



## Texas HB 3859 Fact Sheet

### What You Need to Know about Texas's License to Discriminate in Foster Care Law

#### What is HB 3859?

HB 3859, effective September 1, 2017, permits a Texas *child welfare provider* to refuse to serve children, families, relatives and foster and adoptive parents if doing so conflicts with the provider's "sincerely held religious beliefs"; to provide "religious education" to the children and families it serves; and to deny those it serves access to contraception, abortions or abortion-inducing services. If a provider uses the law, the State of Texas or any other *governmental entity* cannot take adverse action against it, such as denying or revoking the provider's service contract or license. HB 3859 specifically prohibits *child welfare providers* from refusing service to someone on the basis of that person's race, ethnicity or national origin, but does not protect from discrimination on account of sex, sexual orientation, gender identity, gender expression, marital status, religion, disability or other protected classes.

#### Who is a *child welfare provider* under the law?

The definition of *child welfare service provider* is broad. A *child welfare provider* is a person or organization, other than a *government entity*, who assists abused or neglected children; counsels children or parents; promotes foster parenting; provides foster or adoptive homes or residential care (group homes, facilities or temporary shelters); recruits foster parents; places children in foster homes; licenses foster homes; promotes adoption or recruits adoptive parents; assists with adoptions or supports adoptive families; performs or assists with home studies; assists with guardianships with kin or supports kinship caregivers; provides family preservation services; provides family support services; provides temporary family reunification services; places children in adoptive homes; or, serves as a foster parent. A provider does not have to provide child welfare services exclusively to use the law.

#### Can the Texas Department of Family and Protective Services ("DFPS") discriminate directly?

No, it can't. A *government entity* cannot use the law. *Government entity* is defined to include: the state; state commissions, boards and councils; institutions of higher education; and, "single source continuum of care" contractors. To date, only one single source continuum of care contractor, ACH Child and Family Services, operates in Texas. Within the coming years, all services, apart from child welfare investigations, are to be provided by single source continuum of care contractors and their subcontractors. Under a separate law, HB 7, also effective September 1, 2017, DFPS will no longer license individual foster families directly; contracted *child welfare providers* will handle all licensing.

### **How does this law work in practice? Will I be affected?**

Some child welfare providers may use HB 3859 to refuse to place children in foster care, who need short-term and long-term placements, with same-sex couples, LGBTQ people, unmarried individuals or people of a different faith than the child welfare provider's. Providers also could, based on their faith, refuse to acknowledge a transgender youth's gender or to work with them at all. Providers could condemn or attempt to "convert" an LGBTQ youth. Providers may compel participation in religious activities as part of such attempts or, more generally, require religious education or indoctrination as a mandatory component of the services they provide to children and families.

### **Does that mean people turned away will just go without services or help?**

It remains to be seen what will happen to people who are refused service or compelled to participate in religious education. HB 3859 requires that DFPS or "other entity that refers or places children for services" to ensure that a "secondary" service provider is available in the same area. If there is not a secondary source provider in the same area, one is to be provided in a nearby area. Child welfare providers who use the law are required to refer the person who is denied services to DFPS's website, another agency who will serve them, or to DFPS itself. DFPS has not released any information to the general public regarding implementation of HB 3859.

### **What are my rights if I am a child in foster care or a shelter or a family member, relative or foster or adoptive parent involved with the child welfare system?**

The U.S. Constitution requires government-funded entities to treat children, families, relatives, and foster and adoptive parents equally under the law. The Constitution also guarantees children in foster care the right to physical and emotional safety while in care, as well as the right to be free from state-endorsed religious activities and to practice no religion or one of their choosing.

In addition to constitutional protections, federal law requires states that receive federal child welfare dollars to ensure children and families are not discriminated against based on their religion, sexual orientation, gender identity and other protected classes. Federal child welfare law also requires that states ensure the safety, permanency and well-being of all youth in foster care and ensure care is consistent with protection of children's civil rights.

### **What do I do if I experience mistreatment or discrimination by a child welfare service provider?**

Please contact one or all of us:

**Lambda Legal** – Currey Cook at 212.809.8585 or [ccook@lambdalegal.org](mailto:ccook@lambdalegal.org)

**Equality Texas** – Brad O'Furey at 512.474.5475 or [brad.ofurey@equalitytexas.org](mailto:brad.ofurey@equalitytexas.org)

**Family Equality Council** – Denise Brogan-Kator at 646.880.3047 or [DeniseBK@familyequality.org](mailto:DeniseBK@familyequality.org)