

By: Laubenberg

H.B. No. 2061

A BILL TO BE ENTITLED

AN ACT

relating to the right of health care facilities, health insurers,
and health care providers to object to providing or participating
in the provision of certain procedures.

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

SECTION 1. Subtitle H, Title 2, Health and Safety Code, is
amended by adding Chapter 172 to read as follows:

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

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 172.001. DEFINITIONS. In this chapter:

(1) "Health care service" means providing or
participating in the provision of a medical diagnosis, counseling,
treatment, procedure, diagnostic test, device or medication, or
drug or other substance intended to affect the physical or mental
condition of an individual. The term includes research or
experimentation for the purpose of improving or refining the
provision of a health care service.

(2) "Health care facility" means:

- (A) a clinical laboratory;
- (B) a research laboratory;
- (C) a county medical care facility;
- (D) a surgical outpatient facility, including an
ambulatory surgical center licensed under Chapter 243;

1 (E) an institution licensed under Chapter 242;

2 (F) a hospital licensed under Chapter 241;

3 (G) a hospice or hospice residence, including a
4 special care facility licensed under Chapter 248, an end stage
5 renal facility licensed under Chapter 251, and a home and community
6 support services agency licensed under Chapter 142;

7 (H) a rehabilitative or other long-term care
8 facility, including a continuing care facility certified under
9 Chapter 246, an assisted living facility licensed under Chapter
10 247, and an intermediate care facility licensed under Chapter 252;

11 (I) the office of a private physician who is
12 licensed to practice medicine in this state;

13 (J) a medical clinic;

14 (K) a public or private institution that provides
15 health care services to an individual;

16 (L) a teaching institution that provides health
17 care services to an individual;

18 (M) a pharmacy licensed under Chapter 560,
19 Occupations Code, that provides health care services to an
20 individual;

21 (N) a corporation, partnership, sole
22 proprietorship, limited liability company, or other legal entity
23 that provides health care services to an individual, including a
24 facility that is required to be licensed or is regulated under Title
25 4; or

26 (O) a facility or agency listed in Paragraphs
27 (A)-(N) that is located at an institution of higher education or

1 other educational institution.

2 (3) "Health insurer" means an entity regulated under
3 the Insurance Code that through a health benefit plan provides or
4 arranges for benefits for a health care service, including an
5 insurance company and a health maintenance organization.

6 (4) "Health care provider":

7 (A) includes:

8 (i) a person who is licensed, certified, or
9 otherwise authorized by the laws of this state to provide a health
10 care service to another person in the ordinary course of business or
11 practice of a profession;

12 (ii) a student providing a health care
13 service at a health care facility or medical facility; and

14 (iii) another person who is employed by or
15 under contract with a health care facility or medical facility and
16 who directly provides or participates in the provision of a health
17 care service; and

18 (B) does not include:

19 (i) a sanitarian registered under Chapter
20 1953, Occupations Code; or

21 (ii) a veterinarian licensed under Chapter
22 801, Occupations Code.

23 (5) "Participate" means, at a minimum, to counsel,
24 refer, perform, administer, prescribe, dispense, treat, withdraw,
25 diagnose, test, evaluate, train, research, prepare, provide
26 medical advice, or directly provide material or physical assistance
27 related to the provision of a health care service.

1 (6) "Public health emergency" means a condition or
2 situation that presents an immediate threat to the public health,
3 safety, or welfare and requires immediate action to preserve the
4 public health, safety, or welfare.

5 [Sections 172.002-172.050 reserved for expansion]

6 SUBCHAPTER B. RIGHT OF HEALTH CARE FACILITY

7 Sec. 172.051. RIGHT TO OBJECT. Subject to Chapter 166, a
8 health care facility may in accordance with this chapter withdraw
9 from providing a health care service or may refuse to provide or
10 participate in the provision of a health care service on ethical,
11 moral, or religious grounds as provided by the facility's
12 organizational documents, charter, bylaws, or an adopted mission
13 statement.

