

HOUSE BILL No. 5158

October 9, 2001, Introduced by Reps. Ehardt, Raczkowski, Vander Veen, Koetje, Rocca, Birkholz, Tabor, Sanborn, Middaugh, Patterson, Pumford, Mans, DeVuyst, Cassis, Bisbee, Pestka, Sheltroun, O'Neil, Neumann, Callahan, Wojno, Bishop, Richardville, Basham, Drolet, Cameron Brown, Faunce, George, Kowall, Van Woerkom, Stamas, Jansen, Voorhees, Hart, Hager, Allen, Pappageorge, Jelinek, Newell, DeRossett, Howell, Vander Roest and Kuipers and referred to the Committee on Health Policy.

A bill to provide for certain health care professionals and providers to object to participating in certain procedures under certain circumstances; to provide for protection from certain liability; and to provide for penalties and remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "health care conscience clause act".

3 Sec. 3. As used in this act:

4 (a) "Emergency patient" means an individual whose physical
5 or mental condition is such that, in the reasonable medical judg-
6 ment of an attending physician or medical director, the individ-
7 ual is, or may reasonably be suspected or known to be, in immi-
8 nent danger of loss of life or of significant health impairment.

9 (b) "Health facility" means a health facility or agency as
10 defined in section 20106 of the public health code, 1978 PA 368,

1 MCL 333.20106, a private physician office, or a public or private
2 institution, teaching institution, pharmacy, corporation, part-
3 nership, or sole proprietorship that provides a health care serv-
4 ice to an individual.

5 (c) "Health care provider" means a person licensed or regis-
6 tered under article 15 of the public health code, 1978 PA 368,
7 MCL 333.16101 to 333.18838, a student of a health facility, or
8 other person employed by a health care institution who either
9 directly or indirectly participates in a health care service.

10 (d) "Health care service" means an action intended to main-
11 tain, improve, or restore the health or physical comfort of an
12 individual.

13 (e) "Life threatening condition" means a condition that in
14 the reasonable medical judgment of an attending physician or med-
15 ical director will result in a patient's death.

16 (f) "Medical director" means that term as defined in section
17 20906.

18 (g) "Participate or participating" means, at a minimum, to
19 counsel, refer, perform, administer, prescribe, dispense, treat,
20 withhold, withdraw, diagnose, test, evaluate, train, research,
21 prepare, or provide material or physical assistance in a health
22 care service.

23 Sec. 5. (1) Pursuant to this section, a health care pro-
24 vider may assert as a matter of conscience, on an ethical, moral,
25 or religious ground, an objection to participating in a health
26 care service.

1 (2) A health care provider shall not assert an objection
2 described in subsection (1) under 1 or more of the following
3 circumstances:

4 (a) The health care provider has had 5 or more disciplinary
5 actions taken against him or her by a health facility within a
6 consecutive 5-year period, 3 of which are related to the health
7 service to which the objection applies, that result in a change
8 of employment status or that adversely affect the health care
9 provider's clinical privileges for a period of more than 15
10 days.

11 (b) The health care provider has had 3 or more complaints
12 issued by the department of consumer and industry services
13 against him or her within a consecutive 5-year period, 2 of which
14 are related to the health service to which the objection
15 applies.

16 (c) The objection to participating in the health care serv-
17 ice is based on the patient's or a group of patients' race, reli-
18 gion, color, national origin, sex, age, disability, disease or
19 other medical condition, marital status, economic status, or
20 sexual preference.

21 (d) The objection is based on a disagreement with the clini-
22 cal judgment of another health care provider regarding the medi-
23 cal appropriateness of a health care service for a specific
24 patient if the patient has consented to the provision of the
25 health care service.

26 (3) If a health care provider is not employed on the
27 effective date of this act, and if the health care provider has

1 an objection described in subsection (1), the health care
2 provider, upon being offered employment, shall notify the
3 employer at that time in writing of the objection. Except as
4 otherwise provided in subsection (5), a health care provider who
5 is employed on the effective date of this act shall notify his or
6 her employer in writing of an objection described in subsection
7 (1) as soon as practicable after learning that he or she may have
8 to participate in the health care service to which the objection
9 applies or at any other time that the health care provider con-
10 sideres necessary to submit an objection described in subsection
11 (1).

12 (4) An employer shall retain a health care provider's writ-
13 ten objection filed under subsection (3) for the duration of the
14 health care provider's employment. The written objection is
15 valid for the duration of the health care provider's employment
16 or until rescinded by the health care provider in writing.

