



State Policy White Paper: Facilitating Abuse Disclosures by Nonprofits

In response to the revelations of a sexual abuse crisis in American society and recognizing that such abuse has occurred in Southern Baptist churches, Southern Baptist Convention (SBC) President J. D. Greear commissioned a Sexual Abuse Advisory Group (SAAG). He tasked the group with considering how Southern Baptists at every level can take discernible action to respond swiftly and compassionately to incidents of abuse, as well as to foster safe environments within churches and institutions.

Responding to the mandate from the messengers to the 2019 SBC meeting in Birmingham, who urged “churches and their leaders to develop partnerships within their communities to serve the abused, calling on government officials to strengthen laws and maintain justice and protections for the vulnerable in our society,” the ERLC in partnership with SAAG has studied various state-level legal mechanisms to confront sexual abuse.

This white paper is a part of a series focused on state policy issues related to sexual abuse. The ERLC encourages Southern Baptist leaders and policymakers to assess the laws surrounding sexual abuse within their respective states to evaluate if new legislation is needed or would be helpful to ensure that survivors of sexual abuse have access to justice and that future abuse is prevented.

Liability for Disclosing Sexual Misconduct

The welcoming environment of most churches and nonprofits and their need to rely on volunteers to run their ministries makes many churches “soft targets” for abuse. When sexual predators are caught or suspicions arise as to their malevolent intent in one congregation, predators will often pack up and move on to the next soft target. And most alarmingly, many perpetrators are able to move from one church to another with near impunity. During investigative reporting into sexual abuse within Southern Baptist churches,



the Houston Chronicle “found dozens of instances in which church leaders [apparently failed to disclose concerns about former employees](#) who applied for jobs at other congregations.”¹

This abuse pipeline from one church to another must be shut down.

A part of this abuse pipeline rests in the confidence that perpetrators have that churches and nonprofit organizations will not share credible information about alleged abuses with future employers. This is because employers, even when they have credible information about alleged abuses, are reluctant to share that information out of a fear that the accused abuser will sue for defamation. Every circumstance is different, but perpetrators are aware of this legal issue and exploit it to their advantage.

Texas has recently enacted a law aimed at allowing churches and nonprofits to share the credible information they have about alleged abuse. Southern Baptist leaders in Texas crafted and passed HB 4345 giving immunity from civil liability to churches or other nonprofits that in good faith report allegations of sexual abuse to an individual’s current or prospective employer.² This allows church leaders to warn future employers about a potential predator by sharing a former employees’ sexual abuse and misconduct allegations without being sued.

While it is imperative for churches to protect the vulnerable whether they are shielded from liability or not, a law such as this can make it easier for church leaders to do the right thing. Pastor Ben Wright, chairman of the Texas Ethics and Religious Liberty Committee of the Southern Baptists of Texas Convention, commented,

This legislation will not solve the entire problem, but it will eliminate one obstacle. It will enable our convention of more than 2,600 churches to say that when you act

¹ John Tedesco, Robert Downen, and Lise Olsen, “[Offend, then repeat: Southern Baptist churches hired dozens of leaders previously accused of sex offenses](#),” Houston Chronicle (Feb. 12, 2019).

² H.B. 4345, 86th Leg., Reg. Sess. (Tex. 2019).

in good faith, when you do what you need to do, you can do it without fear because the state of Texas stands behind you.³

Sample Statute: Texas

This bill was authored and introduced by Texas state Senator Scott Sanford, who in addition to serving in elected office is Executive Pastor of Cottonwood Creek Church in Allen, Texas, a Southern Baptist church.⁴ The bill was passed by the Texas Legislature in 2019 and is now a part of Texas law.⁵

Statute Text

Sec. 84.0066. LIABILITY FOR DISCLOSING SEXUAL MISCONDUCT. (a) A charitable organization, or an employee, volunteer, or independent contractor of a charitable organization, acting in good faith, is immune from civil liability for any act to disclose to an individual's current or prospective employer information reasonably believed to be true about an allegation that an individual who was employed by or served as a volunteer or independent contractor for the charitable organization or its associated charitable organizations:

