

By: Oliverson

H.B. No. 142

A BILL TO BE ENTITLED

AN ACT

1
2 relating to protection of persons from participation in a health
3 care service for reasons of conscience; providing a civil remedy;
4 authorizing disciplinary action.

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

6 SECTION 1. The legislature finds that:

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

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

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

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

20 SUBCHAPTER X. TEXAS HEALTH CARE CONSCIENCE PROTECTION ACT

21 Sec. 161.701. DEFINITIONS. In this subchapter:

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

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

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

2 (C) a moral philosophy or ethical position,

3 without regard to whether the philosophy or position is related to a

4 religious faith.

5 (2) "Emergency care" means bona fide emergency
6 services provided after a sudden onset of a medical or traumatic
7 condition manifested by acute symptoms of sufficient severity,
8 including severe pain, such that the absence of immediate medical
9 attention could reasonably be expected to:

10 (A) place the patient's health in serious
11 jeopardy;

12 (B) result in serious impairment to the patient's
13 bodily functions; or

14 (C) result in serious dysfunction of any bodily
15 organ or part of the patient.

16 (3) "Health care facility" means a public or private
17 organization, corporation, partnership, sole proprietorship,
18 association, agency, network, joint venture, or other entity that
19 provides health care services to patients. The term includes a
20 hospital, clinic, medical center, ambulatory surgical center,
21 private physician's office, pharmacy, nursing home, laboratory or
22 diagnostic facility, infirmary, dispensary, medical school,
23 nursing school, pharmacy school, or medical training facility.

24 (4) "Health care provider" means a nurse, nurse aide,
25 medical assistant, hospital employee, allied health professional,
26 laboratory technician, clinic employee, nursing home employee,
27 pharmacist, pharmacy employee, researcher, medical, pharmacy, or

1 nursing school student, professional, paraprofessional, or,
2 without regard to whether the person holds a license, any other
3 person who furnishes or assists in the furnishing of a health care
4 service.

5 (5) "Health care service" means any phase of patient
6 health care or treatment. The term includes:

7 (A) examination, testing, diagnosis, referral,
8 prognosis, dispensing or administering a drug or device, ancillary
9 research, instruction, therapy, treatment, and preparing for or
10 performing a surgery or procedure;

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

14 (C) record-making procedures, preparation of
15 treatment notes, and any other care or treatment rendered by a
16 health care facility, physician, or health care provider.

17 (6) "Physician" means an individual licensed to
18 practice medicine in this state.

19 Sec. 161.702. RIGHT TO DECLINE PARTICIPATION IN HEALTH CARE
20 SERVICE FOR REASONS OF CONSCIENCE; CONSTRUCTION OF SUBCHAPTER. (a)
21 Except as provided by Subsection (b), a person may decline to
22 participate in a health care service for reasons of conscience.

23 (b) A person may not decline to participate in the following
24 services:

25 (1) emergency care; or

26 (2) except as provided by Chapter 166, life-sustaining
27 treatment.

1 (c) Nothing in this subchapter may be construed to:

2 (1) supersede Chapter 166 governing the provision,
3 withholding, or withdrawing of life-sustaining treatment; or

4 (2) apply to emergency care, life-sustaining
5 treatment, or cardiopulmonary resuscitation.

6 (d) An exercise of the right of conscience under this
7 section is limited to a person's right to refuse to participate in a
8 specific health care service.

9 Sec. 161.703. IMMUNITY OF PHYSICIANS AND HEALTH CARE
10 PROVIDERS. A physician or health care provider may not be held
11 civilly or criminally liable because the physician or health care
12 provider declines to participate in a health care service wholly or
13 partly for reasons of conscience.

14 Sec. 161.704. ADVERSE ACTION. A person, including a public
15 official and a medical school or other institution that conducts
16 education or training programs for physicians or health care
17 providers, violates this subchapter by taking an adverse action
18 against another person because the other person declines to
19 participate in a health care service for reasons of conscience.
20 Violations include discrimination against or taking an adverse
21 action with regard to:

22 (1) licensure;

23 (2) certification;

24 (3) employment terms, benefits, seniority status,
25 promotion, or transfer;

26 (4) staff appointments or other privileges;

27 (5) denial of employment, admission, or participation

1 in a program for which the other person is eligible;

2 (6) reference to reasons of conscience in an
3 application form;

4 (7) questions regarding an applicant's participation
5 in providing a health care service for reasons of conscience;

6 (8) imposition of a burden in the terms or conditions
7 of employment;

8 (9) denial of aid, assistance, or benefits;

9 (10) conditional receipt of the aid, assistance, or
10 benefits; or

11 (11) coercion or disqualification of the other person
12 receiving aid, assistance, or benefits.

13 Sec. 161.705. PROTOCOL FOR DECLINING PARTICIPATION IN
14 PROVISION OF HEALTH CARE SERVICE. (a) A health care facility shall
15 develop a written protocol for circumstances in which a person
16 declines to participate in providing a health care service, other
17 than emergency care or life-sustaining treatment, for reasons of
18 conscience. The protocol must describe a patient's access to health
19 care services and information to ensure the patient is not
20 permanently or substantially prevented from obtaining the
21 services. The protocol must explain the process the facility will
22 implement to facilitate in a timely manner the patient's access to
23 the services.

24 (b) A person who declines to participate in providing a
25 health care service for reasons of conscience shall:

26 (1) notify the health care facility of the
27 declination; and

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

3 (c) A protocol developed under this section may not require
4 a health care facility, physician, or health care provider to
5 counsel a patient or refer the patient to another physician or
6 facility regarding a health care service that is contrary to the
7 conscience of the physician or health care provider.

8 Sec. 161.706. DISCIPLINARY ACTION; COMPLAINT. (a) A
9 health care facility, physician, or health care provider that holds
10 a license issued by a licensing agency in this state is subject to
11 review and disciplinary action by the licensing agency for a
12 violation of this subchapter as if the facility, physician, or
13 provider violated the applicable licensing law.

14 (b) A person who is injured by a violation of this
15 subchapter may file a complaint with the licensing agency that
16 issued a license to the health care facility, physician, or health
17 care provider that allegedly violated this subchapter.

18 (c) A physician or health care provider may not file a
19 complaint with the appropriate licensing agency under this section
20 unless the physician or health care provider complies with the
21 health care facility's protocol developed under Section 161.705.

22 Sec. 161.707. CIVIL REMEDIES. A person who is injured by a
23 violation of this subchapter may bring a civil action against a
24 person who violates this subchapter. A person who brings the action
25 under this section may obtain:

26 (1) injunctive relief;

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

1 (A) actual damages for all psychological,
2 emotional, and physical injuries resulting from the violation of
3 this subchapter;

4 (B) court costs; and

5 (C) reasonable attorney's fees; or

6 (3) both injunctive relief and damages.

7 SECTION 3. Not later than March 1, 2022, a health care
8 facility, as that term is defined by Section 161.701, Health and
9 Safety Code, as added by this Act, shall adopt protocols required by
10 Section 161.705, Health and Safety Code, as added by this Act.

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

14 SECTION 5. This Act takes effect January 1, 2022.