

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 13

BY SENATORS TARR AND MAYNARD

[Introduce February 10, 2021; referred
to the Committee on Health and Human Resources]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §49-10-1, §49-10-2, §49-10-3, and §49-10-4, all relating to protecting rights of
 3 conscience for child welfare services providers; defining terms; defining applicability;
 4 setting forth protection for child welfare services providers; and providing for secondary
 5 services providers in catchment area.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 10. PROTECTING RIGHTS OF CONSCIENCE FOR CHILD WELFARE
 SERVICE PROVIDERS.**

§49-10-1. Definitions.

6 (a) "Adverse action" means any action that directly or indirectly adversely affects the
 7 person against whom the adverse action is taken, places the person in a worse position than the
 8 person was in before the adverse action was taken, or is likely to deter a reasonable person from
 9 acting or refusing to act. An adverse action includes, but is not limited to:

- 10 (1) Denying an application for, refusing to renew, or canceling funding;
 11 (2) Declining to issue, refusing to renew, or canceling a contract;
 12 (3) Declining to issue, refusing to renew, or canceling a license;
 13 (4) Terminating, suspending, demoting, or reassigning a person; and
 14 (5) Limiting the ability of a person to engage in child welfare services.

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

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

- 19 (1) Assisting abused or neglected children;
 20 (2) Counseling children or parents;
 21 (3) Promoting foster parenting;

22 (4) Providing foster homes, general residential operations, residential care, adoptive
23 homes, group homes, or temporary group shelters for children;

24 (5) Recruiting foster parents;

25 (6) Placing children in foster homes;

26 (7) Licensing foster homes;

27 (8) Promoting adoption or recruiting adoptive parents;

28 (9) Assisting adoptions or supporting adoptive families;

29 (10) Performing or assisting home studies;

30 (11) Assisting kinship guardianship or kinship caregivers;

31 (12) Providing family preservation services;

32 (13) Providing family support services;

33 (14) Providing temporary family reunification services;

34 (15) Placing children in adoptive homes; and

35 (16) Serving as a foster parent.

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

40 (e) "Governmental entity" means:

41 (1) The State of West Virginia or a municipality or other political subdivision of this state;

42 or

43 (2) Any agency of the State of West Virginia or of a municipality or other political
44 subdivision of this state, including a department, bureau, board, commission, office, agency,
45 council, and public institution of higher education.

§49-10-2. Applicability

1 (a) This article applies to any ordinance, rule, order, decision, practice, or other exercise.

2 (b) This article applies to an act of a government entity, in the exercise of governmental
3 authority, granting or refusing to grant a government benefit to a child welfare services provider.

§49-10-3. Child Welfare Services Providers Protected.

1 A governmental entity or any person that contracts with this state or operates under
2 governmental authority to refer or place children for child welfare service may not discriminate or
3 take any adverse action against a child welfare services provider on the basis, wholly or partly,
4 that the provider:

5 (A) Has declined or will decline to provide, facilitate, or refer a person for child welfare
6 services that conflict with, or under circumstances that conflict with, the provider's sincerely held
7 religious beliefs;

8 (B) Refuses to enter into a contract that is inconsistent with or would in any way interfere
9 with or force a provider to surrender the rights created by this article.

§49-10-4. Secondary Service Providers and Referrals.

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

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

5 (1) Ensure that a secondary child welfare services provider is available in that catchment
6 area to provide a service described by subsection (a) to a child; or

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

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

12 (A) Provide to the person seeking the services written information directing the person to:

13 (B) The web page on the department's internet website that includes a list of other

- 14 providers licensed in child welfare services providers; or
15 (C) Other information sources that identify other licensed child welfare services providers
16 who provide the service being denied; or
17 (D) Refer the applicant to another licensed child welfare services provider who provides
18 the services being denied.

NOTE: The purpose of this bill is to maintain a diverse network of service providers that offer a range of foster capacity and that accommodate children from various cultural backgrounds. This bill permits reasonable accommodation 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. The bill prevents a governmental entity or any person that contracts for child welfare services from discriminating to taking any adverse action against a child welfare services provider on the basis, wholly, or partly if that provider has declined to provide a service or refer a person for services that conflict with the provider's sincerely held religious beliefs.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.