

Legislative Analysis



CHILD PLACING AGENCIES CAN DECLINE SERVICES BASED ON SINCERELY HELD RELIGIOUS BELIEFS

Mary Ann Cleary, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4928 (Substitute H-4)

Sponsor: Rep. Kenneth Kurtz

House Bill 4991 (Substitute H-3)

Sponsor: Rep. Tom Leonard

House Bill 4927 (Substitute H-4)

Sponsor: Rep. Andrea LaFontaine

Committee: Families, Children, and Seniors

Complete to 10-2-13

A SUMMARY OF HOUSE BILLS 4928, 4927 AND 4991 AS REPORTED FROM HOUSE COMMITTEE ON 9-25-13

The bills would each amend a separate act in order, generally speaking, to say that a child placing agency could not be required to provide adoption services or foster care services if those services conflicted with the agency's "sincerely held religious beliefs."

Each bill also says, however, that a child placing agency can only decline to provide services under one of several specified circumstances.

House Bill 4928 would amend the Adoption Code (which is Chapter X of the Probate Code of 1939, MCL 710.23g) to apply to child placing agencies and adoption services.

House Bill 4991 would amend Public Act 116 of 1973 (MCL 722.114e), which regulates child care organizations, to apply to child placing agencies involved in both foster care and adoption services. House Bills 4928 and 4991 contain very similar language.

House Bill 4927 would amend the Social Welfare Act (MCL 400.5a) to prohibit the state or a local unit of government from discriminating against or taking an adverse action a child placing agency for declining to provide foster care or adoption services on religious grounds. (A similar prohibition also appears in the other two bills.)

The bills are tie-barred to one another, meaning all must be enacted for any to take effect.

Sincerely held religious beliefs

House Bill 4928 specifies the following:

. . . to the fullest extent permitted by state and federal law, including, but not limited to, the [state] Foster Care and Adoption Services Act . . . and the [federal] Multiethnic Placement Act . . . a child placement agency shall not be required to provide adoption services if those services conflict with, and shall not be required to provide adoption services under circumstances that conflict with, the child placing agency's sincerely held

religious beliefs contained in a written policy, statement of faith, or other document adhered to by the child placing agency.

House Bill 4991 contains a similar provision but with an additional reference to foster care services.

Circumstances when an agency can decline to provide services

Under House Bill 4928, a child placing agency under contract with the Department of Human Services could decline to provide adoption services referred from the department only in one of the following circumstances:

- The agency declines to provide the adoption services before the completion of a child adoptive assessment for placement.
- The agency declines to provide the adoption services after the completion of a child adoptive assessment for a placement if declining to provide the services will not delay a placement or permanent placement of the child and will not harm the child.

Under House Bill 4991, the (very similar) required circumstances would be:

- The agency declines to participate in the placement before the completion of a home study for a foster care placement or the completion of a child adoptive assessment for an adoptive placement, whichever occurs first.
- The agency declines to provide foster care or adoption services after the completion of either a home study or child adoptive assessment if declining will not delay a placement or permanent placement of a child and will not harm the child.

When an agency declines

If a child placing agency declined to provide services, it would have to do one of the following:

- Use its best efforts to promptly refer the applicant or the adoption case to another child placing agency that would be willing and able to provide the declined services.
- Promptly refer the applicant or adoption case to the department
- If the department had referred the applicant or adoption case to the agency, promptly notify the department that another referral is necessary.

The state could take an adverse action against an agency if it failed to comply with those requirements. However, a child placing agency could assert a defense in an administrative or judicial proceeding based on the provisions of these bills. If an agency

declined to provide services, that decision would not limit the ability of the department or another child placing agency to provide the services.

No discrimination or adverse action

Except in cases where certain requirements were not met, to the fullest extent permitted by state and federal law, the state or a local unit of government could not discriminate or take an adverse action against a child placing agency because an agency's declined to provided services that conflict with its sincerely held religious beliefs contained in a written policy, statement of faith, or other document adhered to by the agency. This provision is contained in all three bills.

Adverse action

The term "*adverse action*" would include, but not be limited to, denying an agency's application for funding, refusing to renew the agency's funding, canceling the agency's funding, declining to enter into a contract with the agency, refusing to renew a contract, declining to issue a license, canceling a license, and any action that materially alters the terms or conditions of an agency's funding, contract, or license.

Enacting section

Each bill contains an enacting section stating:

It is the intent of the legislature to protect child placing agencies' free exercise of religion protection by the United States Constitution and the State Constitution of 1963. [The legislation] is not intended to limit or deny any person's right to adopt a child or participate in foster care.

FISCAL IMPACT:

These bills should have a negligible fiscal impact on the state or local units of government or on the judiciary.

POSITIONS:

Citizens for Traditional Values supports House Bills 4927 and 4928. (9-11-13)

Michigan Catholic Conference supports House Bills 4927 and 4928. ((9-11-13)

Michigan Family Forum supports the bills. (9-11-13 & 9-25-13)

Right to Life of Michigan supports House Bills 4927 and 4928. (9-11-13)

LDS Family Services (Church of Jesus Christ of Latter-day Saints) indicated support for House Bills 4927 and 4928

Department of Human Services opposes the bills in their current form but hopes to continue working on language with the sponsor. (9-25-13)

ACLU of Michigan opposes the bills. (9-25-13)

Equality of Michigan opposes the bills. (9-11-13 & 9-25-13)

Family Law Section--State Bar opposes the bills (9-25-13)

Michigan Project for Informed Policy opposes House Bills 4927 and 4928. (9-11-13)

UAW Local 6000 opposes the bills. (9-25-13)

The Rainbow Law Center indicated opposition to House Bills 4927 and 4928 (9-25-13)

Legislative Analyst: E. Best
Fiscal Analyst: Kevin Koorstra

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.