

## HOUSE BILL No. 2898

By Representatives Toplikar, Faber and Howell

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AN ACT enacting the health care providers' rights of conscience act.

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

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

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

The provisions of this act shall be construed liberally to carry out purposes thereof.

Sec. 3. As used in this act:

(a) "Discriminate" means any conduct or practice relating to the refusal of a health care provider to participate in the provision of a health care service subject to the act if such conduct or practice, if it was based on race, religion, color, sex, disability, national origin or ancestry, would be unlawful under K.S.A. 44-1009, and amendments thereto; any denial, deprivation, disqualification or adverse action with respect to licensure, aid, assistance, grants, benefit or privilege, including staff privileges; any denial, deprivation, disqualification or adverse action with respect to any authorization, including authorization to create, expand, improve, acquire, affiliate or merge with any health care institution or payer; or in any other manner engage in coercion against any person, health care provider, health care institution or health care payer because of their refusal to participate in the provision of, or pay for, a health care service subject to this act.

(b) "Health care service" means any phase of patient medical care, treatment or procedure, including but not limited to, therapy, counseling, diagnosis or prognosis, research, instruction, prescribing, dispensing or

1 providing any device, drug or medication, surgery or any other care or  
2 treatment rendered by health care providers or health care institutions.

3 (c) “Health care service subject to this act” means any health care  
4 service relating to abortion, artificial insemination, assisted reproduction,  
5 artificial birth control, blood transfusions, cloning, embryonic stem cell  
6 and fetal experimentation, infanticide, physician-assisted suicide and eu-  
7 thanasia and sterilization.

8 (d) “Health care provider” means any individual who may participate  
9 in the provision of a health care service, including a physician, physician’s  
10 assistant, nurse, nurses’ aide, medical assistant, hospital employee, clinic  
11 employee, adult care home employee, pharmacist, pharmacy employee,  
12 medical or nursing school faculty, student or employee, researcher, coun-  
13 selor or social worker.

14 (e) “Health care institution” means any public or private organization,  
15 corporation, partnership, limited liability company, sole proprietorship,  
16 association, agency, network, joint venture or other entity, including its  
17 employees, agents, owners, directors, operators or managers, that partic-  
18 ipates in the provision of a health care service, including hospitals, clinics,  
19 medical centers, ambulatory surgical centers, private physician’s offices,  
20 pharmacies, adult care homes, university medical schools and nursing  
21 schools, medical training facilities or other institutions or locations where  
22 health care services are provided to any person and any person attempting  
23 to establish a health care institution.

24 (f) “Health care payer” means any employer, public or private organ-  
25 ization, corporation, partnership, limited liability company, sole proprie-  
26 torship, association, agency, network, joint venture or other entity, in-  
27 cluding its employees, agents, owners, directors, operators or managers,  
28 that pays for any health care service or product including, health main-  
29 tenance organizations, health plans, insurance companies, management  
30 service organizations and employers that pay for or provide health ben-  
31 efits or health insurance coverage as a benefit to their employees and any  
32 person attempting to establish a health care payer.

33 (g) “Licensing body” means the state of Kansas and any agency,  
34 board, commission or instrumentality of the state and any political sub-  
35 division of the state that authorizes individuals or entities to provide  
36 health care services in this state and issues a license, certificate, permit  
37 or other authorization to such individual or entity.

38 (h) “Participate in the provision of a health care service” means to  
39 counsel, advise, provide, perform, assist in, refer for, admit for purposes  
40 of providing or participate in providing any health care service or any  
41 form of such service.

42 (i) “Pay” or “payment” means pay, contract for or otherwise arrange  
43 for the payment of, in whole or in part.

1 (j) "Person" means any individual, corporation, partnership, limited  
2 liability company, sole proprietorship, association, legal representative,  
3 trustee, trustee in bankruptcy or receiver, joint venture, organization or  
4 other entity.

5 (k) "Public agency" means the state of Kansas, its state agencies,  
6 boards, and instrumentalities, and every governmental subdivision when  
7 acting solely in the agency's capacity as an employer of a health care  
8 provider or when making determinations affecting the amount or au-  
9 thority to receive payment for health care costs.

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

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

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

18 (d) Nothing in this act shall relieve a health care provider from any  
19 duty, which may exist under the law concerning current standards of  
20 normal professional practices and procedures, to inform a patient of the  
21 patient's condition, prognosis and risks of a health care service subject to  
22 this act. Such health care provider shall be under no duty to participate  
23 in the provision of a health care service subject to this act.

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

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

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

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

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

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

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

41 Sec. 7. (a) Any health care provider aggrieved by an alleged unlawful  
42 employment practice, as defined by K.S.A. 44-1009, and amendments  
43 thereto, based on the refusal to participate in the provision of a health

1 care service subject to this act may file a complaint and receive relief in  
2 the manner provided for under the Kansas act against discrimination,  
3 K.S.A. 44-1001 *et seq.*, and amendments thereto, but such relief shall not  
4 be available if the employer has provided the health care provider, upon  
5 hire or as soon as practicable, with written notice of the health care pro-  
6 vider's rights under this act and the provider has failed to provide the  
7 employer with reasonable notice of the provider's objection to partici-  
8 pating in the provision of a health care service subject to this act. Written  
9 notice provided by a health care provider to the provider's employer upon  
10 hire, upon enactment of this act, or at least 48 hours prior to any refusal  
11 to participate in the provision of a health care service subject to this act  
12 shall be deemed reasonable in all circumstances. In all other cases, the  
13 reasonableness of notice by a health care provider shall be determined  
14 by considering all the circumstances.

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

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

31 (d) Upon finding a violation of this act brought pursuant to paragraph  
32 (a), (b) or (c), the aggrieved party shall be entitled to recover, in addition  
33 to any damages or other relief, such party's costs of the action and rea-  
34 sonable attorney fees. Any remedies available under this act shall be cu-  
35 mulative and not exclusive of other remedies afforded under any other  
36 state or federal law.

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

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

43 (g) Each employer of a health care provider shall comply with its

1 notice obligations under paragraph (a) of this section by posting, and  
2 keeping posted, in conspicuous places on the premises of the employer  
3 where notices to employees and applicants for employment are custom-  
4 arily posted, a notice, to be prepared or approved by the Kansas human  
5 rights commission by rule or regulation, setting forth excerpts from, or  
6 summaries of, the pertinent provisions of this act. Any health care pro-  
7 vider shall be relieved of the provider's notice obligations to the employer  
8 if the employer of the health care provider fails to comply with the pro-  
9 visions of this paragraph.

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

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

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

21 Sec. 9. This act shall supercede all other acts or parts of acts to the  
22 extent that any other acts or parts of acts are inconsistent with the terms  
23 or operation of this act, except that protections of this act only shall sup-  
24 plement and not replace the protections contained in K.S.A. 65-443, 65-  
25 444, 65-446, and 65-447, and amendments thereto.

26 Sec. 10. Nothing in this act shall be construed as prohibiting or per-  
27 mitting any health care service subject to this act.

28 Sec. 11. The provisions of this act are declared to be severable and  
29 if any provision, word, phrase or clause of the act or the application  
30 thereof to any person shall be held invalid, such invalidity shall not affect  
31 the validity of the remaining portions of this act.

32 Sec. 12. This act shall take effect and be in force from and after its  
33 publication in the statute book.

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