

INTERIM STUDY PROPOSAL 2019-167

State of Arkansas
92nd General Assembly
Second Extraordinary Session, 2020

A Bill

JMB/JMB
HOUSE BILL

By: Representative B. Smith

Filed with: Arkansas Legislative Council
pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

AN ACT TO CREATE THE MEDICAL CONSCIENCE PROTECTION
ACT; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE MEDICAL CONSCIENCE
PROTECTION ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 17, Chapter 80, is amended to add an
additional subchapter to read as follows:

Subchapter 5 – Medical Conscience Protection Act

17-80-501. Title.

This subchapter shall be known and may be cited as the "Medical
Conscience Protection Act".

17-80-502. Legislative findings and purpose.

(a) The General Assembly finds that:

(1) The right of conscience is a fundamental and unalienable
right;

(2) The right of conscience was central to the founding of the
United States, has been deeply rooted in the history and tradition of the
United States for centuries, and has been central to the practice of medicine
through the Hippocratic Oath for millennia;

1 (3) Despite its importance, threats to the right of conscience
2 of healthcare practitioners and healthcare institutions have become
3 increasingly more common and severe in recent years;

4 (4) The swift pace of scientific advancement and the expansion
5 of medical capabilities, along with the notion that healthcare practitioners
6 and healthcare institutions are mere public utilities, promise only to
7 exacerbate the current crisis unless something is done to restore the
8 importance of the right of conscience; and

9 (5) It is the public policy of this state to protect the right
10 of conscience of healthcare practitioners and healthcare institutions.

11 (b) It is the purpose of this subchapter to protect all healthcare
12 practitioners and healthcare institutions from discrimination, punishment, or
13 retaliation as a result of any instance of conscientious medical objection.

14
15 17-80-503. Definitions.

16 As used in this subchapter:

17 (1)(A) "Conscience" means the deeply held religious, moral,
18 ethical, or philosophical beliefs or principles of a healthcare practitioner
19 or healthcare institution.

20 (B) "Conscience" of a healthcare institution may be
21 determined by reference to existing or proposed documents, including without
22 limitation any published religious, moral, or ethical guidelines, mission
23 statements, constitutions, bylaws, articles of incorporation, regulations, or
24 other relevant documents;

25 (2) "Discriminate" means to take an adverse action against, or
26 communicate a threat of adverse action to, any healthcare practitioner or
27 healthcare institution as a result of a decision by a healthcare practitioner
28 or healthcare institution to decline to participate in a healthcare service
29 on the basis of the conscience of the healthcare practitioner or healthcare
30 institution, including without limitation:

31 (A) Termination;

32 (B) Refusal of staff privileges;

33 (C) Refusal of board certification;

34 (D) Adverse administrative or disciplinary action;

35 (E) Demotion;

36 (F) Loss of career specialty;

- 1 (G) Reduction of wages, benefits, or privileges;
- 2 (H) Refusal to award any grant, contract, or other
- 3 program;
- 4 (I) Refusal to provide residency training opportunities;
- 5 (J) Refusal to authorize the creation, expansion,
- 6 improvement, acquisition, affiliation, or merger of a healthcare institution;
- 7 and
- 8 (K) Any other penalty or disciplinary retaliatory action;
- 9 (3) "Employer" means an individual or entity that pays for or
- 10 provides health benefits or health insurance coverage as a benefit to the
- 11 employees of the individual or entity;
- 12 (4) "Healthcare institution" means a public or private
- 13 organization, corporation, partnership, sole proprietorship, association,
- 14 agency, network, joint venture, or other entity involved in providing
- 15 healthcare services, including without limitation:
- 16 (A) A hospital;
- 17 (B) A clinic;
- 18 (C) A medical center;
- 19 (D) An ambulatory surgical center;
- 20 (E) A private physician's office;
- 21 (F) A pharmacy;
- 22 (G) A nursing home;
- 23 (H) A medical training facility;
- 24 (I) An individual, association, corporation, or other
- 25 entity attempting to establish a new healthcare institution or operating an
- 26 existing healthcare institution; and
- 27 (J) Any other institution or location where healthcare
- 28 services are provided to an individual;
- 29 (5) "Healthcare practitioner" means an individual who is:
- 30 (A) A physician;
- 31 (B) A physician's assistant;
- 32 (C) A nurse;
- 33 (D) A nurse's aide;
- 34 (E) A medical assistant;
- 35 (F) A healthcare institution employee;
- 36 (G) A pharmacist;

1 (H) A pharmacy employee;

2 (I) A researcher;

3 (J) A student, employee, or faculty member of a medical
4 school or nursing school;

5 (K) A counselor;

6 (L) A social worker; or

7 (M) Any professional, paraprofessional, or other
8 individual who furnishes or assists in the providing or performing of
9 healthcare services;

10 (6)(A) "Healthcare service" means a phase of patient medical
11 care, treatment, or procedure, including without limitation:

12 (i) Patient referral;

13 (ii) Counseling;

14 (iii) Therapy;

15 (iv) Testing;

16 (v) Research;

17 (vi) Diagnosis or prognosis;

18 (vii) Instruction;

19 (viii) Prescribing, dispensing, or administering of
20 any drug, medication, or device;

21 (ix) Surgery; and

22 (x) Other care or treatment provided by a healthcare
23 provider or healthcare institution.

