

By: Hall

S.B. No. 2199

A BILL TO BE ENTITLED

AN ACT

relating to protection of individuals from participation in a health care service for reasons of conscience; providing a civil remedy; authorizing disciplinary action.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The legislature finds that:

(1) the public policy of this state is to respect the conscience of all health care providers and the right of each health care provider to hold their own belief about whether certain health care services are morally acceptable;

(2) without comprehensive protections, the conscience of health care providers may be violated; and

(3) each health care provider must be protected from required participation in a health care service in which the provider has declined participation for reasons of conscience and from discriminatory adverse action resulting from the nonparticipation.

SECTION 2. Chapter 161, Health and Safety Code, is amended by adding Subchapter X to read as follows:

SUBCHAPTER X. TEXAS HEALTH CARE CONSCIENCE PROTECTION ACT

Sec. 161.701. DEFINITIONS. In this subchapter:

(1) "Birth control" means prescription contraceptive drugs, supplies, or devices approved by the United States Food and Drug Administration.

1 (2) "Conscience" means a sincerely held set of moral
2 convictions arising from:

3 (A) a belief in and relation to God;

4 (B) a religious faith or spiritual practice; or

5 (C) a moral philosophy or ethical position,
6 without regard to whether the philosophy or position is related to a
7 religious faith.

8 (3) "Emergency care" means health care services
9 provided to stabilize a patient's medical condition manifesting in
10 acute symptoms of sufficient severity, including severe pain, that
11 would lead a prudent layperson possessing an average knowledge of
12 medicine and health to believe the patient's condition, sickness,
13 or injury is of sufficient severity that absence of immediate
14 medical care could reasonably be expected to:

15 (A) result in the patient's death;

16 (B) place the patient's health in serious
17 jeopardy;

18 (C) result in serious impairment of the patient's
19 bodily functions;

20 (D) result in serious dysfunction of a bodily
21 organ or body part of the patient;

22 (E) result in serious disfigurement of the
23 patient; or

24 (F) for a pregnant woman, place the health of the
25 woman's unborn child in serious jeopardy.

26 (4) "Emergency contraception" means a drug containing
27 an elevated dose of hormones that;

1 (A) is used postcoitally;

2 (B) prevents pregnancy by preventing
3 fertilization of an egg or preventing implantation of a fertilized
4 egg in a uterus; and

5 (C) is approved by the United States Food and
6 Drug Administration.

7 (5) "Health care facility" means a public or private
8 organization, corporation, partnership, sole proprietorship,
9 association, agency, network, joint venture, or other entity that
10 provides health care services to patients. The term includes a
11 hospital, clinic, medical center, ambulatory surgical center,
12 private physician's office, pharmacy, nursing home, laboratory or
13 diagnostic facility, infirmary, dispensary, medical school,
14 nursing school, or medical training facility.

15 (6) "Health care provider" means a nurse, nurse aide,
16 medical assistant, hospital employee, clinic employee, nursing
17 home employee, pharmacist, pharmacy employee, researcher, medical,
18 pharmacy, or nursing school student, professional,
19 paraprofessional, or, without regard to whether the individual
20 holds a license, any other individual who furnishes or assists in
21 the furnishing of a health care service.

22 (7) "Health care service" means any phase of patient
23 health care or treatment, including any conduct that may give rise
24 to a health care liability claim, as that term is defined by Section
25 [74.001](#), Civil Practice and Remedies Code. The term includes:

26 (A) testing, diagnosis, prognosis, ancillary
27 research, instruction, medication, therapy, treatment, and

1 surgery;

2 (B) family planning, counseling, and referrals,
3 and any other advice in connection with the use or procurement of
4 contraceptives, sterilization, or abortion; and

5 (C) any other care or treatment rendered by a
6 health care facility, physician, or health care provider.

7 (8) "Life-sustaining treatment" has the meaning
8 assigned by Section 166.002.

9 (9) "Participate" related to the provision of a health
10 care service includes an act to receive, obtain, perform, assist in
11 performing, give advice regarding, suggest, recommend, or refer a
12 health care service.

