

State of Arkansas
85th General Assembly
Regular Session, 2005

A Bill

SENATE BILL 1141

By: Senator Critcher

For An Act To Be Entitled

AN ACT TO CREATE THE ARKANSAS HEALTH CARE RIGHTS
OF CONSCIENCE ACT; AND FOR OTHER PURPOSES.

Subtitle

AN ACT TO CREATE THE ARKANSAS HEALTH
CARE RIGHTS OF CONSCIENCE ACT.

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

SECTION 1. Arkansas Code Title 20, Chapter 9 is amended to add an
additional subchapter to read as follows:

20-9-1001. Title.

This subchapter shall be known and may be cited as the "Arkansas Health
Care Rights of Conscience Act".

20-9-1002. Definitions.

As used in this subchapter:

(1)(A) "Conscience" means the religious, moral, or ethical
principles held by a health care provider or a health care institution.

(B) For purposes of this subchapter, a health care
institution's conscience shall be determined by reference to its existing or
proposed religious, moral, or ethical guidelines, mission statement,
constitution, bylaws, articles of incorporation, regulations, or other
relevant documents;

(2) "Discrimination" includes, but is not limited to:

(A) Termination;

(B) Transfer;



1 (C) Refusal of staff privileges;
 2 (D) Refusal of board certification;
 3 (E) Adverse administrative action;
 4 (F) Demotion;
 5 (G) Loss of career specialty;
 6 (H) Reassignment to a different shift;
 7 (I) Reduction of wages or benefits;
 8 (J) Refusal to award any grant, contract, or other
 9 program;
 10 (K) Refusal to provide residency training opportunities;
 11 or
 12 (L) Any other penalty, disciplinary, or retaliatory
 13 action;

14 (3) "Employer" means any individual or entity that pays for or
 15 provides health benefits or health insurance coverage as a benefit to its
 16 employees, whether through a third party, a health maintenance organization,
 17 a program of self-insurance, or some other means;

18 (4) "Health care institution" means any public or private
 19 organization, corporation, partnership, sole proprietorship, association,
 20 agency, network, joint venture, or other entity that is involved in providing
 21 health care services, including, but not limited to:

22 (A) Hospitals;
 23 (B) Clinics;
 24 (C) Medical centers;
 25 (D) Ambulatory surgical centers;
 26 (E) Private physician's offices;
 27 (F) Pharmacies;
 28 (G) Nursing homes;
 29 (H) University medical schools and nursing schools;
 30 (I) Medical training facilities; or
 31 (J) Other institutions or locations where health care
 32 service's are provided to any person;

33 (5) "Health care provider" means any individual who may be asked
 34 to participate in any way in a health care service, including, but not
 35 limited to, a:

36 (A) Physician;

1 (B) Physician's assistant;
2 (C) Nurse;
3 (D) Nurse's aide;
4 (E) Medical assistant;
5 (F) Hospital employee;
6 (G) Clinic employee;
7 (H) Nursing home employee;
8 (I) Pharmacist;
9 (J) Pharmacy employee;
10 (K) Researcher;
11 (L) Medical or nursing school faculty member, student, or
12 employee;

13 (M) Counselor;
14 (N) Social worker; or
15 (O) Professional, paraprofessional, or other person who
16 furnishes or assists in the furnishing of a health care service;

17 (6) "Health care service" means any phase of patient medical
18 care, treatment, or procedure, including, but not limited to:

19 (A) Patient referral;
20 (B) Counseling;
21 (C) Therapy;
22 (D) Testing;
23 (E) Diagnosis or prognosis;
24 (F) Research;
25 (G) Instruction;
26 (H) Prescribing;
27 (I) Dispensing or administering any device, drug, or
28 medication;
29 (J) Surgery; or
30 (K) Any other care or treatment rendered by a health care
31 provider or health care institutions; and

32 (7) "Participate in a health care service" means to counsel,
33 advise, provide, perform, assist in, refer for, admit for purposes of
34 providing, or participate in providing, any health care service or any form
35 of health care service.

1 20-9-1003. Rights of conscience of health care providers.

2 (a)(1) A health care provider has the right not to participate, and no
3 health care provider shall be required to participate in a health care
4 service that violates the health care provider's conscience.

