

1 SB46
2 126164-1
3 By Senator Ward
4 RFD: Health
5 First Read: 01-MAR-11
6 PFD: 02/24/2011

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8 SYNOPSIS: Under current law, health care authorities
9 are vested with the authority to make and to alter
10 appropriate rules and regulations for the conduct
11 of any health care facility and properties owned or
12 operated by it.

13 This bill would give health care providers,
14 health care institutions, and health care payers
15 the following: The authority to refuse to perform
16 or to participate in health care services that
17 violate their conscience; immunity from civil,
18 criminal, or administrative liability for refusing
19 to provide or participate in a health care service
20 that violates their conscience; immunity from
21 discrimination or disciplinary action including
22 termination, transfer, refusal of staff privileges,
23 shift reassignment, or wage or benefits reduction
24 for declining to participate in a health care
25 service that violates their conscience. Further,
26 the bill would provide for injunctive relief and
27 back pay for violation.

1
2 A BILL
3 TO BE ENTITLED
4 AN ACT
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6 Relating to health care, allows health care
7 providers, institutions, and payers to decline to perform any
8 health care service that violates their conscience and provide
9 remedies for persons who exercise that right and suffer
10 consequences as a result.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. This act may be known and cited as the
13 "Health Care Rights of Conscience Act."

14 Section 2. The Legislature hereby finds and
15 declares:

16 (a) It is the public policy of the State of Alabama
17 to respect and protect the fundamental right of conscience of
18 all individuals who provide health care services.

19 (b) Without comprehensive protection, health care
20 rights of conscience may be violated in various ways, such as
21 harassment, demotion, salary reduction, transfer, termination,
22 loss of staffing privileges, denial of aid or benefits, and
23 refusal to license, or refusal to certify.

24 (c) It is the purpose of this act to protect as a
25 basic civil right the right of all health care providers,
26 institutions and payers to decline to counsel, advise, pay
27 for, provide, perform, assist, or participate in providing or

1 performing certain enumerated health care services that
2 violate their consciences.

3 (d) Accordingly, it is the purpose of this act to
4 prohibit all forms of discrimination, disqualification,
5 coercion, disability, or liability upon such health care
6 providers, institutions, and payers that decline to perform
7 any enumerated health care service that violates their
8 conscience.

9 Section 3. The following words and terms shall have
10 the meanings ascribed to them in this section, unless
11 otherwise required by their respective context:

12 (1) CONSCIENCE. The religious, moral, or ethical
13 principles held by a health care provider, the health care
14 institution, or health care payer. For purposes of this act, a
15 health care institution or health care payer's conscience
16 shall be determined by reference to its existing or proposed
17 religious, moral, or ethical guidelines, mission statement,
18 constitution, bylaws, articles of incorporation, regulations,
19 or other relevant documents.

20 (2) EMPLOYER. Any individual or entity that pays for
21 or provides health benefits or health insurance coverage as a
22 benefit to its employees, whether through a third party, a
23 health maintenance organization, a program of self insurance,
24 or some other means.

25 (3) HEALTH CARE INSTITUTION. Any public or private
26 organization, corporation, partnership, sole proprietorship,
27 association, agency, network, joint venture, or other entity

1 that is involved in providing health care services, including,
2 but not limited to: Hospitals, clinics, medical centers,
3 ambulatory surgical centers, private physician's offices,
4 pharmacies, nursing homes, university medical schools and
5 nursing schools, medical training facilities, or other
6 institutions or locations wherein health care services are
7 provided to any person.

8 (4) HEALTH CARE PAYER. Any entity or employer that
9 contracts for, pays for, or arranges for the payment of, in
10 whole or in part, any health care service or product,
11 including, but not limited to: Health maintenance
12 organizations, health plans, insurance companies, or
13 management services organizations.

14 (5) HEALTH CARE PROVIDER. Any individual who may be
15 asked to participate in any way in a health care service,
16 including, but not limited to: A physician, physician's
17 assistant, nurse, nurse's aide, medical assistant, hospital
18 employee, clinic employee, nursing home employee, pharmacist,
19 pharmacy employee, researcher, medical or nursing school
20 faculty, student, or employee, counselor, social worker, or
21 any professional, paraprofessional, or any other person who
22 furnishes, or assists in the furnishing of, health care
23 services.

24 (6) HEALTH CARE SERVICE. Any phase of patient
25 medical care, treatment or procedure, including, but not
26 limited to, the following: Patient referral, counseling,
27 therapy, testing, diagnosis or prognosis, research,

1 instruction, prescribing, dispensing or administering any
2 device, drug, or medication, surgery, or any other care or
3 treatment rendered by health care providers or health care
4 institutions for abortion, artificial birth control,
5 artificial insemination, assisted reproduction, human cloning,
6 euthanasia, human embryonic stem cell research, fetal
7 experimentation, physician-assisted suicide, and
8 sterilization.

9 (7) PARTICIPATE. To counsel, advise, provide,
10 perform, assist in, refer for, admit for purposes of
11 providing, or participate in providing, any health care
12 service or any form of such service.

13 (8) PAY or PAYMENT. To pay, contract for, or
14 otherwise arrange for the payment of, in whole or in part.

15 Section 4. (a) A health care provider has the right
16 not to participate, and no health care provider shall be
17 required to participate, in a health care service that
18 violates his or her conscience.

19 (b) No health care provider shall be civilly,
20 criminally, or administratively liable for declining to
21 participate in a health care service that violates his or her
22 conscience.

