

6 **HOUSE BILL No. 2711**  
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8  
9 By Representatives T. Powell, Aday, Boston, Campbell, Cook, Dahl,  
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15 Powell, Powers, Pyle, Reardon, Shultz, Thimesch, Toplikar, Vickrey,  
16 D. Williams and Wilson

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18 1-28  
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20 AN ACT enacting the health care providers' rights of conscience act.  
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22 *Be it enacted by the Legislature of the State of Kansas:*

23 Section 1. This act shall be known and may be cited as the health  
24 care providers' rights of conscience act.

25 Sec. 2. The legislature finds and declares that people and organiza-  
26 tions hold different beliefs about whether certain health care services are  
27 morally acceptable. It is the public policy of the state of Kansas to respect  
28 and protect, as a civil right, the right of conscience of all persons to refuse  
29 to participate in the provision of, or pay for, a health care service subject  
30 to this act whether acting individually, corporately or in association with  
31 others; and to prohibit all forms of discrimination, disqualification, co-  
32 ercion, disability or imposition of liability upon such persons or entities  
33 by reason of their refusal to participate in the provision of, or pay for, a  
34 health care service subject to this act.

35 The provisions of this act shall be construed liberally to carry out pur-  
36 poses thereof.

37 Sec. 3. As used in this act:

38 (a) "Discriminate" means any conduct or practice relating to the re-  
39 fusal of a health care provider to participate in the provision of a health  
40 care service subject to the act if such conduct or practice, if it was based  
41 on race, religion, color, sex, disability, national origin or ancestry, would  
42 be unlawful under K.S.A. 44-1009, and amendments thereto; any denial,  
43 deprivation, disqualification or adverse action with respect to licensure,

1 aid, assistance, grants, benefit or privilege, including staff privileges; any  
2 denial, deprivation, disqualification or adverse action with respect to any  
3 authorization, including authorization to create, expand, improve, ac-  
4 quire, affiliate or merge with any health care institution or payer; or in  
5 any other manner engage in coercion against any person, health care  
6 provider, health care institution or health care payer because of their  
7 refusal to participate in the provision of, or pay for, a health care service  
8 subject to this act.

9 **[(b) “Euthanasia” means an act that is directly intended to**  
10 **cause the death of a person with an illness or disability. “Eutha-**  
11 **nasia” does not include the administration of pain medication or**  
12 **other acts or omissions which may have an unintended side-effect**  
13 **of hastening death.]**

14 ~~(b)~~ [(c)] “Health care service” means any phase of patient medical  
15 care, treatment or procedure, including but not limited to, therapy, coun-  
16 seling, diagnosis or prognosis, research, instruction, prescribing, dispens-  
17 ing or providing any device, drug or medication, surgery or any other care  
18 or treatment rendered by health care providers or health care institutions.

19 ~~(c)~~ [(d)] “Health care service subject to this act” means any health  
20 care service relating to abortion, artificial insemination, assisted repro-  
21 duction, artificial birth control **prescribed for a contraceptive pur-**  
22 **pose, blood transfusions, human cloning, embryonic stem cell and fetal**  
23 **experimentation, infanticide, ~~physician-assisted suicide and assisting su-~~**  
24 **icide, euthanasia and sterilization for contraceptive purposes.**

25 ~~(d)~~ [(e)] “Health care provider” means any individual who may partic-  
26 ipate in the provision of a health care service, including a physician,  
27 physician’s assistant, nurse, **advanced registered nurse practitioner,**  
28 nurses’ aide, medical assistant, hospital employee, clinic employee, adult  
29 care home employee, pharmacist, pharmacy employee, medical or nurs-  
30 ing school faculty, student or employee, researcher, counselor or social  
31 worker.

32 ~~(e)~~ [(f)] “Health care institution” means any public or private organ-  
33 ization, corporation, partnership, limited liability company, sole proprie-  
34 torship, association, agency, network, joint venture or other entity, in-  
35 cluding its employees, agents, owners, directors, operators or managers,  
36 that participates in the provision of a health care service, including hos-  
37 pitals, clinics, medical centers, ambulatory surgical centers, private phy-  
38 sician’s offices, pharmacies, adult care homes, university medical schools  
39 and nursing schools, medical training facilities or other institutions or  
40 locations where health care services are provided to any person and any  
41 person attempting to establish a health care institution.

42 ~~(f)~~ [(g)] “Health care payer” means any employer, public or private  
43 organization, corporation, partnership, limited liability company, sole pro-

1 proprietorship, association, agency, network, joint venture or other entity,  
2 including its employees, agents, owners, directors, operators or managers,  
3 that pays for any health care service or product including, health main-  
4 tenance organizations, health plans, insurance companies, management  
5 service organizations and employers that pay for or provide health ben-  
6 efits or health insurance coverage as a benefit to their employees and any  
7 person attempting to establish a health care payer.

