption or foster care service, or a  
15 related service, based on or in a manner consistent with a sincerely  
16 held religious belief or moral conviction protected by this  
17 chapter.

18 (b) A governmental entity may not take any discriminatory  
19 action against a person granted custody of a foster or adoptive  
20 child or a person who seeks custody of a foster or adoptive child  
21 wholly or partly because that person guides, instructs, or raises a  
22 child, or intends to guide, instruct, or raise a child, based on or  
23 in a manner consistent with a sincerely held religious belief or  
24 moral conviction protected by this chapter.

25 Sec. 110A.053. SEX REASSIGNMENT OR GENDER IDENTITY  
26 TRANSITIONING. (a) A governmental entity may not take any  
27 discriminatory action against a person wholly or partly because the

1 person, based on or in a manner consistent with a sincerely held  
2 religious belief or moral conviction protected by this chapter,  
3 declines to participate in providing:

4 (1) treatment, counseling, or surgery related to sex  
5 reassignment or gender identity transitioning; or

6 (2) psychological, counseling, or fertility services.

7 (b) This section may not be construed to allow a person to  
8 deny visitation, recognition of a designated representative for  
9 health care decision-making, or emergency medical treatment  
10 necessary to cure an illness or injury as required by law.

11 Sec. 110A.054. MARRIAGE-RELATED GOODS AND SERVICES. A  
12 governmental entity may not take any discriminatory action against  
13 a person wholly or partly because the person, based on or in a  
14 manner consistent with a sincerely held religious belief or moral  
15 conviction protected by this chapter, has provided or declined to  
16 provide the following for a purpose related to the solemnization,  
17 formation, celebration, or recognition of a marriage:

18 (1) photography, poetry, videography, disc jockey  
19 services, wedding planning, printing, publishing, or similar  
20 marriage-related goods or services; or

21 (2) floral arrangements, dressmaking, cake or pastry  
22 artistry, assembly hall or other wedding venue rentals, limousine  
23 or other car service rentals, jewelry sales and services, or  
24 similar marriage-related services, accommodations, facilities,  
25 goods, or privileges.

26 Sec. 110A.055. EMPLOYEE AND STUDENT POLICIES. A  
27 governmental entity may not take any discriminatory action against

1 a person wholly or partly because the person, based on or in a  
2 manner consistent with a sincerely held religious belief or moral  
3 conviction protected by this chapter, establishes sex-specific  
4 standards or policies concerning:

- 5           (1) employee or student dress or grooming; or  
6           (2) access to restrooms, spas, baths, showers,  
7 dressng rooms, locker rooms, or other intimate facilities or  
8 settings.

9           Sec. 110A.056. GOVERNMENTAL EMPLOYEE SPEECH OR CONDUCT. A  
10 governmental entity may not take any discriminatory action against  
11 an employee wholly or partly because the employee lawfully speaks  
12 or engages in expressive conduct, based on or in a manner consistent  
13 with a sincerely held religious belief or moral conviction  
14 protected by this chapter, so long as:

- 15           (1) if the speech or expressive conduct occurs in the  
16 workplace, the speech or expressive conduct is consistent with the  
17 time, place, manner, and frequency of any other expression of a  
18 religious, political, or moral belief or conviction that would be  
19 protected; or

- 20           (2) if the speech or expressive conduct occurs outside  
21 the workplace, the speech or expressive conduct is in the  
22 employee's personal capacity and outside the course of performing  
23 work duties.

24           Sec. 110A.057. RECUSAL FROM MARRIAGE LICENSING. (a) A  
25 person employed by or acting on behalf of a governmental entity who  
26 has authority to authorize or license marriages, including a county  
27 clerk or deputy county clerk, may seek recusal from authorizing or



1 licensing lawful marriages, based on or in a manner consistent with  
2 a sincerely held religious belief or moral conviction protected by  
3 this chapter.

4 (b) A person making a recusal under this section shall  
5 provide written notice to the vital statistics unit of the  
6 Department of State Health Services before the recusal. The vital  
7 statistics unit shall keep a record of the recusal.

