

1 SB457
2 118838-1
3 By Senator Glover
4 RFD: Judiciary
5 First Read: 23-FEB-10

2
3
4
5
6
7
8 SYNOPSIS: Under existing law, there is no provision
9 that gives health care providers, health care
10 institutions, or health care payers the right to
11 decline participation in a health care service that
12 violates his or her conscience. This bill would
13 provide health care providers, institutions, and
14 payers the right to decline participation in a
15 health care service that violates his or her
16 conscience, and to be immune from civil, criminal,
17 or administrative liability; and imposes legal
18 liability upon any public official, agency,
19 institution, or entity for the discrimination or
20 denial of financial assistance to any health care
21 provider, institution, or payer on account of his
22 or her refusal to participate in a health care
23 service that violates his or her conscience.

24
25 A BILL
26 TO BE ENTITLED
27 AN ACT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

To provide for health care providers, institutions, and payers the right to decline participation in a health care service that violates his or her conscience.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known as the Alabama Health Care Rights of Conscience Act.

Section 2. As used in this act, the following terms shall have the following meanings:

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

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

(3) HEALTH CARE INSTITUTION. A public or private organization, corporation, partnership, sole proprietorship, association, agency, network, joint venture, or other entity that is involved in providing health care services, including, but not limited to: Hospitals, clinics, medical centers,

1 ambulatory surgical centers, private physician's offices,
2 pharmacies, nursing homes, university medical schools and
3 nursing schools, medical training facilities, or other
4 institutions or locations where health care procedures are
5 provided to any person.

6 (4) HEALTH CARE PAYER. An entity or employer that
7 contracts for, pays for, or arranges for the payment of, in
8 whole or in part, a health care service, including, but not
9 limited to, health maintenance organizations, health plans,
10 insurance companies, or management services organizations.

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

21 (6) HEALTH CARE SERVICE. A phase of patient medical
22 care, treatment, or procedure, including, but not limited to,
23 the following: Patient referral, counseling, therapy, testing,
24 diagnosis or prognosis, research, instruction, prescribing,
25 dispensing, or administering any device, drug, or medication,
26 surgery, or any other care or treatment rendered by health
27 care providers or health care institutions.

1 (7) PARTICIPATE IN A HEALTH CARE SERVICE. Counsel,
2 advise, provide, perform, assist in, refer for, admit for
3 purposes of providing, or participate in providing, any health
4 care service or any form of such service.

5 (8) PAY or PAYMENT. Pay, contract for, or otherwise
6 arrange for the payment of, in whole or in part.

7 Section 3. (a) A health care provider has the right
8 not to participate, and no health care provider shall be
9 required to participate in a health care service that violates
10 his or her conscience. This subsection does not allow a health
11 care provider to refuse to participate in a health care
12 service regarding a patient because of the patient's race,
13 color, national origin, ethnicity, sex, religion, creed, or
14 sexual orientation.

15 (b) No health care provider shall be civilly,
16 criminally, or administratively liable for declining to
17 participate in a health care service that violates his or her
18 conscience. This subsection does not exempt a health care
19 provider from liability for refusing to participate in a
20 health care service regarding a patient because of the
21 patient's race, color, national origin, ethnicity, sex,
22 religion, creed, or sexual orientation.

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 4. (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. This subsection does not allow a
15 health care institution to refuse to participate in a health
16 care service regarding a patient because of the patient's
17 race, color, national origin, ethnicity, sex, religion, creed,
18 or sexual orientation.

19 (b) A health care institution that declines to
20 provide or participate in a health care service that violates
21 its conscience shall not be civilly, criminally, or
22 administratively liable if the institution provides a consent
23 form to be signed by a patient before admission to the
24 institution stating that it reserves the right to decline to
25 provide or participate in a health care service that violates
26 its conscience. This subsection does not exempt a health care
27 institution from liability for refusing to participate in a

1 health care service regarding a patient because of the
2 patient's race, color, national origin, ethnicity, sex,
3 religion, creed, or sexual orientation.