14 Sec. 172.052. RIGHT TO OBJECT PROHIBITED IN CERTAIN
15 CIRCUMSTANCES. A health care facility may not assert an objection
16 under Section 172.051:

17 (1) during a public health emergency;

18 (2) during an emergency in which in the reasonable
19 medical judgment of an attending physician or medical director of
20 the health care facility, a patient's condition:

21 (A) requires immediate action to prevent the
22 patient's death; or

23 (B) is such that a delay would create a serious
24 risk of substantial and irreversible impairment of a major bodily
25 function to that patient; or

26 (3) based on a patient's:

27 (A) race, color, religion, sex, or national

1 origin, within the meaning of Section 703 of the federal Civil
2 Rights Act of 1964 (42 U.S.C. 2000e-2);

3 (B) age, within the meaning of Section 15 of the
4 federal Age Discrimination in Employment Act of 1967 (29 U.S.C.
5 633a); or

6 (C) disability, within the meaning of Section 501
7 of the federal Rehabilitation Act of 1973 (29 U.S.C. 791) and
8 Sections 102 through 104 of the federal Americans with Disabilities
9 Act of 1990 (42 U.S.C. 12112 to 12114).

10 Sec. 172.053. HEALTH CARE FACILITY LIABILITY AND
11 ELIGIBILITY. A health care facility's objection to providing or
12 participating in the provision of a health care service under
13 Section 172.051 may not:

14 (1) be a basis for civil, criminal, or administrative
15 liability; or

16 (2) affect the awarding of a grant, contract, or
17 program to the health care facility unless providing or
18 participating in the provision of the health care service objected
19 to is the exclusive purpose of the grant, contract, or program.

20 [Sections 172.054-172.100 reserved for expansion]

21 SUBCHAPTER C. RIGHT OF HEALTH INSURER

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

27 Sec. 172.102. RIGHT TO OBJECT PROHIBITED IN CERTAIN

1 CIRCUMSTANCES. A health insurer may not refuse to offer or provide
2 a benefit for a health care service under Section 172.101 if the
3 benefit is:

4 (1) specifically covered under the contract, policy,
5 or certificate issued by the insurer; or

6 (2) required to be provided by the insurer under the
7 Insurance Code.

8 Sec. 172.103. HEALTH INSURER LIABILITY AND ELIGIBILITY. A
9 health insurer's refusal to offer or provide a benefit for a health
10 care service under Section 172.101 may not:

11 (1) be a basis for civil, criminal, or administrative
12 liability; or

13 (2) affect the awarding of a contract, policy, or
14 certificate to the health insurer unless offering or providing the
15 benefit objected to is expressly required under the contract,
16 policy, or certificate or under the Insurance Code.

17 [Sections 172.104-172.150 reserved for expansion]

18 SUBCHAPTER D. RIGHT OF HEALTH CARE PROVIDER

19 Sec. 172.151. RIGHT TO OBJECT. (a) Notwithstanding any
20 other law, a health care provider may in accordance with this
21 chapter and as a matter of conscience object to providing or
22 participating in the provision of a health care service on ethical,
23 moral, or religious grounds.

24 (b) A health care provider may assert an objection under
25 this section:

26 (1) at the time the provider is offered employment;

27 (2) at the time the health care provider adopts an

1 ethical, moral, or religious belief system that conflicts with
2 providing or participating in the provision of a health care
3 service; or

4 (3) not later than 24 hours after receiving notice
5 that the provider is scheduled to participate in a health care
6 service to which the provider objects on ethical, moral, or
7 religious grounds.

8 Sec. 172.152. WRITTEN NOTICE TO EMPLOYER REQUIRED. (a) A
9 health care provider that exercises the right to object provided
10 under Section 172.151 shall notify the provider's employer in
11 writing of the objection. The written notice must:

12 (1) be given directly to the health care provider's
13 supervisor; and

14 (2) include a statement explaining the provider's
15 objection on ethical, moral, or religious grounds and any health
16 care service to which the provider specifically objects to
17 providing, or participating in the provision of, under this
18 chapter.

19 (b) A written notice under this section is valid while the
20 health care provider is employed by the employer or until rescinded
21 in writing by the health care provider.

22 (c) An employer shall retain in the employer's records the
23 written notice provided by a health care provider under this
24 section while the health care provider is employed by the employer.

25 Sec. 172.153. EMPLOYER RESPONSIBILITIES; STAFF PRIVILEGES.

26 (a) Following receipt of a written notice from a health care
27 provider under Section 172.152, an employer may not require the

1 provider to provide or participate in the provision of the health
2 care service or services to which the provider specifically objects
3 in the notice.

4 (b) If a health care provider asserts an objection under
5 this subchapter less than 24 hours before a scheduled health care
6 service, an employer shall make a reasonable effort to excuse the
7 provider from providing or participating in the provision of the
8 health care service or find a replacement for the provider. If a
9 replacement is unavailable and the health care provider cannot be
10 excused, the employer may require the health care provider to
11 provide or participate in the provision of that scheduled health
12 care service.

