

HOUSE BILL No. 2741

By Committee on Health and Human Services

Requested by Representative Bryce

2-6

1 AN ACT concerning health professions and practices; enacting the Kansas
2 medical rights of conscience act; permitting a healthcare professional to
3 refuse to provide transgender healthcare services if such services
4 violate the healthcare professional's conscience; creating a civil cause
5 of action for violation of the act.

6

7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. (a) This act shall be known and may be cited as the Kansas
9 medical rights of conscience act.

10 (b) As used in this section:

11 (1) "Discriminated against" means any adverse action taken against
12 or any threat of adverse action communicated to any healthcare
13 professional as a result of such healthcare professional exercising a right
14 protected in this act, including, but not limited to, any penalty, disciplinary
15 or retaliatory action, whether executed or threatened.

16 (2) "Healthcare institution" means a medical care facility as defined
17 in K.S.A. 65-425, and amendments thereto, an adult care home as defined
18 in K.S.A. 39-923, and amendments thereto, outpatient or primary care
19 center, physician organization, healthcare professional association, private
20 physician's office, pharmacy, accredited medical school, approved nursing
21 school or other entity or location where healthcare services are performed;

22 (3) "Healthcare professional" means any medical care facility
23 administrator or governing board of any medical care facility, an
24 individual who is licensed or holds a temporary permit to practice issued
25 by the state board of healing arts, the board of nursing, the behavioral
26 sciences regulatory board, the Kansas dental board, the board of examiners
27 in optometry, the state board of pharmacy, a person who holds an
28 emergency medical service provider certificate issued by the board of
29 emergency medical services, a faculty member or student at a school of
30 nursing approved by the Kansas state board of nursing, a faculty member
31 or student at an accredited medical school or an individual who provides
32 healthcare services to a patient or assists in the provision of healthcare
33 services through the collection of a patient's biological fluids or imaging or
34 the administration or interpretation of tests using a patient's biological
35 fluids or imaging.

1 (4) "State" means the same as defined in K.S.A. 75-6102, and
2 amendments thereto.

3 (c) (1) A healthcare institution or healthcare professional shall not be
4 required to perform, assist, counsel toward or participate in a surgical
5 procedure referenced by K.S.A. 65-28,139, and amendments thereto, or to
6 prescribe, dispense, counsel toward or administer a medication referenced
7 by K.S.A. 65-28,139, and amendments thereto, regardless of the patient's
8 age, if such procedure or medication is contrary to the established policy
9 of or the moral, ethical or religious beliefs of such healthcare institution or
10 healthcare provider.

11 (2) A cause of action shall not accrue against a healthcare institution
12 or healthcare professional on account of such person asserting a right
13 protected by this act. This section may be used as a defense in any
14 purported action related to or arising out of the exercise of a right
15 protected by this act.

16 (3) A healthcare institution or healthcare professional shall not be
17 denied or discriminated against in:

18 (A) The receipt of any public benefit, assistance or privilege
19 whatsoever; or

20 (B) any public or private employment by any means, including, but
21 not limited to, any adverse action related to hiring, firing, promotion,
22 advancement, transfer, licensing, education, training or granting of hospital
23 privileges or staff appointments on the grounds that such healthcare
24 institution or healthcare professional has exercised a right protected by this
25 act.

26 (4) A healthcare institution or healthcare provider that has been
27 denied or discriminated against in violation of this subsection shall have a
28 private cause of action against the person or entity that violated this
29 subsection for actual damages, injunctive relief and any other appropriate
30 relief. Any action commenced under this subsection shall be brought
31 within two years following the violation. In an action brought for a
32 violation of this subsection, a prevailing plaintiff shall recover damages
33 and the cost of the suit, including reasonable attorney fees.

34 (d) Nothing in this act shall be construed to allow any person or
35 entity to deny:

36 (1) Visitation;

37 (2) recognition of a designated representative for healthcare
38 decision-making; or

39 (3) emergency medical treatment that is necessary to cure an
40 illness or injury as required by law in accordance with the emergency
41 medical treatment and labor act, 42 U.S.C. § 1395dd, in effect on the
42 effective date of this act.

43 (e) A healthcare professional shall not be discriminated against

1 by the state, an employer, healthcare institution or other person because
2 such healthcare professional:

3 (1) Provided, caused to be provided, is about to provide or is about to
4 cause to be provided information relating to any act or omission that the
5 healthcare professional reasonably believes to be a violation of any
6 provision of this act to:

7 (A) Such healthcare professional's employer;

8 (B) the attorney general;

9 (C) any state agency charged with protecting healthcare rights of
10 conscience;

11 (D) the United States department of health and human services, office
12 for civil rights; or

13 (E) any other federal agency charged with protecting healthcare rights
14 of conscience; or

15 (2) testified, assisted, participated or is about to testify, assist or
16 participate in a proceeding concerning such violation.

17 (f) The state, including, but not limited to, the Kansas department of
18 health and environment, the board of healing arts, the Kansas state board
19 of nursing or any other department or board regulating the practice of a
20 medical procedure, treatment or service in the state shall not take, fail to
21 take, threaten to take or threaten to fail to take any action against a
22 healthcare professional or harass or in any other manner discriminate or
23 retaliate against such healthcare professional for engaging in speech,
24 expression or association that is protected from government interference
25 by the first amendment to the constitution of the United States, unless the
26 state, state agency or board demonstrates by clear and convincing evidence
27 that the healthcare professional's speech, expression or association was the
28 direct cause of physical harm to a person with whom the healthcare
29 professional had a practitioner-patient relationship within the three years
30 immediately preceding the incident of physical harm.

31 (g) A healthcare provider that has been aggrieved by a violation of
32 subsection (d) or (e) shall have a private cause of action for actual
33 damages, injunctive relief and any other appropriate relief. Any action
34 commenced under this subsection shall be brought within two years
35 following the violation. In an action brought for a violation of this
36 subsection, a prevailing plaintiff shall recover damages and the cost of the
37 suit, including reasonable attorney fees.

38 Sec. 2. This act shall take effect and be in force from and after its
39 publication in the statute book.