COMMITTEE REPORT

February 23, 2011

**H. 3408**

Introduced by Reps. Delleney, Lucas, Simrill, Hiott, Limehouse, Bowen, Bedingfield, Pinson, J.R. Smith, G.M. Smith, Bingham, Thayer, V.S. Moss, Brannon, Bikas, Cooper, Allison, Toole, Parker, G.R. Smith, Frye, Atwater, Henderson, McCoy, Ballentine, Clemmons, Hixon, D.C. Moss, Pitts, Young and Quinn

S. Printed 2/23/11--H.

Read the first time January 20, 2011.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3408) to amend the Code of Laws of South Carolina, 1976, by adding Article 5, to Chapter 41, Title 44, to enact the “Freedom of Conscience Act”, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by adding an appropriately numbered SECTION to read:

/SECTION \_\_. Article 1, Chapter 71, Title 38 of the 1976 Code is amended by adding:

“Section 38‑71‑295. (A) Pursuant to Section 1303(a)(1), as amended by Section 10104(c), of the Patient Protection and Affordable Care Act, Pub. L. No. 111‑148, all qualified health plans offered through the state Exchange are prohibited from including elective abortion coverage. Nothing in this section shall be construed as preventing anyone from purchasing optional supplemental coverage for elective abortions for which there must be paid a separate premium in accordance with subsection (D) in the health insurance market outside of the state Exchange.

(B) No health plan, including health insurance contracts, plans or policies, offered outside of the Exchange, but within the State, shall provide coverage for elective abortions except by optional separate supplemental coverage for abortion for which there must be paid a separate premium in accordance with subsection (D).

(C) For purposes of this section, an ‘elective abortion’ means an abortion for any reason other than to prevent the death of the mother upon whom the abortion is performed; provided, that an abortion may not be deemed one to prevent the death of the mother based on a claim or diagnosis that she will engage in conduct which will result in her death.

(D) The issuer of any health plan providing elective abortion coverage:

(1) shall calculate the premium for such coverage so that it fully covers the estimated cost of covering elective abortions, per enrollee, determined on an average actuarial basis, in calculating which the issuer of the plan may not take into account any cost reduction in any health plan covering an enrollee estimated to result from the provision of abortion coverage, including prenatal care, delivery, or postnatal care;

(2) if the enrollee is enrolling in a health plan providing any other coverage at the same time as the enrollee is enrolling in a plan providing elective abortion coverage, shall require a separate signature, distinct from that to enroll in the health plan providing other coverage, in order to enroll in the separate supplemental plan providing elective abortion coverage;

(3) shall provide a notice to enrollees, at the time of enrollment, that:

(a) specifically states the cost of the separate premium for coverage of elective abortions, distinct and apart from the cost of the premium for any health plan providing any other coverage in any health plan covering an enrollee;

(b) states that enrollment in elective abortion coverage is optional; and

(c) if the enrollee is enrolling in a health plan providing any other coverage at the same time as the enrollee is enrolling in a plan providing elective abortion coverage, states that the enrollee, may choose to enroll in the plan providing other coverage without enrolling in the plan providing elective abortion coverage.

(E) The issuer of any health plan providing any coverage other than elective abortion shall not discount or reduce the premium for such coverage on the basis that an enrollee has elective abortion coverage.

(F) Any employer who offers employees a health plan providing elective abortion coverage shall, at the time of beginning employment, and at least once in each calendar year thereafter, provide each employee the option to choose or reject elective abortion coverage.

(G) Any entity offering a group health plan providing elective abortion coverage, other than employers offering such a plan to their employees shall, at the time each group member begins such coverage, and at least once in each calendar year thereafter, provide each group member the option to choose or reject elective abortion coverage.

(H) Nothing in this section shall be construed to apply in circumstances in which federal law preempts state health insurance regulation.”/

Renumber sections to conform.

Amend title to conform.

