

By: Kolkhorst

S.B. No. 1107

A BILL TO BE ENTITLED

AN ACT

relating to the right of conscientious refusal of a health care service.

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

SECTION 1. Chapter 161, Health and Safety Code, is amended by adding Subchapter X to read as follows:

SUBCHAPTER X. TEXAS HEALTH CARE RIGHT OF CONSCIENCE ACT

Sec. 161.701. DEFINITIONS. In this subchapter:

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

(A) a belief in and relation to God;

(B) a religious faith or spiritual practice; or

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

(2) "Health care facility" means a public or private organization, corporation, partnership, sole proprietorship, association, agency, network, joint venture, or other entity that provides health care services, including a hospital, clinic, medical center, ambulatory surgical center, private physician's office, pharmacy, nursing home, laboratory or diagnostic facility, infirmary, dispensary, medical school, nursing school, or medical training facility.

(3) "Health care provider" means a nurse, nurse aide,

1 medical assistant, hospital employee, clinic employee, nursing  
2 home employee, pharmacist, pharmacy employee, researcher, medical  
3 or nursing school student, professional, paraprofessional, or,  
4 without regard to whether the individual holds a license, any other  
5 individual who furnishes or assists in the furnishing of a health  
6 care service.

7           (4) "Health care service" means any phase of patient  
8 health care or treatment, including any conduct that may give rise  
9 to a health care liability claim, as that term is defined by Section  
10 74.001, Civil Practice and Remedies Code. The term includes:

11                   (A) testing, diagnosis, prognosis, ancillary  
12 research, instruction, medication, and surgery;

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

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

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

20           (6) "Undue delay" means an unreasonable delay that  
21 impairs a patient's health.

22           Sec. 161.702. CONSCIENTIOUS REFUSAL OF HEALTH CARE SERVICE  
23 DEFINED; LIFE-SUSTAINING TREATMENT; HEALTH CARE OR TREATMENT  
24 DECISION. (a) Subject to Subsection (b), in this chapter,  
25 "conscientious refusal of a health care service" means an  
26 individual's refusal to receive, obtain, perform, assist in  
27 performing, give advice regarding, suggest, recommend, refer, or

1 participate in a health care service that is contrary to the  
2 individual's conscience.

3 (b) Chapter 166 governs the required provision of, and the  
4 withholding or withdrawing of, life-sustaining treatment, as that  
5 term is defined by Section 166.002. A conscientious refusal of a  
6 health care service does not include, and may not be construed to  
7 include:

8 (1) an individual's refusal to provide or refusal to  
9 assist in providing life-sustaining treatment subject to Chapter  
10 166; or

11 (2) a patient's advance directive or a health care or  
12 treatment decision made by or on behalf of a patient that is subject  
13 to Section 166.046.

14 Sec. 161.703. IMMUNITY OF PHYSICIANS AND HEALTH CARE  
15 PROVIDERS. A physician or health care provider may not be held  
16 civilly or criminally liable in part because of the physician's or  
17 health care provider's conscientious refusal of a health care  
18 service.

19 Sec. 161.704. ADVERSE ACTION RELATED TO LICENSING. A  
20 person violates this subchapter by taking an adverse action against  
21 an individual because of the individual's conscientious refusal of  
22 a health care service, including taking an adverse action with  
23 regard to:

24 (1) licensing;

25 (2) employment terms or status or hiring, promoting,  
26 or transferring; and

27 (3) granting of staff appointments or other

1 privileges.

2 Sec. 161.705. ADVERSE ACTION RELATED TO EMPLOYMENT. A  
3 person, including a medical school or other institution that  
4 conducts education or training programs for physicians or health  
5 care providers, violates this subchapter by taking an adverse  
6 action against an applicant because of the applicant's  
7 conscientious refusal of a health care service, including taking an  
8 adverse action by:

9 (1) denying employment, admission, or participation  
10 in a program for which an applicant is eligible;

11 (2) referring to conscientious refusal in an  
12 application form;

13 (3) questioning an applicant regarding the applicant's  
14 conscientious refusal of a health care service; and

15 (4) imposing a burden in the terms or conditions of  
16 employment.

17 Sec. 161.706. ADVERSE ACTION RELATED TO BENEFITS. A  
18 person, including a public official, violates this subchapter by  
19 taking an adverse action against a recipient entitled to any type of  
20 aid, assistance, or benefits because of the recipient's  
21 conscientious refusal of a health care service, including taking an  
22 adverse action by:

23 (1) denying aid, assistance, or benefits;

24 (2) conditioning receipt of the aid, assistance, or  
25 benefits; or

26 (3) coercing or disqualifying the recipient.

27 Sec. 161.707. CONSCIENTIOUS REFUSAL PROTOCOL. (a) A

1 health care facility shall develop a written conscientious refusal  
2 protocol describing a patient's access to care and information to  
3 ensure that a conscientious refusal of a health care service does  
4 not permanently or substantially prevent a patient from obtaining  
5 the health care service. The protocol must explain the process the  
6 health care facility will implement to address a conscientious  
7 refusal of a health care service in a timely manner to facilitate  
8 the patient's health care service through the health care facility  
9 or another health care facility. The protocol must, at a minimum,  
10 require a health care facility, physician, or health care provider  
11 to:

12 (1) timely inform a patient of the patient's  
13 condition, prognosis, legal treatment options, and risks and  
14 benefits of treatment options, consistent with accepted standards  
15 of health care;

16 (2) provide copies of the patient's medical records to  
17 the patient or to another health care facility, physician, or  
18 health care provider designated by the patient in accordance with  
19 medical privacy laws, without undue delay, if requested by the  
20 patient or the patient's legal representative; and

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

23 (b) The protocol must clearly differentiate between a  
24 health care service to which this chapter applies and a  
25 life-sustaining treatment governed by Chapter 166.

26 (c) This section does not require a health care facility,  
27 physician, or health care provider to counsel a patient regarding a

1 health care service that is contrary to the conscience of the  
2 physician or health care provider. The information required by  
3 Subsection (a)(1) may be provided by a health care facility,  
4 physician, or health care provider other than the physician or  
5 health care provider with a conscientious refusal of a health care  
6 service.

7 (d) A physician or health care provider may not file a  
8 complaint with the appropriate licensing agency under Section  
9 161.708 unless the physician or health care provider, as  
10 applicable, complies with the applicable health care facility's  
11 conscientious refusal protocol developed under this section.

12 Sec. 161.708. DISCIPLINARY ACTION; COMPLAINT. (a) A  
13 health care facility, physician, or health care provider that holds  
14 a license issued by a licensing agency in this state is subject to  
15 review and disciplinary action by the licensing agency for a  
16 violation of this subchapter.

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

21 SECTION 2. Not later than December 1, 2019, a health care  
22 facility, as that term is defined by Section 161.701, Health and  
23 Safety Code, as added by this Act, shall adopt a conscientious  
24 refusal protocol required by Section 161.707, Health and Safety  
25 Code, as added by this Act.

26 SECTION 3. Section 161.703, Health and Safety Code, as  
27 added by this Act, applies only to a cause of action that accrues on

1 or after the effective date of this Act.

2 SECTION 4. This Act takes effect September 1, 2019.