8 ~~(g)~~ [(h)] “Licensing body” means the state of Kansas and any agency,  
9 board, commission or instrumentality of the state and any political sub-  
10 division of the state that authorizes individuals or entities to provide  
11 health care services in this state and issues a license, certificate, permit  
12 or other authorization to such individual or entity.

13 ~~(h)~~ [(i)] “Participate in the provision of a health care service” means  
14 to counsel, advise, provide, perform, assist in, refer for, admit for purposes  
15 of providing or participate in providing any health care service or any  
16 form of such service.

17 ~~(i)~~ [(j)] “Pay” or “payment” means pay, contract for or otherwise ar-  
18 range for the payment of, in whole or in part.

19 ~~(j)~~ [(k)] “Person” means any individual, corporation, partnership, lim-  
20 ited liability company, sole proprietorship, association, legal representa-  
21 tive, trustee, trustee in bankruptcy or receiver, joint venture, organization  
22 or other entity.

23 ~~(k)~~ [(l)] “Public agency” means the state of Kansas, its state agencies,  
24 boards, and instrumentalities, and every governmental subdivision when  
25 acting solely in the agency’s capacity as an employer of a health care  
26 provider or when making determinations affecting the amount or au-  
27 thority to receive payment for health care costs.

28 Sec. 4. (a) A health care provider has the right not to participate in  
29 the provision of a health care service subject to this act.

30 (b) No health care provider shall be liable civilly or criminally for  
31 declining to participate in the provision of a health care service subject  
32 to this act.

33 (c) It shall be unlawful for any person, health care provider, health  
34 care institution, licensing body or public agency to discriminate against a  
35 health care provider.

36 (d) Nothing in this act shall relieve a health care provider from any  
37 duty, which may exist under the law concerning current standards of  
38 normal professional practices and procedures, to inform a patient of the  
39 patient’s condition, prognosis and risks of a health care service subject to  
40 this act. Such health care provider shall be under no duty to participate  
41 in the provision of a health care service subject to this act.

42 (e) **Nothing in this act shall be construed to relieve a health**  
43 **care provider from participating in the provision of what, in such**

1 **provider's best medical and ethical judgment, is a medically nec-**  
2 **essary and appropriate health care service in the case of an emer-**  
3 **gency when the patient's life is in jeopardy.**

4 Sec. 5. (a) A health care institution has the right to not participate in  
5 the provision of a health care service subject to this act.

6 (b) No health care institution shall be liable civilly or criminally for  
7 declining to participate in the provision of a health care service subject  
8 to this act.

9 (c) It shall be unlawful for any person, licensing body or public agency  
10 to discriminate against any health care institution.

11 (d) Nothing in this act shall relieve a health care institution from any  
12 obligation it may have under the emergency medical treatment and active  
13 labor act as contained in 42 U.S.C. 1395dd as in effect on July 1, 2002.

14 **(e) Nothing in this act shall be construed to relieve a health**  
15 **care institution from participating in the provision of what, in such**  
16 **institution's best medical and ethical judgment, is a medically nec-**  
17 **essary and appropriate health care service in the case of an emer-**  
18 **gency when the patient's life is in jeopardy.**

19 Sec. 6. (a) A health care payer has the right to decline to pay for any  
20 health care service subject to this act.

21 (b) No health care payer shall be liable civilly or criminally by reason  
22 of the health care payer's declining to pay for any health care service  
23 subject to this act.

24 (c) It shall be unlawful for any person, licensing body or public agency  
25 to discriminate against any health care payer.

26 **(d) Nothing in this act shall be construed to relieve a health**  
27 **care payer from paying, to the extent of such payer's contractual**  
28 **obligation, for what, in such payer's best medical and ethical judg-**  
29 **ment, is a medically necessary and appropriate health care service**  
30 **in the case of an emergency when the patient's life is in jeopardy.**

31 Sec. 7. (a) Any health care provider aggrieved by an alleged unlawful  
32 employment practice, as defined by K.S.A. 44-1009, and amendments  
33 thereto, based on the refusal to participate in the provision of a health  
34 care service subject to this act may file a complaint and receive relief in  
35 the manner provided for under the Kansas act against discrimination,  
36 K.S.A. 44-1001 *et seq.*, and amendments thereto, but such relief shall not  
37 be available ~~if the employer has provided the health care provider, upon~~  
38 ~~hire or as soon as practicable, with written notice of the health care pro-~~  
39 ~~vider's rights under this act and the provider has failed to provide the~~  
40 ~~employer with reasonable notice of the provider's objection to partici-~~  
41 ~~pating in the provision of a health care service subject to this act. Written~~  
42 ~~notice provided by a health care provider to the provider's employer upon~~  
43 ~~hire, upon enactment of this act, [unless the health care provider gives~~

