

BILL ANALYSIS

Senate Research Center
79R7929 YDB-D

S.B. 1016
By: Deuell
State Affairs
4/11/2005
As Filed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Current Texas law exempts only physicians, nurses, and medical students from participating in abortion procedures. In some cases, pharmacists and other health professionals have been terminated from employment or threatened with termination if they do not perform a duty that is in conflict with their conscience.

As proposed, S.B. 1016 expands the Occupational Code to cover all health care providers, health care facilities, and health insurers who assert a conscientious objection to providing certain health care services. It also protects faith-based health care facilities and insurance companies from being forced to offer and provide services contrary to their mission and creed.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle H, Title 2, Health and Safety Code, by adding Chapter 172, as follows:

CHAPTER 172. RIGHT TO OBJECT TO PROVIDING OR PARTICIPATING IN CERTAIN PROCEDURES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 172.001. DEFINITIONS. Defines "health care service," "health care facility," "health insurer," "health care provider," "participate," and "public health emergency."

Reserves Sections 172.002-172.050 for expansion.

SUBCHAPTER B. RIGHT OF HEALTH CARE FACILITY

Sec. 172.051. RIGHT TO OBJECT. Authorizes a health care facility, subject to Chapter 166 (Advance Directives), in accordance with this chapter, to withdraw from providing a health care service or refuse to provide or participate in the provision of a health care service on ethical, moral, or religious grounds as provided by the facility's organizational documents, charter, bylaws, or an adopted mission statement.

Sec. 172.052. RIGHT TO OBJECT PROHIBITED IN CERTAIN CIRCUMSTANCES. Prohibits a health care facility from asserting an objection under Section 172.051 in specific situations relating to a public health emergency or certain patient characteristics.

Sec. 172.053. HEALTH CARE FACILITY LIABILITY AND ELIGIBILITY. Prohibits a health care facility's objection to providing or participating in the provision of a health care service under Section 172.051 from being the basis for civil, criminal, or administrative liability or affecting the awarding of a grant, contract, or program to the health care facility unless providing or participating in the provision of the health care service objected to is the exclusive purpose of the grant, contract, or program.

[Reserves Sections 172.054-172.100 for expansion.]

SUBCHAPTER C. RIGHT OF HEALTH INSURER

Sec. 172.101. **RIGHT TO OBJECT.** Authorizes a health insurer, notwithstanding any other law, in accordance with this chapter, to refuse to offer or provide a benefit for a health care service on ethical, moral, or religious grounds as provided by the insurer's articles of incorporation, bylaws, or an adopted mission statement.

Sec. 172.102. **RIGHT TO OBJECT PROHIBITED IN CERTAIN CIRCUMSTANCES.** Prohibits a health insurer from refusing to offer or provide a benefit for a health care service under Section 172.101 if the benefit is specifically covered under the contract, policy, or certificate issued by the insurer or required to be provided by the insurer under the Insurance Code.

Sec. 172.103. **HEALTH INSURER LIABILITY AND ELIGIBILITY.** Prohibits a health insurer's refusal to offer or provide a benefit for a health care service under Section 172.101 from being the basis for civil, criminal, or administrative liability or affecting the awarding of a contract, policy, or certificate to the health insurer unless offering or providing the benefit objected to is expressly required under the contract, policy, or certificate or under the Insurance Code.

[Reserves Sections 172.104-172.150 for expansion.]

SUBCHAPTER D. RIGHT OF HEALTH CARE PROVIDER

Sec. 172.151. **RIGHT TO OBJECT.** (a) Authorizes a health care provider, notwithstanding any other law, to provide in accordance with this chapter and as a matter of conscience object to providing or participating in the provision of a health care service on ethical, moral, or religious grounds.

(b) Authorizes a health care provider to assert an objection under this section at the time the provider is offered employment, adopts an ethical, moral, or religious belief system that conflicts with providing or participating in the provision of a health care service, or not later than 24 hours after receiving notice that the provider is scheduled to participate in a health care service to which the provider objects on ethical, moral, or religious grounds.