23 (c) It shall be unlawful for any person, health care
24 provider, health care institution, public or private
25 institution, public official, or any board which certifies
26 competency in medical specialties to discriminate against any
27 health care provider in any manner based on his or her

1 declining to participate in a health care service that
2 violates his or her conscience. For purposes of this act,
3 discrimination includes, but is not limited to: Termination,
4 transfer, refusal of staff privileges, refusal of board
5 certification, adverse administrative action, demotion, loss
6 of career specialty, reassignment to a different shift,
7 reduction of wages or benefits, refusal to award any grant,
8 contract, or other program, refusal to provide residency
9 training opportunities, or any other penalty disciplinary or
10 retaliatory action.

11 Section 5. (a) A health care institution has the
12 right not to participate, and no health care institution shall
13 be required to participate, in a health care service that
14 violates its conscience.

15 (b) A health care institution that declines to
16 provide or participate in a health care service that violates
17 its conscience shall not be civilly, criminally, or
18 administratively liable if the institution provides a consent
19 form to be signed by a patient before admission to the
20 institution stating that it reserves the right to decline to
21 provide or participate in health care services that violate
22 its conscience.

23 (c) It shall be unlawful for any person, public or
24 private institution, or public official to discriminate
25 against any health care institution, or any person,
26 association, corporation, or other entity attempting to
27 establish a new health care institution or operating an

1 existing health care institution, in any manner, including,
2 but not limited to, any denial, deprivation or
3 disqualification with respect to licensure; any aid
4 assistance, benefit, or privilege, including staff privileges;
5 or any authorization, including authorization to create,
6 expand, improve, acquire, or affiliate or merge with any
7 health care institution, because such health care institution,
8 or person, association, or corporation planning, proposing, or
9 operating a health care institution, declines to participate
10 in a health care service which violates the health care
11 institution's conscience.

12 (d) It shall be unlawful for any public official,
13 agency, institution, or entity to deny any form of aid,
14 assistance, grants, or benefits, or in any other manner to
15 coerce, disqualify, or discriminate against any person,
16 association, corporation, or other entity attempting to
17 establish a new health care institution or operating an
18 existing health care institution because the existing or
19 proposed health care institution declines to participate in a
20 health care service contrary to the health care institution's
21 conscience.

22 Section 6. (a) A health care payer has the right to
23 decline to pay, and no health care payer shall be required to
24 pay for or arrange for the payment of, any health care service
25 or product that violates its conscience.

26 (b) No health care payer and no person, association,
27 corporation, or other entity that owns, operates, supervises,

1 or manages a health care payer shall be civilly or criminally
2 liable by reason of the health care payer's declining to pay
3 for or arrange for the payment of any health care service that
4 violates its conscience.

5 (c) It shall be unlawful for any person, public or
6 private institution, or public official to discriminate
7 against any health care payer, or any person, association,
8 corporation, or other entity: (i) attempting to establish a
9 new health care payer or (ii) operating an existing health
10 care payer, in any manner, including, but not limited to, any
11 denial, deprivation, or disqualification with respect to
12 licensure, aid, assistance, benefit, privilege, or
13 authorization, including, but not limited to, any
14 authorization to create, expand, improve, acquire, or
15 affiliate or merge with, any health care payer, because a
16 health care payer, or a person, association, corporation, or
17 other entity planning, proposing, or operating a health care
18 payer declines to pay for or arrange for the payment of any
19 health care service that violates its conscience.

20 (d) It shall be unlawful for any public official,
21 agency, institution, or entity to deny any form of aid,
22 assistance, grants, or benefits, or in any other manner to
23 coerce, disqualify, or discriminate against any health care
24 payer, or any person, association, corporation, or other
25 entity attempting to establish a new health care payer or
26 operating an existing health care payer because the existing
27 or proposed health care payer declines to pay for, or arrange

1 for the payment of, any health care service that is contrary
2 to its conscience.

3 Section 7. (a) An action for injunctive relief may
4 be brought for the violation of any provision of this act. It
5 shall not be a defense to any claim arising out of the
6 violation of this act that such violation was necessary to
7 prevent additional burden or expense on any other health care
8 provider, health care institution, individual, or patient.

9 (b) Any individual, association, corporation,
10 entity, or health care institution injured by any public or
11 private individual, association, agency, entity, or
12 corporation by reason of any conduct prohibited by this act
13 may commence an action for injunctive relief. Upon finding a
14 violation of this act, the aggrieved party shall be entitled
15 to recover the costs of the action, and reasonable attorney's
16 fees. These remedies shall be cumulative, and not exclusive of
17 other remedies afforded under any other state or federal law.

18 (c) The court in such action may award injunctive
19 relief, including, but not limited to, ordering reinstatement
20 of a health care provider to his or her prior job position and
21 back pay.

22 (d) The Alabama Legislature, by joint resolution,
23 may appoint one or more of its members, who sponsored or
24 co-sponsored this act in its official capacity, to intervene
25 as a matter of right in any case in which the
26 constitutionality of this law is challenged.

1 Section 8. If any provision, word, phrase, or clause
2 of this act or the application thereof to any person or
3 circumstance is held invalid, such invalidity shall not affect
4 the provisions, words, phrases, clauses, or applications of
5 this act which can be given effect without the invalid
6 provision, word, phrase, clause, or application and to this
7 end, the provisions, words, phrases, and clauses of this act
8 are declared severable.

9 Section 9. This act shall become effective on the
10 first day of the third month following its passage and
11 approval by the Governor, or its otherwise becoming law.