17 (5) If a health care provider has not submitted a written
18 objection under subsection (3) before being asked to participate
19 in a health care service, the health care provider shall notify
20 the employer in writing if he or she has an objection to partici-
21 pating in the health care service described in subsection (1)
22 within 24 hours after receiving notice that the health care serv-
23 ice has been scheduled. If a health care provider does not
24 notify the employer of the objection within 24 hours after
25 receiving notice that the health care service has been scheduled,
26 the employer shall make a reasonable effort to exclude the health
27 care provider from participating in the health care service or to

1 find a replacement for the health care provider if the health
2 care provider still claims to have, either orally or in writing,
3 an objection to participating in the health care service as
4 described in subsection (1).

5 (6) If a health care provider employee has submitted an
6 objection to participating in a health care service under subsec-
7 tion (3) or (5), and if 5% or more of the health care provider's
8 daily or weekly duties consist of participating in that health
9 care service, the employer may give the health care provider
10 employee not less than 6 months' notice of the termination of the
11 employee's employment. This subsection does not apply to an
12 employer who employs 5 or fewer health care providers.

13 (7) A health care provider's objection to participating in a
14 health care service as described in subsection (1) shall not be
15 the basis for 1 or more of the following:

16 (a) Civil liability to another person.

17 (b) Criminal action.

18 (c) Except as otherwise provided in section 7, refusal of
19 staff privileges at a health facility.

20 (d) Administrative or licensure action.

21 (e) Except as otherwise provided in subsection (6), an
22 involuntary change in terms or conditions of employment or other
23 disciplinary action, including, but not limited to, termination
24 of employment, by the health care provider's employer.

25 (8) This section does not relieve a health care provider
26 from a duty that exists under another statute or other law
27 pertaining to current standards of acceptable health care

1 practice and procedure to inform a patient of the patient's
2 condition, prognosis, and risks of receiving health care services
3 for the condition. However, this subsection does not impose a
4 duty on a health care provider to counsel, recommend, or refer a
5 health care service to which the health care provider has
6 asserted an objection as described in subsection (1).

7 Sec. 7. (1) Pursuant to this section, a health facility may
8 assert as a matter of conscience, on an ethical, moral, or reli-
9 gious ground, an objection to providing a health care service.

10 (2) A health facility shall not assert an objection
11 described in subsection (1) under either of the following
12 circumstances:

13 (a) If the objection is based on a patient's or a group of
14 patients' race, religion, color, national origin, sex, age, dis-
15 ability, disease or other medical condition, marital status, eco-
16 nomic status, or sexual preference.

17 (b) The objection is based on a disagreement with a health
18 care provider employed by, under contract to, or granted privi-
19 leges by the health facility regarding the medical appropriate-
20 ness of a health care service for a specific patient if the
21 patient has consented to the provision of the health care
22 service.

23 (3) A health facility shall provide notice of an objection
24 described in subsection (1) to providing a health care service
25 through written public notice or personally in writing at the
26 time an individual seeks to obtain that health care service from
27 the health facility.

1 (4) A health facility's objection as described in subsection
2 (1) to providing a health care service shall not be a basis for 1
3 or more of the following:

4 (a) Civil, criminal, or administrative liability.

5 (b) Eligibility discrimination against the health facility
6 in a grant, contract, or program, where providing the health care
7 service is not expressly required as a condition of eligibility
8 for the grant, contract, or program.

9 (5) A person including, but not limited to, a governmental
10 agency shall not refuse employment or staff privileges to a
11 health care provider or impose an involuntary change in terms or
12 conditions of employment or other disciplinary action, including,
13 but not limited to, termination of employment, on a health care
14 provider who has previously asserted, or is presently asserting,
15 an objection to participating in a health care service under sec-
16 tion 5, unless participation in that health care service is indi-
17 cated as a part of the normal course of duties in the posting of
18 the availability of the position for employment or staff privi-
19 leges and except as otherwise provided in section 5(6).

20 (6) A medical school or other institution for the education
21 or training of a health care provider shall not refuse admission
22 to an individual or penalize that individual because the individ-
23 ual has filed in writing with the medical school or other insti-
24 tution an objection to participating in a health care service as
25 described in section 5(1).

26 (7) Except as otherwise provided in this section and section
27 5, a civil action for damages or reinstatement of employment, or

1 both, may be brought against a person including, but not limited
2 to, a governmental agency, health facility, or other employer for
3 penalizing or discriminating against a health care provider,
4 including, but not limited to, penalizing or discriminating in
5 hiring, promotion, transfer, a term or condition of employment,
6 licensing, or granting of staff privileges or appointments,
7 because that health care provider has filed an objection to par-
8 ticipating in a health care service under section 5(3) or (5).
9 Civil damages may be awarded equal to 3 times the amount of
10 proven damages and attorney fees. A civil action filed under
11 this subsection may include a petition for injunctive relief.

12 Sec. 9. A person who violates this act is responsible for a
13 state civil infraction and may be ordered to pay a civil fine of
14 not more than \$1,000.00 for each day the violation continues or a
15 civil fine of not more than \$1,000.00 for each occurrence.