Sec. 172.152. **WRITTEN NOTICE TO EMPLOYER REQUIRED.** (a) Requires a health care provider that exercises the right to object provided under Section 172.151 to notify the provider's employer, in writing, of the objection. Requires the written notice to include specific information.

(b) Provides that a written notice under this section is valid while the health care provider is employed by the employer or until rescinded, in writing, by the health care provider.

(c) Requires an employer to retain in the employee's records, the written notice provided by a health care provider under this section with the health care provider is employed by the employer.

Sec. 172.153. **EMPLOYER RESPONSIBILITIES; STAFF PRIVILEGES.** (a) Prohibits the employer, following receipt of a written notice from a health care provider under Section 172.152, from requiring the provider to provide or participate in the provision of the health care service to which the provider specifically objects in the notice.

(b) Requires the employer to make a reasonable effort to excuse the provider from providing or participating in the provision of the health care service or find a replacement for the provider, if a health care provider asserts an objection under this subchapter less than 24 hours before a scheduled health care service.

(c) Prohibits a health care facility or other person from refusing staff privileges to a health care provider who asserts an objection to providing or participating in the provision of a health care service under this subchapter, unless participation in that health care service is listed as part of the normal duties in the posting for the staff privileges.

Sec. 172.154. **EDUCATIONAL INSTITUTION RESPONSIBILITIES.** Prohibits a medical school or other institution that conducts education or training programs for health care providers from refusing admission to an individual or penalizing an individual who has filed with the school or institution a written objection in the manner described by Section 172.152 to providing or participating in the provision of a health care service.

Sec. 172.155. **RIGHT TO OBJECT PROHIBITED IN CERTAIN CIRCUMSTANCES.** Prohibits a health care provider from asserting an objection under this subchapter in specific situations relating to a public health emergency or certain patient characteristics.

Sec. 172.156. **DUTY UNDER THE LAW.** Provides that this chapter does not relieve a health care provider from a duty that exists under other law related to the standards of acceptable health care practice and procedure to inform a patient of the patient's condition prognosis, and the risks of receiving health care services for the condition.

Sec. 172.157. **HEALTH CARE PROVIDER LIABILITY AND ELIGIBILITY.** Prohibits a health care provider's objection to providing or participating in the provision of a health care service in accordance with this subchapter from being the basis for civil liability, a criminal action, and administrative action or an action affecting the provider's license, termination of employment or refusal of staff privileges at a health care facility, except as provided by Section 172.158, or disciplinary action, penalties, or discrimination.

Sec. 172.158. **REQUIREMENTS FOR TERMINATION OF CERTAIN HEALTH CARE PROVIDERS.** Defines "regular or substantial portion." Authorizes an employer, subject to a collective bargaining agreement that covers a health care provider, to terminate the employment of a health care provider who asserts objection under this subchapter to providing or participating in the provision of a health care service that at the time of the objection is asserted, constitutes a regular or substantial portion of the health care provider's current and defined position. Requires an employer to give a minimum of 60 days notice before terminating the employment under this section.

Sec. 172.159. **CIVIL LIABILITY.** (a) Authorizes a civil action for damages or reinstatement of employment, or both, to be brought by a health care provider against a person, including a governmental agency, health care facility, or other employer, that penalizes or discriminates against the provider in promotion, transfer, a term or condition of employment, licensing or granting of staff privileges or appointment for the provider's assertion of an objection under this subchapter.

(b) Provides that damages awarded in a civil action brought under this section are limited to the amount of actual damages and attorney's fees.

(c) Authorizes a civil action filed under this section to include a petition for injunctive relief against a person alleged to have penalized or discriminated against a health care provider in promotion, transfer, a term or condition of employment, licensing, or granting of staff privileges or appointment.

Sec. 172.160. **RIGHTS IN ADDITION.** Provides that the rights provided under this subchapter are in addition to the rights provided under Chapter 103 (Right to Object to Participation in Abortion Procedure), Occupations Code.

SECTION 2. Effective date: upon passage or September 1, 2005.