

1 SB105
2 133880-1
3 By Senator Ward
4 RFD: Judiciary
5 First Read: 07-FEB-12
6 PFD: 01/30/2012

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8 SYNOPSIS: This bill would give health care providers
9 the following: The authority to refuse to perform
10 or to participate in health care services that
11 violate their conscience; immunity from civil,
12 criminal, or administrative liability for refusing
13 to provide or participate in a health care service
14 that violates their conscience. This bill would
15 declare it unlawful for any person to discriminate
16 against health care providers for declining to
17 participate in a health care service that violates
18 their conscience. Further, the bill would provide
19 for injunctive relief and back pay for violation.
20

21 A BILL
22 TO BE ENTITLED
23 AN ACT

24
25 Relating to health care, to allow health care
26 providers to decline to perform any health care service that

1 violates their conscience and provide remedies for persons who
2 exercise that right and suffer consequences as a result.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. This act may be known and cited as the
5 Health Care Rights of Conscience Act.

6 Section 2. The Legislature finds and declares:

7 (1) It is the public policy of the State of Alabama
8 to respect and protect the fundamental right of conscience of
9 individuals who provide health care services.

10 (2) Without comprehensive protection, health care
11 rights of conscience may be violated in various ways, such as
12 harassment, demotion, salary reduction, termination, loss of
13 privileges, denial of aid or benefits, and refusal to license,
14 or refusal to certify.

15 (3) It is the purpose of this act to protect
16 religious or ethical rights of all health care providers to
17 decline to counsel, advise, provide, perform, assist, or
18 participate in providing or performing certain health care
19 services that violate their consciences, where they have made
20 their objections known in writing.

21 (4) It is the purpose of this act to prohibit
22 discrimination, disqualification, or coercion upon such health
23 care providers who decline to perform any health care service
24 that violates their conscience and who object in writing prior
25 to being asked to perform such health care services.

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

4 (1) CONSCIENCE. The religious, moral, or ethical
5 principles held by a health care provider.

6 (2) DISCRIMINATION. Discrimination includes, but is
7 not limited to: Hiring, termination, refusal of staff
8 privileges, refusal of board certification, demotion, loss of
9 career specialty, reduction of wages or benefits, adverse
10 treatment in the terms and conditions of employment, refusal
11 to award any grant, contract, or other program, or refusal to
12 provide residency training opportunities.

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

22 (4) HEALTH CARE SERVICE. Any phase of patient
23 medical care, treatment or procedure, related to: Patient
24 referrals, counseling, therapy, testing, diagnosis or
25 prognosis, research, instruction, prescribing, dispensing or
26 administering any device, drug, or medication, surgery, or any
27 other care or treatment rendered or provided by health care

1 providers for abortion, human cloning, human embryonic stem
2 cell research, and sterilization. Health care service does not
3 include notifying a member of a health care institution's
4 management of a patient inquiry about obtaining a health care
5 service that a health care provider believes may violate his
6 or her conscience.

7 (5) OBJECT IN WRITING. To provide advance notice in
8 a signed written document to an authorized agent of his or her
9 employer, board, or other oversight agency of a particular
10 health care provider.

11 (6) PARTICIPATE. To counsel, advise, provide,
12 perform, assist in, refer for, admit for purposes of
13 providing, or participate in providing, any health care
14 service or any form of such service. Participate does not
15 include compliance with a health care institution's policy and
16 procedure which states that a health care provider must notify
17 a member of the health care institution's management of a
18 patient's inquiry about obtaining a health care service that
19 the health care provider believes may violate his or her
20 conscience.

21 Section 4. (a) A health care provider has the right
22 not to participate, and no health care provider shall be
23 required to participate, in a health care service that
24 violates his or her conscience when the health care provider
25 has objected in writing prior to being asked to provide such
26 health care services.

1 (b) No health care provider shall be civilly,
2 criminally, or administratively liable for declining to
3 participate in a health care service that violates his or her
4 conscience except when failure to do would immediately
5 endanger the life of a patient.

6 (c) No limitation of liability or exception in this
7 act shall apply when any health care provider declines to
8 participate in any health care service if the denial of the
9 health care service will result in or hasten the death of the
10 patient on the basis that extending the life of an elderly,
11 disabled, or terminally ill patient is of less value than
12 extending the life of a patient who is younger, not disabled,
13 or not terminally ill.

14 (d) It shall be unlawful for any person, health care
15 provider, health care institution, public or private
16 institution, public official, or any board which certifies
17 competency in medical specialties to discriminate against any
18 health care provider in any manner based on his or her
19 declining to participate in a health care service that
20 violates his or her conscience, where the health care provider
21 has made his or her objections known in writing.

22 Section 5. (a) An action for injunctive relief may
23 be brought for the violation of any provision of this act. It
24 shall not be a defense to any claim arising out of the
25 violation of this act that such violation was necessary to
26 prevent additional burden or expense on any other health care
27 provider or health care institution.

1 (b) The court in such action may award injunctive
2 relief, including ordering reinstatement of a health care
3 provider to his or her prior job position, back pay and costs
4 of the action.

5 Section 6. (a) The provisions of this act shall not
6 apply to health care institutions or employers who are
7 licensed by the State of Board of Health as abortion clinics.
8 Further, nothing in this act shall modify, amend, repeal, or
9 supersede any provision of Section 6-5-333 of the Code of
10 Alabama 1975, or any judicial interpretation thereof.

11 (b) This act shall not apply to a licensed
12 professional counselor licensed by the Board of Examiners in
13 Counseling, or an associate licensed counselor or a counselor
14 in training, or a school counselor certified by the State
15 Board of Education, providing counseling is in accordance with
16 the codes of ethics of the respective licensing or certifying
17 entity and the standards of care reflected in the appropriate
18 codes of ethics.

19 Section 7. If any part of this act or the
20 application thereof to any person or circumstances is held
21 invalid, such invalidity shall not affect parts or
22 applications of this act which can be given effect without the
23 invalid part or application and to this end, such invalid
24 portions of this act are declared severable.

25 Section 8. This act shall become effective on the
26 first day of the third month following its passage and
27 approval by the Governor, or its otherwise becoming law.

