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RECALLED

May 4, 2022

**H. 4776**

Introduced by Reps. Willis, McCravy, Thayer, Bailey, Wooten, B. Cox, McGarry, Magnuson, Pope, Taylor, G.R. Smith, Gilliam, Jones, M.M. Smith, Trantham, Erickson, Huggins, Long, Hiott, Burns, May, Haddon, Oremus, Bennett, Daning, T. Moore, Chumley, Nutt, Hyde, Dabney, McCabe, Bryant, Forrest, Hixon, J.E. Johnson, Lucas, Morgan and D.C. Moss

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Read the first time March 31, 2022.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “MEDICAL ETHICS AND DIVERSITY ACT” BY ADDING CHAPTER 139 TO TITLE 44 SO AS TO SET FORTH FINDINGS OF THE GENERAL ASSEMBLY REGARDING THE RIGHT OF CONSCIENCE IN THE HEALTH CARE INDUSTRY; TO DEFINE CERTAIN TERMS; TO AUTHORIZE MEDICAL PRACTITIONERS, HEALTH CARE INSTITUTIONS, AND HEALTH CARE PAYERS NOT TO PARTICIPATE IN HEALTH CARE SERVICES THAT VIOLATE THE PRACTITIONER’S OR ENTITY’S CONSCIENCE AND TO PROTECT THESE INDIVIDUALS AND ENTITIES FROM CIVIL, CRIMINAL, OR ADMINISTRATIVE LIABILITY AND FROM DISCRIMINATION FOR EXERCISING THEIR PERSONAL RIGHT OF CONSCIENCE, WITH EXCEPTIONS; TO CREATE A PRIVATE RIGHT OF ACTION FOR MEDICAL PRACTITIONERS, HEALTH CARE INSTITUTIONS, AND HEALTH CARE PAYERS FOR VIOLATION OF THE CHAPTER; AND FOR OTHER PURPOSES.

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

SECTION 1. This act may be known and cited as the “Medical Ethics and Diversity Act”.

SECTION 2. Title 44 of the 1976 Code is amended by adding:

“CHAPTER 139

Medical Ethics and Diversity Act

Section 44‑139‑10. (A) The General Assembly finds that the right of conscience is a fundamental and unalienable right. It was central to the founding of the United States, has been deeply rooted in our Nation’s history and tradition for centuries, and has been central to the practice of medicine, through the Hippocratic Oath, for millennia.

(B) Despite its preeminent importance, however, threats to the right of conscience of medical practitioners, health care institutions, and health care payers have become increasingly more common and severe in recent years. The swift pace of scientific advancement and the expansion of medical capabilities, along with the mistaken notion that medical practitioners, health care institutions, and health care payers are mere public utilities, promise only to make the current crisis worse, unless something is done to restore conscience to its rightful place.

(C) With this purpose in mind, the General Assembly declares that it is the public policy of the State of South Carolina to protect the right of conscience for medical practitioners, health care institutions, and health care payers.

(D) As the right of conscience is fundamental, no medical practitioner, health care institutions, and health care payers should be compelled to participate in or pay for any medical procedure or prescribe or pay for any medication to which the practitioner or entity objects on the basis of conscience, whether such conscience is informed by religious, moral, or ethical beliefs or principles.

(E) It is the purpose of this chapter to protect medical practitioners, health care institutions, and health care payers from discrimination, punishment, or retaliation as a result of any instance of conscientious medical objection.

Section 44‑139‑20. For the purposes of this chapter:

(1) ‘Conscience’ means the religious, moral, or ethical beliefs or principles held by any medical practitioner, health care institutions, and health care payers. Conscience with respect to institutional entities or corporate bodies, as opposed to individual persons, is determined by reference to that entity or body’s governing documents including, but not limited to, any published religious, moral, or ethical guidelines or directives; mission statements; constitutions; articles of incorporation; bylaws; policies; or regulations.

(2) ‘Disclosure’ means a formal or informal communication or transmission, but does not include a communication or transmission concerning policy decisions that lawfully exercise discretionary authority unless the medical practitioner providing the disclosure or transmission reasonably believes that the disclosure or transmission evinces:

(a) any violation of any law, rule, or regulation;

(b) any violation of any standard of care or other ethical guidelines for the provision of any health care service; or

