HB95
173640-1
By Representative Mooney
RFD: Health
First Read: 07-FEB-17
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SYNOPSIS: This bill would give health care providers the following: The authority to refuse to perform or to participate in health care services that violate their conscience; immunity from civil, criminal, or administrative liability for refusing to provide or participate in a health care service that violates their conscience. This bill would declare it unlawful for any person to discriminate against health care providers for declining to participate in a health care service that violates their conscience. The bill would also provide for injunctive relief and back pay for violation.

A BILL TO BE ENTITLED
AN ACT

Relating to health care, to allow health care providers to decline to perform any health care service that
violates their conscience and provide remedies for persons who
exercise that right and suffer consequences as a result.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

   Section 1. This act may be known and cited as the
   Health Care Rights of Conscience Act.

   Section 2. The Legislature finds and declares:

   (1) It is the public policy of the State of Alabama
to respect and protect the fundamental right of conscience of
individuals who provide health care services.

   (2) Without comprehensive protection, health care
rights of conscience may be violated in various ways, such as
harassment, demotion, salary reduction, termination, loss of
privileges, denial of aid or benefits, and refusal to license,
or refusal to certify.

   (3) It is the purpose of this act to protect
religious or ethical rights of all health care providers to
decline to provide, perform, assist, or participate in
providing or performing certain health care services that
violate their consciences, where they have made their
objections known in writing in advance.

   (4) It is the purpose of this act to prohibit
discrimination, disqualification, or coercion upon such health
care providers who decline to perform any health care service
that violates their conscience and who object in writing as
soon as practicable prior to being asked to perform such
health care services.
Section 3. The following words and terms shall have the meanings ascribed to them in this section, unless otherwise required by their respective context:

(1) CONSCIENCE. The religious, moral, or ethical principles held by a health care provider.

(2) DISCRIMINATION. Discrimination includes, but is not limited to: Hiring, termination, refusal of staff privileges, refusal of board certification, demotion, loss of career specialty, reduction of wages or benefits, adverse treatment in the terms and conditions of employment, refusal to award any grant, contract, or other program, or refusal to provide residency training opportunities.

(3) HEALTH CARE PROVIDER. Any individual who may be asked to participate in any way in a health care service, including, but not limited to: A physician, physician's assistant, nurse, nurse's aide, medical assistant, hospital employee, clinic employee, nursing home employee, pharmacist, researcher, medical or nursing school faculty, student, or employee, counselor, social worker, or any professional, paraprofessional, or any other person who furnishes or assists in the furnishing of health care services.

(4) HEALTH CARE SERVICE. Patient medical care, treatment or procedure that is limited to abortion, human cloning, human embryonic stem cell research, and sterilization, and is related to: Testing, diagnosis or prognosis, research, instruction, prescribing, dispensing or administering any device, drug, or medication, surgery, or any
other care or treatment rendered or provided by health care providers. Health care service does not include notifying a member of a health care institution's management of a patient inquiry about obtaining a health care service that a health care provider believes may violate his or her conscience.

(5) OBJECT IN WRITING. To provide advance notice in a signed written paper document to an authorized agent of his or her employer, board, or other oversight agency of a particular health care provider. The notice shall be provided within a reasonable time, but in no case less than twenty-four (24) hours prior to any service or procedure objected to under this act by the health care provider.

(6) PARTICIPATE. To perform, assist in, refer for, admit for purposes of providing, or participate in providing, any health care service or any form of such service. Participate does not include compliance with a health care institution's policy and procedure which states that a health care provider must notify a member of the health care institution's management of a patient's inquiry about obtaining a health care service that the health care provider believes may violate his or her conscience.

Section 4. (a) A health care provider has the right not to participate, and no health care provider shall be required to participate, in a health care service that violates his or her conscience when the health care provider has objected in writing prior to being asked to provide such health care services.
(b) When objecting in writing in accordance with this act, no health care provider shall be civilly, criminally, or administratively liable for declining to participate in a health care service that violates his or her conscience except when failure to do so would immediately endanger the life of a patient.

(c) It shall be unlawful for any person, health care provider, health care institution, public or private institution, public official, or any board which certifies competency in medical or health care specialties to discriminate against any health care provider in any manner based on his or her declining to participate in a health care service that violates his or her conscience, where the health care provider has made his or her objections known in writing. Provided further, students may be evaluated based on their understanding of course materials, but no student shall be required to perform a health care service or be penalized because he or she subscribes to a particular position on health care services.

(d) Notwithstanding any other provision in this act, in a life-threatening situation where no other health care provider is available or capable of providing or participating in a health care or medical service, a health care provider shall provide and participate in diagnosis, medical treatment, medical care, and medical procedures until an alternate health care provider capable of providing or participating in the
emergency medical treatment, medical care, or medical
procedures is found or otherwise becomes available.

(e) Except as otherwise provided in this section, a
hospital, as defined in Section 22-21-20, Code of Alabama
1975, or other health care entity, and any employee,
physician, member, or person associated with the hospital or
other health care entity is immune from criminal and civil
liability for any damage caused by the refusal of a health
care provider to participate in a health care service as
defined in this act at a facility owned, operated, or
controlled by the hospital or other health care entity.

Section 5. (a) An action for injunctive relief may
be brought for the violation of any provision of this act.

(b) The court in such action may award injunctive
relief, including ordering reinstatement of a health care
provider to his or her prior job position, back pay and costs
of the action.

Section 6. Nothing in this act shall be construed to
permit or require the violation of any Alabama statute,
regulation, or other provision of law that regulates or
provides rights, duties, obligations, or limitations related
in any way to abortion.

Section 7. The provisions of this act shall not
apply to health care institutions or employers who are
licensed by the State of Board of Health as abortion clinics.
Further, nothing in this act shall modify, amend, repeal, or
supersede any provision of Section 6-5-333 of the Code of
Alabama 1975, or the "Alabama Medical Liability Act of 1987"
commencing with Section 6-5-540, Code of Alabama 1975, et
seq., or the Alabama Medical Liability Act of 1996, commencing
with Section 6-5-548, Code of Alabama 1975, et seq., or any
amendment to any of the foregoing, or any judicial
interpretation of any of the foregoing.

Section 8. If any part, section, or subsection of
this act or the application thereof to any person or
circumstances is held invalid, such invalidity shall not
affect parts, sections or subsections or applications of this
act which can be given effect without the invalid part,
section, or subsection or application and to this end, such
invalid portions of this act are declared severable.

Section 9. This act shall become effective on the
first day of the third month following its passage and
approval by the Governor, or its otherwise becoming law.