

SENATE BILL No. 475

By Committee on Ways and Means

2-26

1 AN ACT concerning health and healthcare; relating to provision of
2 services; enacting the healthcare conscience protection act.

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4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. (a) The provisions of this section shall be known and may
6 be cited as the healthcare conscience protection act.

7 (b) The purpose of the healthcare conscience protection act is to
8 encourage and safeguard the right of healthcare providers and entities to
9 exercise conscience in decisions to provide healthcare services and to
10 protect healthcare providers and entities from discrimination or retaliation
11 as a result of conscientious medical objection.

12 (c) (1) Notwithstanding any other provision of state law, and to the
13 extent allowed by federal law, a healthcare provider shall have the right to
14 not participate in any healthcare service when participating in the
15 healthcare service would violate such provider or entity's conscience.

16 (2) A healthcare provider or entity's decision not to participate in a
17 healthcare service that would violate the provider or entity's conscience
18 shall not form the basis for any civil or criminal liability or administrative
19 action under any state or local law.

20 (3) It shall be unlawful for any person, firm, corporation or
21 governmental entity to discriminate against any healthcare provider or
22 entity as a result of such provider or entity's decision not to participate in a
23 healthcare service that would violate such provider or entity's conscience.

24 (4) Nothing in this act shall be construed to relieve a healthcare
25 provider or entity from providing emergency medical treatment to all
26 patients as required by law.

27 (d) A healthcare provider or entity that exercises the right of
28 conscience shall:

29 (1) Promptly inform a patient or an individual authorized to make
30 healthcare decisions on behalf of a patient if the healthcare provider or
31 entity decides not to participate in the healthcare service for reasons of
32 conscience; and

33 (2) make reasonable efforts to assist in a prompt transfer of a patient
34 if requested by the patient or on behalf of the patient.

35 (e) No person shall intimidate, threaten, coerce or discriminate
36 against any healthcare provider or entity for the purpose of interfering with

1 any right protected by this act, or because a healthcare provider or entity
2 makes a complaint, testifies, assists, participates in an investigation,
3 proceeding or hearing under this act, exercises the rights protected under
4 this act or aids or encourages others to exercise the rights protected under
5 this act.

6 (f) Nothing in this act shall relieve a healthcare provider or entity
7 from performing any act that, if not performed, would subject the
8 healthcare provider or entity to disciplinary action by the licensing agency
9 responsible for the supervision and licensure of such healthcare provider
10 or entity.

11 (g) (1) A healthcare provider or entity who has been aggrieved by a
12 violation of this act may bring a cause of action in an appropriate state
13 court for such violation and seek appropriate relief, including, but not
14 limited to:

15 (A) Actual damages, including lost wages and other benefits suffered
16 by the plaintiff;

17 (B) punitive damages, if the court finds the violation was willful,
18 wanton or malicious;

19 (C) statutory damages in the amount of \$10,000;

20 (D) injunctive relief to restrain violations of the provisions of this act
21 against further violations of this act; and

22 (E) any other necessary or appropriate relief.

23 (2) The court shall award a prevailing plaintiff the cost of the suit,
24 including reasonable attorney fees.

25 (3) Notwithstanding any other provision of law, any action
26 commenced under this act shall be filed within two years after the date the
27 plaintiff experienced the act of discrimination.

28 (4) If judgment is rendered in favor of the defendant in an action
29 brought under this act, and the court finds the plaintiff's action was
30 frivolous and brought in bad faith, the court shall award reasonable
31 attorney fees to the defendant in addition to any other relief that is
32 awarded.

33 (h) As used in this act:

34 (1) "Conscience" means the deeply held religious, moral, ethical or
35 philosophical beliefs or principles of a healthcare provider or healthcare
36 entity. "Conscience" of a healthcare entity may be determined by an
37 entity's governing documents, including, but not limited to: Published
38 religious, moral or ethical guidelines; mission statements; constitutions;
39 articles of incorporation; bylaws; policies; or regulations.

40 (2) "Discriminate" or "discrimination" means any adverse action
41 taken against, or any threat of adverse or retaliatory action communicated
42 to any healthcare provider or healthcare entity as a result of such provider
43 or entity's decision not to participate in a healthcare service on the basis of

1 conscience.

2 (3) "Healthcare entity" means any facility licensed under chapter 39
3 or 65 of the Kansas Statutes Annotated, and amendments thereto, that
4 provides healthcare services, regardless of how such entity is incorporated
5 or organized.

6 (4) "Healthcare provider" means any person licensed or otherwise
7 authorized by law to provide healthcare services in this state.

8 (5) "Healthcare service" means any activity within a provider's
9 authorized scope of practice for the diagnosis, cure or treatment of any
10 injury, infirmity, disease, physical or mental illness or psychological
11 disorder, of human beings. "Healthcare service" does not mean emergency
12 medical care where failure to provide immediate medical attention would
13 result in serious impairment to bodily functions or serious dysfunction of a
14 bodily organ or part or would place the person's health in serious jeopardy.

15 (6) "Participate" in a healthcare service means to provide, perform,
16 assist with, facilitate, refer for, counsel for, advise with regard to, admit for
17 the purposes of providing or taking part in any healthcare service.

18 Sec. 2. This act shall take effect and be in force from and after its
19 publication in the statute book.