

POLICY BRIEF

S.B. 289

Medical Ethics and Diversity (MED) Act

Last Updated: 2/3/21

Lead Sponsors: Sen. Kim Hammer & Rep. Brandt Smith

Summary: S.B. 289 emphasizes the right of healthcare providers, institutions, and payers to decline to participate in medical procedures that violate their moral, religious, or ethical convictions. It prohibits retaliatory discrimination against healthcare providers, institutions, or payers for declining to participate in healthcare services that violate their consciences. This bill also creates a legal remedy for such discrimination. S.B. 289 supplements the minimal existing conscience protections found in state code.

Current Law

- Arkansas has good protections for medical professionals with conscientious objections to abortion, abortion counseling, abortifacients, and end of life decisions.
- Arkansas healthcare payers have no specific conscience protections.
- Arkansas law does not address discrimination or retaliation against medical professionals or companies who object to certain procedures, and it does not provide specific legal remedies for victims of discrimination or retaliation.
- S.B. 289 addresses the two previously listed inadequacies in current law.

Points to Consider

- No one should have to worry about being retaliated or discriminated against for obeying their conscientious convictions.
- Rights-of-conscience is a long-established tradition that predates the U.S. Constitution. Our state constitution says, "No human authority can, in any case or manner whatsoever, control or interfere with the right of conscience." This right should not be ignored by employers and business contracts.
- Illinois and Mississippi have passed similar laws protecting rights of conscience for the entire healthcare industry, prohibiting conscience discriminations, and providing legal remedies.
- Specific right-of-conscience protections in Arkansas are narrowly focused on abortion, abortifacients, and end of life decisions, and protect only a limited number of people.

PLEASE VOTE FOR S.B. 289



Questions and Answers

1. Why is this bill necessary?

Answer: The Arkansas Constitution establishes the right of conscience. Current Arkansas Code protects the right of conscience only in certain circumstances. S.B. 289 responsibly extends the right of conscience to ALL those involved in the healthcare industry where conscience can be invoked, and conveniently places it in one central place within state code.

2. Could this bill be used to deny a person lifesaving care?

Answer: No. While some people have moral objections to some medical procedures, such as vaccines or blood transfusions, courts have ruled time and again that a patient's need for emergency, lifesaving medical care outweighs a medical professional's conscientious objections. Mississippi and Illinois have passed legislation similar to S.B. 289, and patients in their states have not been denied lifesaving care as a result of this same law. The same should be true for Arkansas as well.

3. Do healthcare providers, institutions, and payers currently have conscience protections?

Answer: Very little, if any. Currently, a healthcare provider has no protections in state law to claim a conscientious exemption to participate in a sex-change surgery, medical research involving embryonic stem cells, sterilization, genetic engineering, assisted reproductive technologies, surrogacies, prescribing highly addictive drugs, or other controversial medical procedures. Healthcare payers' rights are not protected from individual, elective medical procedures these payers deem objectionable, and Arkansas law does not clearly protect medical professionals and institutions from retaliation or discrimination for following their conscientious convictions.

4. Are any Arkansas healthcare workers or companies currently victims to conscience rights violations?

Answer: It is uncertain how many have been victims in Arkansas. However, healthcare providers and companies as close as Oklahoma and Tennessee, and especially those in California and New York have been pressured to perform or participate in elective medical procedures that violate their consciences, and some have received retaliation from supervisors or future business agreements for their conscience convictions. Passing this bill now will prevent these problems from occurring in Arkansas.

5. Can a person or company take advantage of this law?

Answer: The bill was vetted by the Arkansas Hospital Association, Arkansas Attorney General's office, and conscience protection experts. Language was added to this bill to prevent such unfair or illegal action of a person or entity to any other person or entity. Mississippi and Illinois have similar laws for a combined 40+ years with not one unintended consequence.

6. How does an employer or business discriminate against a healthcare provider, hospital, or payer?

Answer: Forms of employment discrimination include, but are not limited to: termination, transfer, refusal of staff privileges, denial of professional development or licensure, demotion, reassignment, reduction of wages, or other disciplinary retaliatory action. A healthcare institution or healthcare payer could discriminate against the other in a number of ways, most notably via coercion or strong-arming to perform or participate in an objectionable procedure or face loss of business.