

SENATE BILL No. 325

By Committee on Federal and State Affairs

2-15

AN ACT concerning the health care professionals' rights of conscience.

Be it enacted by the Legislature of the State of Kansas:

Section 1. This act may be known and cited as the health care professionals' rights of conscience act.

Sec. 2. (a) It is the public policy of the state of Kansas to respect and protect the fundamental rights of conscience of all individuals who provide health care services.

(b) Without a comprehensive civil rights act for health care professionals, religious beliefs and rights of conscience may be violated in various ways, such as harassment, demotion, salary reduction, transfer, termination, loss of staffing privileges, denial of aid or benefits and refusal to license or certify.

(c) It is the purpose of this act to protect as a basic civil right the right of all individuals and entities to decline to counsel, advise, pay for, provide, perform, assist, refer for or participate in providing or performing health care services that violate their religious or moral convictions. Such health care services may include abortion, artificial insemination, assisted reproduction, artificial birth control, cloning, human stem cell and fetal experimentation, physician-assisted suicide and euthanasia.

(d) Accordingly, it is the purpose of this act to prohibit all forms of discrimination, disqualification, coercion, disability or liability upon such individuals or entities that decline to perform any health care service based on religious or moral convictions.

Sec. 3. As used in this act, the following definitions apply:

(a) "Health care service" means any phase of patient medical care, treatment or procedure, including the following: Therapy, diagnosis or prognosis, research, instruction, prescribing or administering any device, drug or medication, surgery or any other care or treatment rendered by health care providers or health care institutions.

(b) "Health care professional" means any individual who may be asked to participate in a health care service, including a physician, physician's assistant, nurse, nurses' aide, medical assistant, hospital employee, clinic employee, nursing home employee, pharmacist, pharmacy employee, medical or nursing school faculty, student or employee, counselor,

1 social worker or any professional, paraprofessional or any other person
2 who furnishes or assists in the furnishing of health care services.

3 (c) "Health care institution" means any public or private organization,
4 corporation, partnership, sole proprietorship, association, agency, net-
5 work, joint venture or other legal entity that is involved in providing health
6 care services, including hospitals, clinics, medical centers, ambulatory sur-
7 gical centers, private physician's offices, pharmacies, nursing homes, uni-
8 versity medical schools and nursing schools, medical training facilities or
9 other institutions or locations where health care services are provided to
10 any person.

11 (d) "Health care payer" means any entity or employer that pays for
12 any health care service or product including health maintenance organi-
13 zations, health plans, insurance companies, management service organi-
14 zation and employers that pay for or provide health insurance coverage
15 as a benefit to their employees.

16 (e) "Includes" and "including" is a term of illustration, not limitation.

17 (f) "Participate" in a health care service means to counsel, advise,
18 provide, perform, assist in, refer for, admit for purposes of providing or
19 participate in providing any health care service or any form of such
20 service.

21 (g) "Pay" or "payment" means pay, contract for or otherwise arrange
22 for the payment of, in whole or in part.

23 (h) "Religious or moral convictions" means the religious or moral
24 principles sincerely held by an individual and the policies adopted by a
25 health care institution or health care payer that are based on sincerely
26 held religious or moral principles.

27 Sec. 4. (a) A health care professional has the right not to participate,
28 and no health care professional shall be required to participate in a health
29 care service that violates such individual's religious or moral convictions.

30 (b) No health care professional shall be civilly, criminally or admin-
31 istratively liable for declining to participate in a health care service that
32 violates such individual's religious or moral convictions.

33 (c) It shall be unlawful for any person, health care professional, health
34 care institution, public or private institution, public official or any board
35 which certifies competency in medical specialties to discriminate against
36 a health care professional in any manner based on such health care pro-
37 fessional's declining to participate in a health care service that violates
38 such individual's religious or moral convictions. For purposes of this act,
39 discrimination includes termination, transfer, refusal of staff privileges,
40 refusal of board certification, adverse administrative action, demotion,
41 loss of career specialty, reassignment to a different shift, reduction of
42 wages or benefits, refusal to award any grant, contract or other program,
43 refusal to provide residency training opportunities or any other penalty,

1 disciplinary or retaliatory action.

2 Sec. 5. (a) A health care institution has the right not to participate,
3 and no health care institution shall be required to participate in a health
4 care service that violates its religious or moral convictions.

5 (b) No health care institution shall be civilly, criminally or adminis-
6 tratively liable for declining to participate in a health care service that
7 violates the institution's moral or religious convictions.