- (1) engaged in sexual misconduct;
- (2) sexually abused another individual;
- (3) sexually harassed another individual; or
- (4) committed an offense under any of the following provisions of the Penal Code:
 - (A) Section 20A.02(a)(3), (4), (7), or (8) (sex trafficking of persons);
 - (B) Section 20A.03 (continuous trafficking of persons), if based partly or wholly on conduct that constitutes an offense under Section 20A.02(a)(3), (4), (7), or (8);
 - (C) Section 22.011 (sexual assault) or 22.021 (aggravated sexual assault);or

³ Bob Allen, "Proposed Texas bill would shield churches that report sexual abuse from lawsuits," Baptist News Global (Apr. 2, 2019); see also Diana Chandler, "TX passes bill to shield churches that report abusers," Baptist Press (May 23, 2019); Robert Downen, "Proposed Texas bill would shield churches that report sexual abuse from lawsuits," Houston Chronicle (Mar. 14, 2019).

⁴ H.B. 4345, 86th Leg., Reg. Sess. (Tex. 2019).

⁵ Tex. Civ. Prac. & Rem. Code § 84.0066 (2020).

(D) Chapter 21 (sexual offenses) or 43 (public indecency).

(b) Immunity from civil liability under Subsection (a) applies in relation to an allegation described by that subsection that was required to have been reported as abuse under Chapter 261, Family Code, only if the allegation has been, at the time of the act to disclose, previously reported to an appropriate agency under Section 261.103, Family Code.

(c) An individual is not immune under this section from civil or criminal liability for:

(1) disclosing the individual's own conduct that constitutes:

(A) sexual misconduct;

(B) sexual abuse of another individual;

(C) sexual harassment of another individual; or

(D) an offense under any of the following provisions of the Penal Code:

(i) Section 20A.02(a)(3), (4), (7), or (8) (sex trafficking of persons);

(ii) Section 20A.03 (continuous trafficking of persons), if based partly or wholly on conduct that constitutes an offense under Section 20A.02(a)(3), (4), (7), or (8);

(iii) Section 22.011 (sexual assault) or 22.021 (aggravated sexual assault); or

(iv) Chapter 21 (sexual offenses) or 43 (public indecency); or

(2) acting in bad faith or with a malicious purpose in making a disclosure described by Subsection (a).

Notes

- **Disclosure based on reasonable beliefs are protected:** The language of the statute is designed to protect a disclosure that is based on reasonable belief: “information reasonably believed to be true.” This is an intentionally low threshold and is not tied to a defined evidentiary threshold, for example a preponderance of the evidence standard. However, as described below, the disclosures must be made in good faith.

- **Bad faith or malicious disclosures are not protected:** A provision is included that specifically denies protection under the statute for disclosures made in bad faith or for a malicious purpose.
- **Applies to employees, volunteers, or independent contractors:** It is important to include more than just employees, because nonprofit organizations and churches may deal with situations that involve volunteers and those who are not formally employed by the organization. This is a crucial element of the legislation to include in other states.
- **Types of behavior and misconduct covered by the statute:** The scope of sexual crimes covered under the statute include sexual misconduct, sexual abuse of another, sexual harassment, and then refers to a number of offenses under the Texas Penal Code, including sexual assault, aggravated sexual assault, sex trafficking, public indecency, and other sexual offenses.
- **Inclusion of “sexual misconduct”:** The term “sexual misconduct” is not defined by the statute and is not a reference to another portion of the Texas Penal Code. This term is intentionally broad, as the purpose of the statute is to facilitate sharing of information that will protect the public.
- **Limitation to properly reported situations:** Subsection (b) includes a limitation on the applicability of the statute to misconduct that was properly reported to the authorities, if reporting was required under Texas’ sexual abuse reporting statute. This provision was not included in the introduced version of the bill and was added during the committee markup process in response to testimony offered by a member of the survivor community. The rationale for this provision is that organizations should not benefit if they did not follow the law when the incident took place. Although this is an understandable rationale for such a provision, it should be noted that this will serve as a deterrent to sharing information about past abuse, which is the core purpose of the statute.

