

1 HB178  
2 126706-1  
3 By Representatives McClurkin and Love  
4 RFD: Health  
5 First Read: 08-MAR-11

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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 civil actions, damages,  
27 remedies, and injunctive relief 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 damages 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 health care services that violate their  
2 consciences. Such health care services may include, but are  
3 not limited to, abortion, artificial birth control, artificial  
4 insemination, assisted reproduction, human cloning,  
5 euthanasia, human embryonic stem cell research, fetal  
6 experimentation, physician-assisted suicide, and  
7 sterilization.

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

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

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

24 (2) EMPLOYER. Any individual or entity that pays for  
25 or provides health benefits or health insurance coverage as a  
26 benefit to its employees, whether through a third party, a

1 health maintenance organization, a program of self insurance,  
2 or some other means.

3 (3) HEALTH CARE INSTITUTION. Any public or private  
4 organization, corporation, partnership, sole proprietorship,  
5 association, agency, network, joint venture, or other entity  
6 that is involved in providing health care services, including,  
7 but not limited to: Hospitals, clinics, medical centers,  
8 ambulatory surgical centers, private physician's offices,  
9 pharmacies, nursing homes, university medical schools and  
10 nursing schools, medical training facilities, or other  
11 institutions or locations wherein health care services are  
12 provided to any person.

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

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

1 furnishes, or assists in the furnishing of, health care  
2 services.

3 (6) HEALTH CARE SERVICE. Any phase of patient  
4 medical care, treatment or procedure, including, but not  
5 limited to, the following: Patient referral, counseling,  
6 therapy, testing, diagnosis or prognosis, research,  
7 instruction, prescribing, dispensing or administering any  
8 device, drug, or medication, surgery, or any other care or  
9 treatment rendered by health care providers or health care  
10 institutions.

11 (7) 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.

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

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

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

25 (c) It shall be unlawful for any person, health care  
26 provider, health care institution, public or private  
27 institution, public official, or any board which certifies

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

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

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

25 (c) It shall be unlawful for any person, public or  
26 private institution, or public official to discriminate  
27 against any health care institution, or any person,

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

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

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



1 (b) No health care payer and no person, association,  
2 corporation, or other entity that owns, operates, supervises,  
3 or manages a health care payer shall be civilly or criminally  
4 liable by reason of the health care payer's declining to pay  
5 for or arrange for the payment of any health care service that  
6 violates its conscience.

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

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

1 operating an existing health care payer because the existing  
2 or proposed health care payer declines to pay for, or arrange  
3 for the payment of, any health care service that is contrary  
4 to its conscience.

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

12 (b) Any individual, association, corporation,  
13 entity, or health care institution injured by any public or  
14 private individual, association, agency, entity, or  
15 corporation by reason of any conduct prohibited by this act  
16 may commence a civil action. Upon finding a violation of this  
17 act, the aggrieved party shall be entitled to recover three  
18 times the actual damages, including pain and suffering,  
19 sustained by such individual, association, corporation,  
20 entity, or health care institution, the costs of the action,  
21 and reasonable attorney's fees; but in no case shall recovery  
22 be less than five thousand dollars (\$5,000) for each violation  
23 in addition to costs of the action and reasonable attorney's  
24 fees. These damage remedies shall be cumulative, and not  
25 exclusive of other remedies afforded under any other state or  
26 federal law.

1 (c) The court in such civil action may award  
2 injunctive relief, including, but not limited to, ordering  
3 reinstatement of a health care provider to his or her prior  
4 job position.

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

10 Section 8. If any provision, word, phrase, or clause  
11 of this act or the application thereof to any person or  
12 circumstance is held invalid, such invalidity shall not affect  
13 the provisions, words, phrases, clauses, or applications of  
14 this act which can be given effect without the invalid  
15 provision, word, phrase, clause, or application and to this  
16 end, the provisions, words, phrases, and clauses of this act  
17 are declared severable.

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