8 (c) A person making a recusal under this section shall take  
9 all necessary steps to ensure that the authorization and licensing  
10 of a legally valid marriage is not impeded or delayed as a result of  
11 the recusal.

12 (d) A governmental entity may not take any discriminatory  
13 action against a person described by Subsection (a) wholly or  
14 partly because of the recusal.

15 Sec. 110A.058. RECUSAL FROM MARRIAGE PERFORMANCE. (a) A  
16 person employed by or acting on behalf of a governmental entity who  
17 has authority to perform or solemnize marriages, including a judge,  
18 magistrate, or justice of the peace, may seek recusal from  
19 performing or solemnizing lawful marriages, based on or in a manner  
20 consistent with a sincerely held religious belief or moral  
21 conviction protected by this chapter.

22 (b) A person making a recusal under this section shall  
23 provide written notice to the Office of Court Administration of the  
24 Texas Judicial System before the recusal.

25 (c) The Office of Court Administration of the Texas Judicial  
26 System shall take all necessary steps to ensure that the  
27 performance or solemnization of any legally valid marriage is not

1 impeded or delayed as a result of any recusal under this section.

2 (d) A governmental entity may not take any discriminatory  
3 action against a person described by Subsection (a) wholly or  
4 partly because of the recusal.

5 Sec. 110A.059. ACCREDITATION, LICENSING, AND  
6 CERTIFICATION. A governmental entity shall consider a person  
7 accredited, licensed, or certified if the person would be  
8 accredited, licensed, or certified, respectively, under state law  
9 except for a determination against the person wholly or partly  
10 because the person believes, speaks, or acts in accordance with a  
11 sincerely held religious belief or moral conviction protected by  
12 this chapter.

13 SUBCHAPTER C. PROCEDURES

14 Sec. 110A.101. SOVEREIGN IMMUNITY WAIVED. Sovereign  
15 immunity to suit and from liability is waived and abolished to the  
16 extent of liability created by Section 110A.103. A person may sue a  
17 governmental entity for damages allowed by that section.

18 Sec. 110A.102. CLAIM OR DEFENSE BASED ON DISCRIMINATORY  
19 ACTION. (a) A person may assert a violation of Subchapter B as a  
20 claim against a governmental entity in a judicial or administrative  
21 proceeding or as a defense in a judicial or administrative  
22 proceeding without regard to whether the proceeding is brought by  
23 or in the name of the governmental entity, a private person, or  
24 another party.

25 (b) An action under this chapter may be commenced, and  
26 relief may be granted, in a court of this state without regard to  
27 whether the person commencing the action has sought or exhausted

1 available administrative remedies.

2 Sec. 110A.103. INJUNCTIVE RELIEF; DAMAGES. (a) An aggrieved  
3 person must first seek injunctive relief to prevent or remedy a  
4 violation of this chapter or the effects of a violation of this  
5 chapter.

6 (b) Subject to Subsections (c) and (d), if a court has  
7 granted injunctive relief and the injunction is violated, only then  
8 may the aggrieved person seek:

9 (1) compensatory damages for pecuniary and  
10 nonpecuniary losses;

11 (2) reasonable attorney's fees and court costs; and

12 (3) any other appropriate relief.

13 (c) Only declaratory relief and injunctive relief are  
14 available against a private person not acting under the authority  
15 of a governmental entity on a successful assertion of a claim or  
16 defense under this chapter.

17 (d) Liability of a governmental entity for compensatory  
18 damages under Subsection (b)(1) may not exceed \$500,000 for all  
19 claims arising out of a single occurrence. A person is not entitled  
20 to recover exemplary damages or prejudgment interest under this  
21 chapter.

22 Sec. 110A.104. TWO-YEAR LIMITATIONS PERIOD. A person must  
23 bring an action to assert a claim under this chapter not later than  
24 two years after the date the person knew or should have known that a  
25 discriminatory action was taken against that person.

26 SECTION 2. The change in law made by this Act applies only  
27 to a cause of action that accrues on or after the effective date of

1 this Act. A cause of action that accrues before the effective date  
2 of this Act is governed by the law as it existed immediately before  
3 that date, and that law is continued in effect for that purpose.

4 SECTION 3. This Act takes effect September 1, 2017.