

By: Hall

S.B. No. 34

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

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

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

13                   (B) place the patient's health in serious  
14 jeopardy;

15                   (C) result in serious impairment of the patient's  
16 bodily functions;

17                   (D) result in serious dysfunction of a bodily  
18 organ or part of the patient;

19                   (E) result in serious disfigurement of the  
20 patient; or

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

23                   (3) "Health care facility" means a public or private  
24 organization, corporation, partnership, sole proprietorship,  
25 association, agency, network, joint venture, or other entity that  
26 provides health care services to patients. The term includes a  
27 hospital, clinic, medical center, ambulatory surgical center,

1 private physician's office, pharmacy, nursing home, laboratory or  
2 diagnostic facility, infirmary, dispensary, medical school,  
3 nursing school, or medical training facility.

4 (4) "Health care provider" means a nurse, nurse aide,  
5 medical assistant, hospital employee, clinic employee, nursing  
6 home employee, pharmacist, pharmacy employee, researcher, medical,  
7 pharmacy, or nursing school student, professional,  
8 paraprofessional, or, without regard to whether the individual  
9 holds a license, any other individual who furnishes or assists in  
10 the furnishing of a health care service.

11 (5) "Health care service" means any phase of patient  
12 health care or treatment, including any conduct that may give rise  
13 to a health care liability claim, as that term is defined by Section  
14 74.001, Civil Practice and Remedies Code. The term includes:

15 (A) testing, diagnosis, prognosis, ancillary  
16 research, instruction, medication, therapy, treatment, and  
17 surgery;

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

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

23 (6) "Life-sustaining treatment" has the meaning  
24 assigned by Section 166.002.

25 (7) "Participate" related to the provision of a health  
26 care service includes an act to receive, obtain, perform, assist in  
27 performing, give advice regarding, suggest, recommend, or refer a

1 health care service.

2 (8) "Physician" means an individual licensed to  
3 practice medicine in this state.

4 (9) "Substantially prevent" related to the provision  
5 of a health care service means to significantly delay the provision  
6 of a health care service to a patient.

7 (10) "Undue delay" related to the provision of a  
8 health care service means an unreasonable delay that impairs a  
9 patient's health.

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

14 (b) An individual may not decline to participate in the  
15 following services:

- 16 (1) emergency care;  
17 (2) life-sustaining treatment; or  
18 (3) cardiopulmonary resuscitation.

19 (c) An individual who declines for reasons of conscience to  
20 participate in providing life-sustaining treatment to a patient  
21 shall continue providing life-sustaining treatment to the patient  
22 until an accommodation is arranged under Section 161.706.

23 (d) This section may not be construed to allow an individual  
24 to decline to participate in providing a health care service to a  
25 patient because of the patient's race, color, sex, national origin,  
26 religion, age, disability, physical condition, or economic status.

27 Sec. 161.703. IMMUNITY OF PHYSICIANS AND HEALTH CARE

1 PROVIDERS. A physician or health care provider may not be held  
2 civilly or criminally liable because the physician or health care  
3 provider declines to participate in a health care service wholly or  
4 partly for reasons of 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 describe a patient's access to health care services  
9 and information to ensure the patient is not permanently or  
10 substantially prevented from obtaining the services. The protocol  
11 must explain the process the facility will implement to facilitate  
12 in a timely manner the patient's access to the services.

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

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

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

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

24           Sec. 161.706. PROTOCOL FOR LIFE-SUSTAINING TREATMENT. (a) A  
25 health care facility shall develop a written protocol for  
26 circumstances in which an individual declines to participate in  
27 providing life-sustaining treatment for reasons of conscience. The

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

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

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

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

23 (2) provide without undue delay on request of the  
24 patient or the patient's legal representative 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; and

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

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

12           Sec. 161.707. 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 as if the facility, physician, or  
17 provider violated the applicable licensing law.

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

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

27           Sec. 161.708. CIVIL REMEDIES. A person who is injured by a



1 violation of this subchapter may bring a civil action against a  
2 person who violates this subchapter. A person who brings the action  
3 under this section may obtain:

4 (1) injunctive relief;

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

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

9 (B) court costs; and

10 (C) reasonable attorney's fees; or

11 (3) both injunctive relief and damages.

12 SECTION 3. Not later than March 1, 2022, a health care  
13 facility, as that term is defined by Section 161.701, Health and  
14 Safety Code, as added by this Act, shall adopt protocols required by  
15 Sections 161.705 and 161.706, Health and Safety Code, as added by  
16 this Act.

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

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