(c) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(3) ‘Discrimination’ means any adverse action taken against, or any threat of adverse action communicated to, any medical practitioner, health care institutions, and health care payers as a result of the practitioner’s or entity’s decision to decline to participate in a health care service on the basis of conscience. Discrimination includes, but is not limited to, termination of employment; demotion from current position; adverse administrative action; increased administrative duties; refusal of staff privileges; refusal of board certification; loss of career specialty; reduction of wages, benefits, or privileges; refusal to award a grant, contract, or other program; refusal to provide residency training opportunities; denial, deprivation, or disqualification of licensure; withholding or disqualifying from financial aid and other assistance; impediments to creating any health care institution or payer or expanding or improving said health care institution or payer; impediments to acquiring, associating with, or merging with any other health care institution or payer; the threat thereof with regard to any of the preceding; or any other penalty, disciplinary, or retaliatory action, whether executed or threatened. For the purposes of this chapter, ‘discrimination’ does not include reassignment to a comparable role for which the employee is duly qualified, if under the same working conditions and without pecuniary impact to the practitioner.

(4) ‘Health care service’ means medical care provided to any patient at any time over the entire course of treatment. This includes, but is not limited to, examination; testing; diagnosis; dispensing and/or administering any drug, medication, or device; psychological therapy or counseling; research; prognosis; therapy; any other care or necessary services performed or provided by any medical practitioner.

(5) ‘Health care institution’ means any public or private hospital, clinic, medical center, physician organization, professional association, ambulatory surgical center, private physician’s office, pharmacy, nursing home, medical school, nursing school, medical training facility, or any other entity or location in which health care services are performed on behalf of any person. Health care institutions may include, but are not limited to, organizations, corporations, partnerships, associations, agencies, networks, sole proprietorships, joint ventures, or any other entity that provides health care services.

(6) ‘Health care payer’ means any employer, health plan, health maintenance organization, insurance company, management services organization, or any other entity that pays for, or arranges for the payment of, any health care service provided to any patient, whether that payment is made in whole or in part, and that either:

(a) is a heath care sharing ministry as defined in 26 U.S.C. Section 5000A(d)(2)(B)(ii); or

(b) holds itself out to the public as religious, states in its governing documents that it has a religious purpose or mission, and has internal operating policies or procedures that implement its religious beliefs.

(7) ‘Medical practitioner’ means any person or individual who may be or is asked to participate in any health care service. This includes, but is not limited to, doctors, nurse practitioners, physician’s assistants, nurses, nurses’ aides, allied health professionals, medical assistants, pharmacists, pharmacy technicians, medical school faculty and students, nursing school faculty and students, psychology and counseling faculty and students, medical researchers, laboratory technicians, counselors, or social workers.

(8) ‘Participate’ in a health care service means to provide, perform, assist with, facilitate, counsel for, advise with regard to, admit for the purposes of providing, or take part in providing, any health care service or any form of such service.

(9) ‘Pay’ or ‘payment’ means to pay for, contract for, arrange for the payment of (whether in whole or in part), reimburse, or remunerate.

Section 44‑139‑30. (A) A medical practitioner, health care institutions, and health care payers has the right not to participate in or pay for any health care service which violates the practitioner’s or entity’s conscience.

(B) No medical practitioner, health care institutions, and health care payers may be civilly, criminally, or administratively liable for exercising the practitioner’s or entity’s right of conscience with respect to a health care service. No health care institution may be civilly, criminally, or administratively liable for any claims related to or arising out of the exercise of conscience rights protected by this chapter by a medical practitioner employed, contracted, or granted admitting privileges by the health care institution.

(C) No medical practitioner, health care institutions, and health care payers may be discriminated against in any manner as a primary result of the practitioner’s or entity’s decision to decline to participate in a health care service on the basis of conscience.

(D) Notwithstanding any other provision of this chapter to the contrary, a religious medical practitioner, health care institutions, and health care payers that holds itself out to the public as religious, states in its governing documents that it has a religious purpose or mission, and has internal operating policies or procedures that implement its religious beliefs, has the right to make employment, staffing, contracting, and admitting privilege decisions consistent with its religious beliefs.

(E) Nothing in this chapter may be construed to override either the requirement to provide emergency medical treatment to all patients as set forth in 42 U.S.C. Section 1395dd or any other federal law or regulation.

(F) Exercise of the right of conscience is limited to conscience‑based objections to a particular health care service. This section may not be construed to waive or modify any duty a health care practitioner, health care institutions, and health care payers may have to provide other medical services that do not violate the practitioner’s, institution’s, or payer’s conscience.

(G) A medical practitioner exercising his right of conscience to abstain from providing certain health care services pursuant to this chapter may:

(1) refer the patient to;

(2) transfer the patient to; or

(3) provide information to the patient about other medical practitioners or health care institutions who they reasonably believe may offer the health care service that the medical practitioner or health care institution does not to permit, perform, or participate in because of a conscience‑based objection to a health care service.