13 (10) "Physician" means an individual licensed to
14 practice medicine in this state.

15 (11) "Substantially prevent" related to the provision
16 of a health care service means to significantly delay the provision
17 of a health care service to a patient.

18 (12) "Undue delay" related to the provision of a
19 health care service means an unreasonable delay that impairs a
20 patient's health.

21 Sec. 161.702. RIGHT TO DECLINE PARTICIPATION IN HEALTH CARE
22 SERVICE FOR REASONS OF CONSCIENCE; EXCEPTIONS. (a) Except as
23 provided by Subsection (b) and (c), an individual may decline to
24 participate in a health care service for reasons of conscience.

25 (b) An individual may not decline to participate in the
26 following services:

27 (1) emergency care;

1 (2) life-sustaining treatment; or

2 (3) cardiopulmonary resuscitation.

3 (c) An individual may not decline to dispense a drug unless
4 the drug is:

5 (1) an abortion-inducing drug as defined by Section
6 171.061(2);

7 (2) emergency contraception;

8 (3) birth control;

9 (4) a controlled substance listed in Schedules II
10 through V as established under Chapter 481, Health and Safety Code,
11 and the pharmacist reasonable suspects the drug will be misused.

12 (d) An individual who declines for reasons of conscience to
13 participate in providing life-sustaining treatment to a patient
14 shall continue providing life-sustaining treatment to the patient
15 until an accommodation is arranged under Section 161.706.

16 (e) This section may not be construed to allow an individual
17 to decline to participate in providing a health care service to a
18 patient because of the patient's race, color, sex, national origin,
19 religion, age, disability, physical condition, vaccination status,
20 economic status, or disagreement with a patient's decision
21 regarding a health care service.

22 Sec. 161.703. IMMUNITY OF PHYSICIANS, HEALTH CARE
23 PROVIDERS, AND HEALTH CARE FACILITIES. (a) A physician or health
24 care provider may not be held civilly or criminally liable because
25 the physician or health care provider declines to participate in a
26 health care service wholly or partly for reasons of conscience.

27 (b) A health care facility may not be held civilly or

1 criminally liable because a physician or health care provider, who
2 is providing health care services at the facility, declines to
3 participate in a health care service wholly or partly for reasons of
4 conscience.

5 Sec. 161.704. ADVERSE ACTION. A person, including a public
6 official and a medical school or other institution that conducts
7 education or training programs for physicians or health care
8 providers, violates this subchapter by taking an adverse action
9 against an individual because the individual declines to
10 participate in a health care service for reasons of conscience.

11 Violations include taking an adverse action with regard to:

- 12 (1) licensure;
- 13 (2) certification;
- 14 (3) employment terms, benefits, seniority status,
15 promotion, or transfer;
- 16 (4) staff appointments or other privileges;
- 17 (5) denial of employment, admission, or participation
18 in a program for which the individual is eligible;
- 19 (6) reference to reasons of conscience in an
20 application form;
- 21 (7) questions regarding an applicant's participation
22 in providing a health care service for reasons of conscience;
- 23 (8) imposition of a burden in the terms or conditions
24 of employment;
- 25 (9) denial of aid, assistance, or benefits;
- 26 (10) conditional receipt of the aid, assistance, or
27 benefits; or

1 (11) coercion or disqualification of the individual
2 receiving aid, assistance, or benefits.

3 Sec. 161.705. PROTOCOL FOR DECLINING PARTICIPATION IN
4 PROVISION OF HEALTH CARE SERVICE. (a) A health care facility shall
5 develop a written protocol for circumstances in which an individual
6 declines to participate in providing a health care service, other
7 than a life-sustaining treatment, for reasons of conscience. The
8 protocol must:

9 (1) describe a patient's access to health care
10 services and information to ensure the patient is not permanently
11 or substantially prevented from obtaining the services; and

12 (2) explain the process the facility will implement to
13 facilitate in a timely manner the patient's access to the services.

14 (b) An individual who declines to participate in providing a
15 health care service for reasons of conscience shall:

16 (1) notify the health care facility of the
17 declination; and

18 (2) comply with the applicable protocol developed
19 under this section.