JAMES H. HARRISON for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 5, TO CHAPTER 41, TITLE 44, TO ENACT THE “FREEDOM OF CONSCIENCE ACT” SO AS TO PROHIBIT AN EMPLOYER FROM DISMISSING, DEMOTING, SUSPENDING, DISCIPLINING OR DISCRIMINATING AGAINST AN EMPLOYEE WHO ADVISES THE EMPLOYER THAT HE OR SHE REFUSES TO PARTICIPATE IN CERTAIN ACTIVITIES INCLUDING, BUT NOT LIMITED TO, PROCEDURES RELATED TO EMBRYONIC TISSUE OR A DEVELOPING CHILD IN AN ARTIFICIAL OR NATURAL WOMB; TO PROVIDE THAT A HEALTH CARE FACILITY IS NOT REQUIRED TO ADMIT A PATIENT, OR TO ALLOW THE USE OF THE FACILITY FOR PROCEDURES INCLUDING, BUT NOT LIMITED TO, PROCEDURES RELATED TO EMBRYONIC TISSUE OR A DEVELOPING CHILD IN AN ARTIFICIAL OR NATURAL WOMB AND TO PROVIDE THAT CERTAIN HEALTH CARE PROVIDERS AND EMPLOYEES OF SUCH PROVIDERS WHO PROVIDED NOTICE THAT THEY WILL NOT PARTICIPATE IN SUCH ACTIVITIES MUST NOT BE REQUIRED TO PARTICIPATE, MUST NOT BE DISCIPLINED DUE TO SUCH REFUSAL, AND ARE IMMUNE FROM LIABILITY FOR ANY DAMAGES CAUSED BY SUCH REFUSAL; TO PROVIDE THAT THE STATE MUST NOT REQUIRE AN INSURANCE PLAN OR ISSUER TO COVER PROCEDURES INCLUDING, BUT LIMITED TO, PROCEDURES RELATING TO EMBRYONIC TISSUE OR DEVELOPMENT OF A CHILD IN AN ARTIFICIAL OR NATURAL WOMB; TO PROHIBIT A HEALTH CARE FACILITY, SCHOOL, OR EMPLOYER FROM DISCRIMINATING AGAINST A PERSON REGARDING ADMISSION, HIRING OR FIRING, TERMS OF EMPLOYMENT, OR STUDENT OR STAFF STATUS BECAUSE THE PERSON REFUSES, WHETHER OR NOT IN WRITING, TO PARTICIPATE IN PROCEDURES INCLUDING, BUT NOT LIMITED TO, PROCEDURES RELATED TO EMBRYONIC TISSUE OR A DEVELOPING CHILD IN AN ARTIFICIAL OR NATURAL WOMB; TO PROVIDE THAT A PERSON MUST NOT BE REQUIRED TO PARTICIPATE IN, MAKE FACILITIES AVAILABLE FOR, OR PROVIDE PERSONNEL FOR PROCEDURES INCLUDING, BUT LIMITED TO, PROCEDURES RELATING TO EMBRYONIC TISSUE OR DEVELOPMENT OF A CHILD IN AN ARTIFICIAL OR NATURAL WOMB IF THE ACTIVITY IS CONTRARY TO THE PERSON’S CONSCIENCE; TO PROHIBIT DISCRIMINATION AGAINST A PERSON ESTABLISHING OR OPERATING A HEALTH CARE FACILITY BECAUSE THE FACILITY DECLINES TO PARTICIPATE IN A HEALTH CARE SERVICE THAT IS CONTRARY TO THE FACILITY’S CONSCIENCE; AND TO PROVIDE THAT A PERSON ADVERSELY AFFECTED BY CONDUCT THAT IS IN VIOLATION OF THIS ARTICLE MAY BRING A CIVIL ACTION FOR EQUITABLE RELIEF AND IF THE PERSON PREVAILS, THE COURT SHALL AWARD ATTORNEY’S FEES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 41, Title 44 of the 1976 Code is amended by adding:

“Article 5

Freedom of Conscience Act

Section 44‑41‑510. This article may be cited as the ‘Freedom of Conscience Act’.

Section 44‑41‑520. As used in this article:

(1) ‘Conscience’ means the religious, moral, or ethical principles held by a person.

(2) ‘Health care facility’ means a public or private organization, corporation, authority, partnership, sole proprietorship, association, agency, network, joint venture, or other entity that is involved in providing health care services, including a hospital, clinic, medical center, ambulatory surgical center, private physician’s office, pharmacy, nursing home, university hospital, medical school, nursing school, medical training facility, inpatient health care facility, or other place where health care services are provided.

(3) ‘Human embryo’ means a human organism from a single cell stage up to eight weeks development, that is derived by fertilization, parthenogenesis, cloning, or any other means from one or more human gametes or human diploid cells.

(4) ‘In vitro human embryo’ means a human embryo, whether cryopreserved or not, living outside of a woman’s body.

(5) ‘Participate in’ means to perform, practice, engage in, assist in, recommend, counsel in favor of, make referrals for, prescribe, dispense, or administer drugs or devices or otherwise promote or encourage.

(6) ‘Person’ means any individual, corporation, industry, firm, partnership, association, venture, trust, institution, federal, state or local governmental instrumentality, agency or body or any other legal entity however organized.