5 (2) However, subdivision (a)(1) of this section shall not allow
6 a health care provider to refuse to participate in a health care service
7 regarding a patient because of the patient's race, religion, national origin,
8 gender, or the presence of any sensory, mental, or physical disability.

9 (b)(1) No health care provider shall be civilly, criminally, or
10 administratively liable solely for declining to participate in a health care
11 service that violates his or her conscience.

12 (2) However, subdivision (b)(1) of this subsection shall not
13 exempt a health care provider from liability for refusing to participate in a
14 health care service regarding a patient because of the patient's race,
15 religion, national origin, gender, or the presence of any sensory, mental, or
16 physical disability.

17 (c) It is unlawful for any person, health care provider, health care
18 institution, public or private institution, public official, or any board
19 that certifies competency in medical specialties to discriminate against any
20 health care provider in any manner based on the provider's declining to
21 participate in a health care service that violates the provider's conscience.

22
23 20-9-1004. Rights of conscience of health care institutions.

24 (a)(1) A health care institution has the right not to participate, and
25 no health care institution shall be required to participate in a health care
26 service that violates the health care institution's conscience.

27 (2) However, subdivision (a)(1) of this section does not allow a
28 health care institution to refuse to participate in a health care service
29 regarding a patient because of the patient's race, religion, national origin,
30 gender, or the presence of any sensory, mental, or physical disability.

31 (b)(1) A health care institution that declines to provide or
32 participate in a health care service that violates its conscience shall not
33 be civilly, criminally, or administratively liable if the institution
34 provides a consent form to be signed by a patient before admission to the
35 institution stating that it reserves the right to decline to provide or
36 participate in a health care service that violates its conscience.

1 (2) However, subdivision (b)(1) of this section does not exempt
2 a health care institution from liability for refusing to participate in a
3 health care service regarding a patient because of the patient's race,
4 religion, national origin, gender, or the presence of any sensory, mental, or
5 physical disability.

6 (c) It is unlawful for any person, public or private institution, or
7 public official to discriminate against any health care institution, or any
8 person, association, corporation, or other entity attempting to establish a
9 new health care institution or operating an existing health care institution,
10 in any manner, including, but not limited to, any denial, deprivation, or
11 disqualification with respect to licensure, any aid assistance, benefit or
12 privilege, including staff privileges, or any authorization, including
13 authorization to create, expand, improve, acquire, or affiliate or merge with
14 any health care institution, because the health care institution, or person,
15 association, or corporation planning, proposing, or operating a health care
16 institution, declines to participate in a health care service which violates
17 the health care institution's conscience.

18 (d) It is unlawful for any public official, agency, institution, or
19 entity to deny any form of aid, assistance, grants or benefits, or in any
20 other manner to coerce, disqualify or discriminate against any person,
21 association, corporation, or other entity attempting to establish a new
22 health care institution or operating an existing health care institution
23 because the existing or proposed health care institution declines to
24 participate in a health care service contrary to the health care
25 institution's conscience.

26
27 20-9-1005. Civil remedies.

28 (a)(1) A civil action for damages or injunctive relief, or both, may
29 be brought for the violation of any provision of this subchapter.

30 (2) It is not a defense to any claim arising out of a violation
31 of this subchapter that the violation was necessary to prevent additional
32 burden or expense on any other health care provider, health care institution,
33 individual, or patient.

34 (b)(1) Any individual, association, corporation, entity, or health
35 care institution injured by any public or private individual, association,
36 agency, entity, or corporation by reason of any conduct prohibited by this

1 subchapter may commence a civil action.

2 (2)(A) If a court finds a violation of this subchapter, the
3 aggrieved party shall be entitled to recover:

4 (i) Threefold the actual damages, including pain and
5 suffering, sustained by the individual, association, corporation, entity, or
6 health care institution;

7 (ii) The costs of the action; and

8 (iii) Reasonable attorney's fees.

9 (B) In no case shall recovery be less than five thousand
10 dollars (\$5,000) for each violation in addition to costs of the action and
11 reasonable attorney's fees.

12 (C) These damage remedies shall be cumulative and not
13 exclusive of other remedies afforded under any other state or federal law.

14 (c) The court in a civil action under this subchapter may award
15 injunctive relief, including, but not limited to, ordering reinstatement of a
16 health care provider to his or her prior job position.