Section 44‑139‑40. (A) No medical practitioner may be discriminated against in any manner because the medical practitioner:

(1) provided, caused to be provided, or is about to provide or cause to be provided to the practitioner’s employer, the Attorney General of South Carolina, the Department of Health and Environmental Control, the South Carolina Board of Medical Examiners, any state agency charged with protecting health care rights of conscience, the U.S. Department of Health and Human Services Office of Civil Rights, or any other federal agency charged with protecting health care rights of conscience information relating to any violation of, or any act or omission the medical practitioner reasonably believes to be a violation of, any provision of this chapter;

(2) testified or is about to testify in a proceeding concerning such violation;

(3) assisted or participated, or is about to assist or participate, in such a proceeding; or

(4) refused to participate in an abortion.

(B) Unless the disclosure is specifically prohibited by law, no medical practitioner may be discriminated against in any manner because the medical practitioner disclosed any information that the medical practitioner reasonably believes evinces:

(1) any violation of any law, rule, or regulation;

(2) any violation of any standard of care or other ethical guidelines for the provision of any health care service; or

(3) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(C) A medical practitioner shall disclose his objection to a health care service to his employer and the entity where the health care service is to be performed within a reasonable amount of time from when he knew or should have known that such a service may be performed. A health care institution or employer shall make every reasonable effort to properly document the objection status of a disclosing practitioner.

(D) No provision of this chapter shall be construed as to limit an employer’s or contractee’s authority to make employment, staffing, contracting, disciplinary, credentialing, privileging, or other related decisions for reasons that are not directly related to individual expressions of conscience that are expressly protected by this chapter.

Section 44‑139‑50. (A) A medical practitioner or health care institution may, pursuant to Section 1‑13‑90, file a complaint with the State Human Affairs Commission for any alleged violation of any provision of this chapter.

(B) The State Human Affairs Commission must investigate reports of alleged violations of this chapter. If the State Human Affairs Commission finds that a respondent has engaged in an unlawful discriminatory practice pursuant to this chapter, the State Human Affairs Commission will assist respondent with appropriate corrective action. If, despite assistance, corrective action is not satisfactory, the State Human Affairs Commission shall consult other public officers as the Commission deems proper regarding options to overcome the effects of such violations. At a minimum, the State Human Affairs Commission must provide a copy of its report to:

(1) the Director of the Department of Health and Environmental Control, if the respondent is a health care facility;

(2) the Director of the Department of Labor, Licensing and Regulation, if the respondent is a medical practitioner.

Section 44‑139‑60. The licensing and regulation of medical practitioners and the provision of health care services, as defined in Section 44‑139‑20, is expressly preempted by the State. A county, municipality, or other political subdivision may not adopt or enforce an ordinance, resolution, rule, or policy that restricts, limits, controls, directs, or otherwise interferes with the type and scope of health care services provided by a medical practitioner or the professional conduct and judgment of a medical practitioner when providing health care services.

Section 44‑139‑70. A health care practitioner may not be scheduled for or assigned to directly or indirectly perform, facilitate, or participate in an abortion unless the practitioner first affirmatively consents in writing to perform, facilitate, or participate in the abortion.”

Section 44-139-80. A medical practitioner may not refuse to provide any health care service to a person based on his race.

SECTION 3. Section 44-41-50 of the 1976 Code is amended to read:

“Section 44‑41‑50. ~~(a)~~(A) No physician, nurse, technician, medical student, or other employee of a hospital, clinic or physician shall be required to recommend, perform or assist in the performance of an abortion if he advises the hospital, clinic or employing physician in writing that he objects to performing, assisting or otherwise participating in such procedures. Such notice will suffice without specification of the reason therefor.

~~(b)~~(B) No physician, nurse, technician, medical student, or other person who refuses to perform or assist in the performance of an abortion shall be liable to any person for damages allegedly arising from such refusal.

~~(c)~~(C) No physician, nurse, technician, medical student, or other person who refuses to perform or assist in the performance of an abortion shall because of that refusal be dismissed, suspended, demoted, or otherwise disciplined or discriminated against by the hospital or clinic with which he is affiliated or by which he is employed. A civil action for damages or reinstatement of employment, or both, may be prosecuted by any person whose employment or affiliation with a hospital or clinic has been altered or terminated in violation of this chapter.

~~(d)~~(D) Any physician who performs an abortion shall also provide, for proper compensation, necessary aftercare for his patient unless released by the patient in writing. The extent of aftercare required shall be that care customarily provided by physicians in such cases in accordance with accepted medical practice.”

SECTION 4. 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 5. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 6. This act takes effect upon approval by the Governor.

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