4 (c) It shall be unlawful for any person, public or
5 private institution, or public official to discriminate
6 against any health care institution, or any person,
7 association, corporation, or other entity attempting to
8 establish a new health care institution or operating an
9 existing health care institution, in any manner, including,
10 but not limited to, any denial, deprivation, or
11 disqualification with respect to licensure, any aid
12 assistance, benefit, or privilege, including staff privileges,
13 or any authorization, including authorization to create,
14 expand, improve, acquire, affiliate, or merge with any health
15 care institution, because such health care institution or
16 person, association, or corporation planning, proposing, or
17 operating a health care institution, declines to participate
18 in a health care service which violates the health care
19 institution's 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 person,
24 association, corporation, or other entity attempting to
25 establish a new health care institution or operating an
26 existing health care institution because the existing or
27 proposed health care institution declines to participate in a

1 health care service contrary to the health care institution's
2 conscience.

3 Section 5. (a) A health care payer has the right to
4 decline to pay, and no health care payer shall be required to
5 pay for, or arrange for, the payment of a health care service
6 that violates its conscience. This subsection does not allow a
7 health care payer to decline to pay or arrange for the payment
8 of a health care service regarding a patient because of the
9 patient's race, color, national origin, ethnicity, sex,
10 religion, creed, or sexual orientation.

11 (b) No health care payer and no person, association,
12 corporation, or other entity that owns, operates, supervises,
13 or manages a health care payer shall be civilly or criminally
14 liable by reason of the health care payer's declining to pay
15 for or arrange for the payment of a health care service that
16 violates its conscience. This subsection does not exempt from
17 liability a health care payer, or the owner, operator,
18 supervisor, or manager of a health care payer, for declining
19 to pay or arranging for the payment of a health care service
20 regarding a patient because of the patient's race, color,
21 national origin, ethnicity, sex, religion, creed, or sexual
22 orientation.

23 (c) It shall be unlawful for any person, public or
24 private institution, or public official to discriminate
25 against any health care payer, or any person, association,
26 corporation, or other entity (1) attempting to establish a new
27 health care payer, or (2) operating an existing health care

1 payer, in any manner, including, but not limiting to, any
2 denial, deprivation, or disqualification with respect to
3 licensure, aid, assistance, benefit, privilege, or
4 authorization, including, but not limited to, any
5 authorization to create, expand, improve, acquire, affiliate,
6 or merge with any health care payer, because a health care
7 payer, or a person, association, corporation, or other entity
8 planning, proposing, or operating a health care payer declines
9 to pay for or arrange for the payment of any health care
10 service that violates its conscience.

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

21 Section 6. (a) A civil action for damages or
22 injunctive relief, or both, may be brought for the violation
23 of any provision of this act. It shall not be a defense to any
24 claim arising out of the violation of this act that such
25 violation was necessary to prevent additional burden or
26 expense on any other health care provider, health care
27 institution, individual, or patient.

1 (b) Any individual, association, corporation,
2 entity, or health care institution injured by any public or
3 private individual, association, agency, entity, or
4 corporation by reason of any conduct prohibited by this act
5 may commence a civil action. Upon finding a violation of this
6 act, the aggrieved party shall be entitled to recover
7 threefold the actual damages, including pain and suffering,
8 sustained by such individual, association, corporation,
9 entity, or health care institution, the costs of the action,
10 and reasonable attorney's fees; but in no case shall recovery
11 be less than five thousand dollars (\$5,000) for each violation
12 in addition to costs of the action and reasonable attorney's
13 fees. These damage remedies shall be cumulative, and not
14 exclusive of other remedies afforded under any other state or
15 federal law.

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

20 Section 7. The provisions of this act are severable.
21 If any part of this act is declared invalid or
22 unconstitutional, that declaration shall not affect the part
23 which remains.

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