8 (c) It shall be unlawful for any person, public or private institution or
9 public official to discriminate against any health care institution or person,
10 association or corporation attempting to establish a new health care in-
11 stitution or operating an existing health care institution in any manner,
12 including any denial, deprivation or disqualification with respect to licen-
13 sure; any aid, assistance, benefit or privilege, including staff privileges; or
14 any authorization, including authorization to create, expand, improve, ac-
15 quire or affiliate or merge with any health care institution, because such
16 health care institution or person, association or corporation planning, pro-
17 posing or operating a health care institution, declines to participate in a
18 health care service which violates the health care institution's religious or
19 moral convictions as reflected in its existing or proposed ethical guide-
20 lines, mission statement, constitution, bylaws, articles of incorporation,
21 rules and regulations or other policies.

22 (d) It shall be unlawful for any public official, agency, institution or
23 entity to deny any form of aid, assistance, grants or benefits, or in any
24 other manner to coerce, disqualify or discriminate against any person,
25 association or corporation attempting to establish a new health care in-
26 stitution or operating an existing health care institution because the ex-
27 isting or proposed health care institution declines to participate in a health
28 care service contrary to the health care institution's religious or moral
29 convictions as reflected in its existing or proposed ethical guidelines, mis-
30 sion statement, constitution, bylaws, articles of incorporation, rules and
31 regulations or other policies.

32 Sec. 6. (a) A health care payer has the right to decline to pay, and,
33 no health care payer shall be required to pay, for any health care service
34 or product that violates its religious or moral convictions.

35 (b) No health care payer and no person, association or corporation
36 that owns, operates, supervises or manages a health care payer shall be
37 civilly or criminally liable by reason of the health care payer's declining
38 to pay for any health care service that violates its religious or moral con-
39 victions as reflected in its ethical guidelines, mission statement, consti-
40 tution, bylaws, articles of incorporation, regulations or other policies.

41 (c) It shall be unlawful for any person, public or private institution or
42 public official to discriminate against any health care payer or any person,
43 association or corporation (1) attempting to establish a new health care

1 payer, or (2) operating an existing health care payer, in any manner, in-
2 cluding any denial, deprivation or disqualification with respect to licen-
3 sure or any aid, assistance, benefit, privilege or authorization, including
4 any authorization to create, expand, improve, acquire or affiliate or merge
5 with any health care payer because the health care payer or a person,
6 association or corporation planning, proposing or operating a health care
7 payer declines to pay for any health care service that violates its religious
8 or moral convictions, as reflected in the existing or proposed ethical
9 guidelines, mission statement, constitution, bylaws, articles of incorpo-
10 ration, regulations or other policies.

11 (d) It shall be unlawful for any public official, agency, institution or
12 entity to deny any form of aid, assistance, grants or benefits or in any
13 other manner to coerce, disqualify or discriminate against any health care
14 payer or any person, association or corporation attempting to establish a
15 new health care payer or operating an existing health care payer because
16 the existing or proposed health care payer declines to pay for any health
17 care service that is contrary to its religious or moral convictions, as re-
18 flected in its existing or proposed ethical guidelines, mission statement,
19 constitution, bylaws, articles of incorporation, rules and regulations or
20 other written policies.

21 Sec. 7. (a) A civil action for damages or injunctive relief or both may
22 be brought for the violation of any provision of this act. It shall not be a
23 defense to any claim arising out of the violation of this act that such
24 violation was necessary to prevent additional burden or expense on any
25 other health care professional, health care institution, individual or
26 patient.

27 (b) Any individual, association, corporation, entity or health care in-
28 stitution injured by any public or private individual, association, agency,
29 entity or corporation by reason of any conduct prohibited by this act may
30 commence a civil action. Upon finding a violation of this act, the aggrieved
31 party shall be entitled to recover threefold the actual damages, including
32 pain and suffering, sustained by such individual, association, corporation,
33 entity or health care institution, the costs of the action and reasonable
34 attorney fees; but in no case shall recovery be less than \$5,000 for each
35 violation in addition to costs of the action and reasonable attorney fees.
36 These damage remedies shall be cumulative and not exclusive of other
37 remedies afforded under any other state or federal law.

38 (c) The court in such civil action may award injunctive relief, includ-
39 ing ordering reinstatement of a health care professional to such health
40 care professional's prior job position.

41 Sec. 8. The provisions of the act are declared to be severable and if
42 any provision, word, phrase or clause of the act or the application thereof
43 to any person shall be held invalid, such invalidity shall not affect the

1 validity of the remaining portions of this act.

2 Sec. 9. This act shall take effect and be in force from and after its
3 publication in the statute book.

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