20 (c) This section does not require a health care facility,
21 physician, or health care provider to counsel a patient or refer the
22 patient to another physician or facility regarding a health care
23 service that is contrary to the conscience of the physician or
24 health care provider.

25 Sec. 161.706. PROTOCOL FOR LIFE-SUSTAINING TREATMENT. (a) A
26 health care facility shall develop a written protocol for
27 circumstances in which an individual declines to participate in

1 providing life-sustaining treatment for reasons of conscience. The
2 protocol must prohibit an individual from declining to provide
3 life-sustaining treatment to a patient before the patient is
4 transferred to another physician or health care provider at the
5 health care facility who is willing to provide life-sustaining
6 treatment to the patient. The protocol must explain the process the
7 health care facility will implement to facilitate the patient's
8 timely transfer.

9 **(b) An individual who declines to participate in providing**
10 life-sustaining treatment for reasons of conscience shall notify
11 the health care facility and comply with the applicable protocol
12 developed under this section. The individual must continue to
13 participate in providing life-sustaining treatment until the
14 facility transfers the patient to another physician or health care
15 provider at the facility.

16 **(c) If a transfer to another physician or health care**
17 provider at the health care facility cannot be arranged, the
18 protocol at a minimum must require a health care facility,
19 physician, or health care provider to:

20 **(1) timely inform the patient of the patient's**
21 condition, prognosis, and treatment options, and the risks and
22 benefits of those treatment options, consistent with accepted
23 standards of health care;

24 **(2) provide without undue delay copies of the**
25 patient's medical records to the patient or another health care
26 facility, physician, or health care provider designated by the
27 patient in accordance with medical privacy laws, if requested by

1 the patient or the patient's legal representative; and

2 (3) take any other action necessary to transfer the
3 patient to another health care facility.

4 (d) This section does not require a health care facility,
5 physician, or health care provider to counsel a patient or refer the
6 patient to another physician or facility regarding a health care
7 service that is contrary to the conscience of the physician or
8 health care provider. The information required by Subsection (c)
9 may be provided by a health care facility, physician, or health care
10 provider other than the physician or health care provider who
11 declined to participate in providing life-sustaining treatment for
12 reasons of conscience.

13 Sec. 161.707. DISCIPLINARY ACTION; COMPLAINT. (a) A
14 health care facility, physician, or health care provider that holds
15 a license issued by a licensing agency in this state is subject to
16 review and disciplinary action by the licensing agency for a
17 violation of this subchapter as if the facility, physician, or
18 provider violated the applicable licensing law.

19 (b) An individual who is injured by a violation of this
20 subchapter may file a complaint with the licensing agency that
21 issued a license to the health care facility, physician, or health
22 care provider that allegedly violated this subchapter.

23 (c) A physician or health care provider may not file a
24 complaint with the appropriate licensing agency under this section
25 unless the physician or health care provider complies with the
26 health care facility's protocol developed under Section 161.705 or
27 161.706, as appropriate.

1 Sec. 161.708. CIVIL REMEDIES. A person who is injured by a
2 violation of this subchapter may bring a civil action against a
3 person who violates this subchapter. A person who brings an action
4 under this section may obtain:

5 (1) injunctive relief;

6 (2) damages incurred by the person, including:

7 (A) actual damages for all psychological,
8 emotional, and physical injuries resulting from the violation of
9 this subchapter;

10 (B) court costs; and

11 (C) reasonable attorney's fees; or

12 (3) both injunctive relief and damages.

13 SECTION 3. Not later than December 1, 2023, a health care
14 facility, as that term is defined by Section 161.701, Health and
15 Safety Code, as added by this Act, shall adopt protocols required by
16 Sections 161.705 and 161.706, Health and Safety Code, as added by
17 this Act.

18 SECTION 4. Section 161.703, Health and Safety Code, as
19 added by this Act, applies only to a cause of action that accrues on
20 or after the effective date of this Act.

21 SECTION 5. This Act takes effect September 1, 2023.