24 (B) "Healthcare service" does not mean health care or
25 treatment that is emergent or necessary to save the life of the patient;

26 (7) "Participate" means to provide, perform, assist with,
27 facilitate, refer for, counsel for, advise with regard to, admit for the
28 purposes of providing, or take part in any way in providing any healthcare
29 service or any form of healthcare service; and

30 (8) "Reasonable accommodation" means an arrangement to
31 accommodate beliefs or practices consistent with Title VII of the Civil
32 Rights Act of 1964, 42 U.S.C. § 2000e et seq., as existing on January 1,
33 2019.

34
35 17-80-504. Right of conscience.

36 (a) A healthcare practitioner or healthcare institution:

1 (1) Has the right not to participate in a healthcare service
2 that violates his, her, or its conscience;

3 (2) Is not required to participate in a healthcare service that
4 violates his, her, or its conscience; and

5 (3) Is not civilly, criminally, or administratively liable for
6 declining to participate in a healthcare service that violates his, her, or
7 its conscience.

8 (b) An individual, healthcare practitioner, health institution, public
9 institution, private institution, public official, or any board or agency
10 that certifies competency in a medical specialty shall not discriminate
11 against a healthcare practitioner or healthcare institution in any manner
12 based upon his, her, or its declining to participate in a healthcare service
13 that violates his, her, or its conscience.

14 (c) The right of conscience described in subsection (a) of this
15 section does not include the right to deny emergency medical care.

16 (d) An action taken by a healthcare institution or employer of a
17 healthcare practitioner is not discrimination under this subchapter if the
18 action is taken as a reasonable accommodation to the right of conscience of a
19 healthcare practitioner.

20 (e)(1) A healthcare institution that exercises the right of conscience
21 shall promptly inform the patient or an individual authorized to make
22 healthcare decisions for the patient that the healthcare institution will not
23 participate in the healthcare service for reasons of conscience.

24 (2) If a request for transfer is made by the patient or on
25 behalf of the patient, the healthcare institution shall make all reasonable
26 efforts to assist in a prompt transfer of the patient and provide continuing
27 care to the patient until a transfer can be effected or until a determination
28 has been made that a transfer cannot be effected.

29 (3) If a transfer cannot be effected, the healthcare institution
30 shall not be compelled to participate in a healthcare service that violates
31 the conscience of the healthcare institution.

32 (f) This section does not:

33 (1) Prohibit a potential employer of a healthcare practitioner
34 from designating participation in a particular healthcare service as a
35 fundamental requirement for a position by providing a written certification

1 to the applicant that the healthcare service is directly related and
2 essential to a core purpose of the employer; or

3 (2) Authorize a healthcare practitioner or healthcare
4 institution to object to or refuse to participate in a healthcare service
5 based upon the particular characteristics of the patient who is seeking the
6 healthcare service.

7 (g) This section authorizes a healthcare practitioner or healthcare
8 institution to object to a healthcare service if the healthcare service is
9 sought for a particular purpose that is in conflict with the conscience of
10 the healthcare practitioner or healthcare institution regardless of the
11 patient who is seeking those services.

12
13 17-80-505. Notice requirements.

14 (a)(1) A healthcare institution or employer shall prominently post a
15 notice, not less than eight and one-half inches by eleven inches (8.5" x 11")
16 in size, entitled "Right of Conscience for Healthcare Practitioners,
17 Students, and Employees" in a location where other notices are normally
18 posted or, if notices are not normally posted, in a location in which
19 personnel are likely to see the notice.

20 (2) The purpose of the notice described in subdivision (a)(1) of
21 this section is to fully inform personnel of their right of conscience with
22 respect to the delivery of healthcare services.

23 (b) A healthcare institution or employer shall ensure that each member
24 of personnel, student, or employee is informed of his or her right of
25 conscience with respect to the delivery of healthcare services upon the start
26 of employment or service.

27 (c) An healthcare institution or employer that violates this section
28 is subject to a civil fine not to exceed ten thousand dollars (\$10,000) per
29 incident.

30
31 17-80-506. Civil remedies.

32 (a)(1) A civil action for damages or injunctive relief, or both, may
33 be brought by a healthcare practitioner or healthcare institution for a
34 violation of this subchapter.

35 (2) A claim that the violation of this subchapter was necessary
36 to prevent an additional burden or expense on another healthcare

1 practitioner, healthcare institution, or individual, including without
2 limitation a patient, is not an affirmative defense.

3 (3) A civil action brought under subdivision (a)(1) of this
4 section shall demonstrate by a preponderance of the evidence that:

5 (A) The healthcare practitioner or healthcare
6 institution holds a conscience as defined in this subchapter; and

7 (B) A reasonable accommodation was not offered or
8 made for the conscience of the healthcare practitioner or healthcare
9 institution.

10 (b)(1)(A) Upon a finding of a violation of this subchapter, the
11 aggrieved party shall be entitled to recover treble damages, including
12 without limitation damages related to:

13 (i) Pain and suffering sustained by the individual,
14 association, corporation, healthcare institution, or other entity;

15 (ii) The cost of the civil action; and

16 (iii) Reasonable attorney's fees.

17 (B) However, the total amount of damages shall not be less
18 than five thousand dollars (\$5,000) for each violation in addition to the
19 costs of the civil action and reasonable attorney's fees.

20 (2) Damages shall be cumulative and are not exclusive of other
21 remedies that may be afforded under state or federal law.

22 (c) A court may award injunctive relief, including without limitation
23 ordering the reinstatement of a healthcare practitioner to his or her prior
24 employment position or board certification or relicensure of a healthcare
25 institution.

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27 17-80-507. Applicability.

28 This subchapter is supplemental to existing protections of the right of
29 conscience within the Arkansas Code and does not affect the existing laws
30 within the state concerning protection of the right of conscience.

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33 Referred by Representative B. Smith

34 Prepared by: JMB/JMB