

THE 2017 TEXAS LEGISLATURE: STEALTH STRATEGY GRANTS SPECIAL RIGHT OF RELIGIOUS REFUSAL TO LICENSED PROFESSIONALS

Opponents of LGBT equality and women’s reproductive rights have adopted a legislative strategy that chips away at equality piece by piece, rather than attacking it wholesale as in sessions past. Most recently, authors of this stealth strategy are amending must-pass legislation to bar licensing agencies from taking any adverse action against professionals who use their religious beliefs to justify discriminating against clients or refusing to adhere to standards of professional conduct in their respective fields. If successful, this strategy would open the door to sweeping, state-sanctioned discrimination against and harm to vulnerable Texans in the name of religion.

In the rush to beat looming end-of-session deadlines, opponents of equality are amending reauthorization bills for state licensing agencies under the Texas Sunset review process. In Texas as in most states, in exchange for the privilege of being licensed, professionals must adhere to rules of professional conduct intended to protect the public from unscrupulous or unethical practices. But these amendments substantially undermine that protection by giving state-licensed professionals a special right of religious refusal that trumps the interests of those who rely on them.

These amendments—and the other religious refusal laws advancing toward passage—upend the careful balance between an individual’s right to religious liberty and laws meant to protect the public good. And that is the point of this stealth strategy: expanding what is legally protected beyond permitting people to practice their faith without government interference to authorizing people to impose their personal religious beliefs on others.

NURSING CARE: HB 2950

An amendment added at the last minute to [HB 2950](#) bars the Texas Board of Nursing from taking any action that impinges on a nurse’s sincerely held religious belief. This religious refusal amendment interferes with the Board’s ability to establish uniform professional and educational standards to protect patients.

- A nurse could cite his religious beliefs as a reason to refuse to care for a gay patient on the grounds that he believes homosexuality is a sin.
- A nurse could withhold information from a rape survivor about emergency contraception based on the nurse’s religious objection to abortion.
- A nurse who believes that men are the head of the household could breach client confidentiality to disclose a woman’s medical condition to her husband against her wishes.



PHARMACY SERVICES: HB 2561

An amendment to [HB 2561](#) similarly bars the Texas State Board of Pharmacy from taking any action that impinges a pharmacist's sincerely held religious belief. The amendment allows licensed pharmacists to opt out of standards of professional practice without consequence.

- A pharmacist could refuse to fill a birth control prescription for an unmarried woman because he disapproves of sex outside of marriage.
- A pharmacist could decline to fill a prescription for hormone therapy for a transgender customer because of his personal beliefs about gender.
- A pharmacist could use religion as a justification to refuse to serve African-American customers because she believes the Bible mandates the segregation of the races.

LEGAL SERVICES: SB 302 AND SB 303

Bills reauthorizing the State Bar of Texas ([SB 302](#)), and the Board of Law Examiners ([SB 303](#)) include amendments that grant special rights of religious refusal to state-licensed attorneys. As a result, lawyers could put their own personal religious beliefs ahead of the interests of the court or even those of their clients without fear of sanction by the bar.

- Ignoring his duty to put his client's interests first, an attorney who has a moral objection to divorce could fail to inform his client of all her rights in a divorce proceeding in an effort to dissuade her from leaving her husband.
- A court-appointed guardian ad litem could ignore her duty of candor to the tribunal by claiming that lying to the court about sexual abuse was necessary to avoid a judicial bypass decision allowing an abortion that conflicts with her personal religious beliefs.
- A court appointed criminal defense attorney could fail to zealously defend his client against a prostitution charge because he believes she should be punished.

CHILD WELFARE PROVIDERS: HB 3859

[HB 3859](#) creates a broad right of religious refusal for child welfare providers, a category that includes a number of professionals licensed by the state to care for children, including social workers, adoption and foster care agencies, counselors, and even foster parents. The bill, which has passed the House and is advancing in the Senate, prevents the Department of Family and Protective Services from taking any action that adversely affects child welfare providers whose conduct is motivated by sincerely held religious belief.

- State-funded adoption and foster care agencies will be able to turn away qualified families headed by LGBT parents because their faith teaches that homosexuality is a sin.
- A foster family can refuse to provide emergency contraception to a teen survivor of sexual abuse based on the parents' moral beliefs about abortion.
- A caseworker could place a child with strangers instead of a close relative because that relative doesn't belong to the right church.