1 **the employer written notice of the provider's objection to partic-**  
2 **ipating in the provision of such health care service prior to such**  
3 **provider's employment, within 30 days after enactment of this act]**  
4 or at least 48 hours prior to any refusal to participate in the provision of  
5 a health care service subject to this act ~~shall be deemed reasonable in all~~  
6 ~~circumstances. In all other cases, the reasonableness of notice by a health~~  
7 ~~care provider shall be determined by considering all the circumstances[,~~  
8 **whichever is latest].**

9 (b) In any proceeding before a licensing body in which it is alleged  
10 that a health care provider has engaged in conduct defined as grounds  
11 for disciplinary action or any adverse action, including unprofessional con-  
12 duct, dishonorable conduct or professional incompetence arising from the  
13 refusal to participate in the provision of a health care service subject to  
14 this act, a health care provider shall have the right to assert the protection  
15 of this act as an affirmative defense. The licensing body shall not impose  
16 any disciplinary sanction or any adverse action and shall not refuse to  
17 grant an original, renewal or reinstated license, certificate or permit based  
18 upon the refusal to participate in the provision of a health care service  
19 subject to this act.

20 (c) Except as provided by subsections (a) and (b), a health care pro-  
21 vider, health care institution or health care payer injured by any person,  
22 public agency or licensing body based on the refusal to participate in the  
23 provision of a health care service subject to this act, may commence a  
24 civil action for damages or injunctive relief or both in the district court.

25 (d) Upon finding a violation of this act brought pursuant to paragraph  
26 (a), (b) or (c), the aggrieved party shall be entitled to recover, in addition  
27 to any damages or other relief, such party's costs of the action and reason-  
28 able attorney fees. Any remedies available under this act shall be cum-  
29 ulative and not exclusive of other remedies afforded under any other  
30 state or federal law.

31 (e) It shall not be a defense to any claim arising out of the violation  
32 of this act that such violation was necessary to prevent additional burden  
33 or expense on any other health care provider, health care institution,  
34 health care payer individual or patient.

35 (f) Any claim brought against a public agency or licensing body shall  
36 be subject to the Kansas tort claims act.

37 (g) Each employer of a health care provider shall comply with its  
38 notice obligations under paragraph (a) of this section by posting, and  
39 keeping posted, in conspicuous places on the premises of the employer  
40 where notices to employees and applicants for employment are custom-  
41 arily posted, a notice, to be prepared or approved by the Kansas human  
42 rights commission by rule or regulation, setting forth excerpts from, or  
43 summaries of, the pertinent provisions of this act. Any health care pro-

1 vider shall be relieved of the provider's notice obligations to the employer  
2 if the employer of the health care provider fails to comply with the pro-  
3 visions of this paragraph.

4 Sec. 8. Nothing in this act shall be construed as excusing any health  
5 care provider, health care institution or health care payer from liability  
6 for refusing to participate in the provision of, or pay for, a health care  
7 service subject to this act if:

8 (a) The health care provider, health care institution or health care  
9 payer has entered into a contract specifically to participate in the provision  
10 of, or pay for, a health care service subject to this act; or

11 (b) the health care provider, health care institution or health care  
12 payer has accepted federal or state funds for the sole purpose of, and  
13 specifically conditioned upon, permitting or participating in the provision  
14 of, or paying for, a health care service subject to this act.

15 **[Sec. 9. Nothing in this act shall be construed to relieve any**  
16 **health care provider from civil or criminal liability or administra-**  
17 **tive action for the unlawful or negligent practice of a health care**  
18 **profession.]**

19 **[Sec. 10. Nothing in this act shall be construed to excuse any**  
20 **health care provider from complying with:**

21 **[(a) Any "do not resuscitate" directive or order which is valid**  
22 **under K.S.A. 2001 Supp. 65-4941 through 65-4948, and amend-**  
23 **ments thereto; or**

24 **[(b) any declaration directing the withholding or withdrawal of**  
25 **life-sustaining procedures which is valid under K.S.A. 65-28,101**  
26 **through 65-28,109, and amendments thereto.]**

27 Sec. ~~9~~ **[11.]** This act shall supercede all other acts or parts of acts to  
28 the extent that any other acts or parts of acts are inconsistent with the  
29 terms or operation of this act, except that protections of this act only shall  
30 supplement and not replace the protections contained in K.S.A. 65-443,  
31 65-444, 65-446, and 65-447, and amendments thereto.

32 Sec. ~~10~~ **[12.]** Nothing in this act shall be construed as prohibiting  
33 or permitting any health care service subject to this act.

34 Sec. ~~11~~ **[13.]** The provisions of this act are declared to be severable  
35 and if any provision, word, phrase or clause of the act or the application  
36 thereof to any person shall be held invalid, such invalidity shall not affect  
37 the validity of the remaining portions of this act.

38 Sec. ~~12~~ **[14.]** This act shall take effect and be in force from and after  
39 its publication in the statute book.

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