Sample Bill: Missouri

HB 1446 was introduced in the Missouri legislature by Rep. Doug Richey, who also serves as Senior Pastor of Pigsah Baptist Church, a Southern Baptist church in Excelsior Springs, Missouri.⁶ The Missouri Baptist Convention supported the legislation.⁷ The bill was heard in committee but did not pass the Missouri legislature in 2020, in part due to legislative disruptions caused by the Covid-19 pandemic.

Bill Text

537.049. 1. No charity, nonprofit organization, religious organization, or church, or persons acting on behalf of a charity, nonprofit organization, religious organization, or church, shall be held civilly liable for any communication regarding an individual made directly to another charity, nonprofit organization, religious organization, or church, or persons acting on behalf of a charity, nonprofit organization, religious organization, or church, to the extent the communication concerns an allegation that the individual has:

- (1) Engaged in sexual misconduct;
- (2) Sexually abused another individual;
- (3) Sexually harassed another individual;
- (4) Committed any sexual offense under chapter 566; or
- (5) Engaged in conduct affecting the individual's fitness for religious ministry, but only in the case of a communication to a church or religious organization or persons acting on behalf of a church or religious organization.

2. Immunity from civil liability under subsection 1 of this section applies in relation to an allegation described in subsection 1 of this section that was required to have been reported as abuse under sections 210.109 to 210.183 only if the allegation has been, at the time of the act to disclose, previously reported to the children's division within the department of social services under section 210.115.

3. An individual is not immune from liability under this section for:

⁶ H.B. 1446, 100th Gen. Assem., 2nd Reg. Sess. (Mo. 2019).

⁷ "[Bill filed to protect churches, target predators.](#)" The Pathway (Jan. 2, 2020); Ben Hawkins, "[Mo. House bill enables churches to fight abuse.](#)" The Pathway (Mar. 25, 2020).

- (1) Disclosing the individual's own conduct; or
- (2) Any communication made with actual malice while making a disclosure described in subsection 1 of this section.

4. This section does not replace, limit, or alter any other defense or privilege available to a person based on communications.

Notes

- **Institutions disclosing sexual misconduct are protected:** The statute protects organizations from civil liability in disclosing sexual misconduct by employees and representatives. This protection covers: charities, nonprofit organizations, religious organizations, and churches. The language of the statute also includes those who are representing these religious organizations to ensure that the reach of the statute is broad enough to encompass potential loopholes that predators may attempt to exploit.
- **Disclosure about an individual's own conduct is not protected:** Those who are not immune to civil liability under this statute will include individuals who disclose their own sexual misconduct.
- **Bad faith or malicious disclosures are not protected:** A provision is included that specifically denies protection under the statute for disclosures made in bad faith or for a malicious purpose.
- **Covered allegations:** The statute lists the following as sex crimes that are covered: sexual misconduct, sexual abuse, sexual harassment and assault, and any offense that is committed under Missouri state law.
- **Inclusion of "sexual misconduct":** The term "sexual misconduct" is not defined by the statute and is not a reference to another portion of the Missouri Code. This term is intentionally broad, as the purpose of the statute is to facilitate sharing of information that will protect the public.
- **Fitness for ministry provision:** This provision is intended to ensure that fitness for ministerial service is protected discussion between two churches. The scope of this

language is somewhat broader than sexual abuse, and this provision ensures that independent, congregationally governed churches are permitted to share information about ministerial fitness for prospective pastors and church leaders.

- **Limitation to properly reported situations:** Subsection (2) includes a limitation on the applicability of the statute to misconduct that was properly reported to the authorities, if reporting was required under Missouri's sexual abuse reporting statute. The rationale for this provision is that organizations should not benefit if they did not follow the law when the incident took place. Although this is an understandable rationale for such a provision, it should be noted that this will serve as a deterrent to sharing information about past abuse, which is the core purpose of the statute.