13 (c) A health care facility or other person may not refuse
14 staff privileges to a health care provider who asserts an objection
15 to providing or participating in the provision of a health care
16 service under this subchapter, unless participation in that health
17 care service is listed as part of the normal duties in the posting
18 for the staff privileges.

19 Sec. 172.154. EDUCATIONAL INSTITUTION RESPONSIBILITIES. A
20 medical school or other institution that conducts education or
21 training programs for health care providers may not refuse
22 admission to an individual or penalize an individual who has filed
23 with the school or institution a written objection in the manner
24 described by Section 172.152 to providing or participating in the
25 provision of a health care service.

26 Sec. 172.155. RIGHT TO OBJECT PROHIBITED IN CERTAIN
27 CIRCUMSTANCES. A health care provider may not assert an objection

1 under this subchapter:

2 (1) during a public health emergency;

3 (2) under circumstances in which a patient's
4 condition, in the reasonable medical judgment of an attending
5 physician or medical director of the health care facility that
6 employs the health care provider, requires immediate action to
7 prevent the patient's death or is such that a delay would create a
8 serious risk of substantial and irreversible impairment of a major
9 bodily function to that patient and another qualified health care
10 provider is not available to provide that health care service; or

11 (3) based on a patient's:

12 (A) race, color, religion, sex, or national
13 origin, within the meaning of Section 703 of the federal Civil
14 Rights Act of 1964 (42 U.S.C. 2000e-2);

15 (B) age, within the meaning of Section 15 of the
16 federal Age Discrimination in Employment Act of 1967 (29 U.S.C.
17 633a); or

18 (C) disability, within the meaning of Section 501
19 of the federal Rehabilitation Act of 1973 (29 U.S.C. 791) and
20 Sections 102 through 104 of the federal Americans with Disabilities
21 Act of 1990 (42 U.S.C. 12112 to 12114).

22 Sec. 172.156. DUTY UNDER OTHER LAW. This chapter does not
23 relieve a health care provider from a duty that exists under other
24 law related to standards of acceptable health care practice and
25 procedure to inform a patient of:

26 (1) the patient's condition and prognosis; and

27 (2) the risks to the patient of receiving health care

1 services for the condition.

2 Sec. 172.157. HEALTH CARE PROVIDER LIABILITY AND
3 ELIGIBILITY. A health care provider's objection to providing or
4 participating in the provision of a health care service in
5 accordance with this subchapter may not be the basis for:

6 (1) civil liability;

7 (2) a criminal action;

8 (3) an administrative action or an action affecting
9 the provider's license;

10 (4) termination of employment or refusal of staff
11 privileges at a health care facility, except as provided by Section
12 172.158; or

13 (5) disciplinary action, penalties, or
14 discrimination, including denial of promotions and raises in wages.

15 Sec. 172.158. REQUIREMENTS FOR TERMINATION OF CERTAIN
16 HEALTH CARE PROVIDERS. (a) In this section, "regular or
17 substantial portion" means 50 percent or more of the health care
18 provider's daily or weekly hours of duty.

19 (b) Subject to a collective bargaining agreement that
20 covers a health care provider, an employer may terminate the
21 employment of a health care provider who asserts an objection under
22 this subchapter to providing or participating in the provision of a
23 health care service that at the time the objection is asserted
24 constitutes a regular or substantial portion of the health care
25 provider's current and defined position. An employer shall give
26 not less than 60 days' notice before terminating the employment
27 under this section.

1 Sec. 172.159. CIVIL LIABILITY. (a) A civil action for
2 damages or reinstatement of employment, or both, may be brought by a
3 health care provider against a person, including a governmental
4 agency, health care facility, or other employer, that penalizes or
5 discriminates against the provider in promotion, transfer, a term
6 or condition of employment, licensing, or granting of staff
7 privileges or appointments for the provider's assertion of an
8 objection under this subchapter.

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

12 (c) A civil action filed under this section may include a
13 petition for injunctive relief against a person alleged to have
14 penalized or discriminated against a health care provider in
15 promotion, transfer, a term or condition of employment, licensing,
16 or granting of staff privileges or appointments.

17 Sec. 172.160. RIGHTS IN ADDITION. The rights provided
18 under this subchapter are in addition to the rights provided under
19 Chapter 103, Occupations Code.

20 SECTION 2. This Act takes effect immediately if it receives
21 a vote of two-thirds of all the members elected to each house, as
22 provided by Section 39, Article III, Texas Constitution. If this
23 Act does not receive the vote necessary for immediate effect, this
24 Act takes effect September 1, 2005.