Section 44‑41‑530. (A) An employer must not dismiss, demote, suspend, or otherwise discipline or discriminate against an employee or prospective employee who advises the employer in writing that he or she refuses to participate in the following:

(1) an experiment or medical procedure that destroys an in vitro human embryo or uses cells or tissue derived from the destruction of an in vitro human embryo;

(2) an experiment or medical procedure on an in vitro human embryo that is not related to the beneficial treatment of the in vitro human embryo;

(3) an experiment or medical procedure on a developing child in an artificial or natural womb, at any stage of development, that is not related to the beneficial treatment of the developing child;

(4) a procedure, including a transplant procedure, that uses fetal tissue or organs that come from a source other than a stillbirth or miscarriage; or

(5) an act that intentionally causes or assists in causing the death of an individual.

(B) Nothing in this article permits a health care provider or insurer that otherwise provides, performs, or covers an item or procedure to refuse to do so for a person based on a judgment that:

(1) discounts the value of the person’s life because of his or her age or disability; or

(2) views the person as not meriting treatment because of an innate personal characteristic, other than a characteristic that would reduce the procedure’s clinical effectiveness or increase its risks.

(C) The notice given by an employee pursuant to subsection (A) suffices without specification of the reason the notice is provided.

Section 44‑41‑540. (A) A health care facility is not required to admit any patient or to allow the use of the health care facility for the purpose of performing any of the acts specified in Section 44‑41‑530(A).

(B) A physician, physician’s assistant, registered nurse, practical nurse, pharmacist, or any employee thereof, or any other person who is an employee of, member of, or associated with the staff of a health care facility in which the performance of an activity specified in Section 44‑41‑530(A) has been authorized, who, in writing, refuses or states an intention to refuse to participate in the activity based on conscience must not be required to participate in the activity and must not be disciplined by the respective licensing board or authorized regulatory department for refusing or stating an intention to refuse to participate in the practice with respect to the activity. This notice suffices without specification of the reason the notice is provided.

(C) A physician, physician’s assistant, registered nurse, practical nurse, pharmacist, or any employee thereof, or any other person who is an employee of, member of, or associated with the staff of a health care facility is immune from liability for any damage caused by the refusal of the person to participate in an activity specified in Section 44‑41‑530(A).

Section 44‑41‑550. (A) The State or state exchange may not require an insurance plan or issuer to cover any of the acts specified in Section 44‑41‑530(A) that are contrary to its conscience.

(B) A health plan or health issuer offering coverage within the State must accommodate the conscientious objection of a purchaser, or of an individual or institutional health care provider, when any of the acts specified in Section 44‑41‑530(A) are contrary to its conscience.

Section 44‑41‑560. (A) A health care facility, school, or employer must not discriminate against any person with regard to admission, hiring or firing, tenure, term, condition, or privilege of employment, student status, or staff status on the ground that the person refuses or states an intention to refuse, whether or not in writing, to participate in an activity specified in Section 44‑41‑530(A). This notice suffices without specification of the reason the notice is provided.

(B) A person must not be required to:

(1) participate in an activity specified in Section 44‑41‑530(A) if the individual’s participation in the activity is contrary to the person’s conscience;

(2) make facilities available for an individual to participate in an activity specified in Section 44‑41‑530(A) if the person prohibits the activity from taking place in the facilities on the basis of conscience; or

(3) provide any personnel to participate in an activity specified in Section 44‑41‑530(A) if the activity is contrary to the conscience of the personnel.

(C) A person must not discriminate against a person attempting to establish a new health care facility or operating an existing health care facility in any manner, including, but not limited to the following: any denial, deprivation, or disqualification with respect to licensure; any aid assistance, benefit, or privilege, including staff privileges; or any authorization, including authorization to create, expand, improve, acquire, or affiliate or merge with any health care facility if such healthcare facility or person, association, or corporation planning, proposing, or operating a health care facility declines to participate in a health care service which violates the health care facility’s conscience. However, nothing in this article permits a health care provider to withdraw or to refuse to provide medical care based on a judgment that:

(1) discounts the value of the person’s life because of his or her age or disability; or

(2) views the person as not meriting treatment because of an innate personal characteristic, other than a characteristic that would reduce the procedure’s clinical effectiveness or increase its risks.

Section 44‑41‑570. (A) A person who is adversely affected by conduct that is in violation of this article may bring a civil action for equitable relief, including reinstatement or damages, or both reinstatement and damages. An action under this subsection may be commenced against the State and any office, department, independent agency, authority, institution, association, or other body in state government created or authorized to be created by the state constitution or any law. An action under this subsection must be commenced within three years after the cause of action arises.

(B) If judgment is rendered in favor of the plaintiff in any action described in this section, the court also shall award a reasonable attorney’s fee in favor of the plaintiff against the defendant.”

SECTION 2. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 3. This act takes effect upon approval by the Governor.

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