

HCS HB 457 -- CONSCIENCE RIGHTS OF MEDICAL SERVICE PROVIDERS

SPONSOR: Jones (110)

COMMITTEE ACTION: Voted "Do Pass" by the Committee on Health Care Policy by a vote of 8 to 3.

This substitute specifies that any medical professional or health care institution that provides medical services has the right not to participate in and cannot be required to participate in any phase of patient medical care, treatment, or procedure that violates his or her conscience including his or her religious, moral, or ethical principles that are adherent to a sincere and meaningful belief in God or in relation to a supreme being.

No medical professional or health care institution can be civilly, criminally, or administratively liable for declining to participate, provide, or perform any specified medical procedure or research that violates his or her conscience.

No medical professional or health care institution can be discriminated or retaliated against for declining to participate, provide, or perform any specified medical procedure or research that violates his or her conscience. Reassignment to a position that does not require participation in a specific medical procedure or research and that does not result in a demotion or reduction in pay or benefits is not a retaliatory action.

Reasonable notice must be provided by an employee asserting a right not to participate in a specific medical procedure or research.

It will be unlawful for any person, the state, a political subdivision, a public or private institution, or a public official to discriminate against any medical institution or any person, association, corporation, or other entity attempting to establish a new or operating an existing health care institution in any manner because it declines to participate, provide, or perform any specified medical procedure or research that violates the institution's conscience.

It will be unlawful for any public official, agency, institution, or entity to deny any form of aid, assistance, grants, or benefits or in any other manner to coerce, disqualify, or discriminate against a person or entity attempting to establish a new or operating an existing health care institution because it declines to participate, provide, or perform any specified medical procedure or research contrary to its conscience.

The provisions of the substitute do not authorize a health care

professional or institution to withhold lifesaving emergency medical treatment or services or alleviate a medical professional from the duty to inform a patient of his or her condition, risks, prognosis, and available options and resources; however, a medical professional cannot be forced to participate in, refer for, or promote specified procedures or research. A cause of action for damages, injunctive relief, or both, may be brought for a violation of these provisions. It cannot be a defense to any claim that the violation was necessary to prevent additional burden or expense on any other medical professional, health care institution, individual, or patient.

A cause of action for damages or injunctive relief, or both, can be a discriminatory violation of a medical professional's or health care institution's conscience rights. A defense to any discrimination claim that the violation was necessary to prevent additional burden or expense on any other medical professional, health care institution, individual, or patient is prohibited. The aggrieved party must be entitled to recover threefold the actual damages, including pain and suffering; the costs of the action; and reasonable attorney fees. Recovery cannot be less than \$5,000 for each violation in addition to the costs of the action and reasonable attorney fees. It is an affirmative defense for an employer that the specified medical procedure or research was so integral to the duties of the employee's position and to the central purpose of the business or enterprise that a reasonable person would understand that participation in the specified medical procedure or research at issue was a requirement of the employee's position.

The General Assembly may, by concurrent resolution, appoint one or more of its members who sponsored or co-sponsored this legislation in his or her official capacity to intervene as a matter of right in any case in which the constitutionality of the law is challenged.

The substitute contains a severability clause for Sections 191.1150 to 191.1168, RSMo, and if any provision is found to be unconstitutional, the remaining provisions of the sections will remain in force and effect with specified exceptions.

PROPONENTS: Supporters say that the legislation received overwhelming bipartisan support in the House of Representatives in the past. The bill is for workers and employees and provides a shield, not a sword, to exercise their religious beliefs that is sacred in the constitutions of Missouri and the United States. The bill allows those health care professionals who perceive certain activities to be "doing harm" to opt out of the activities without punishment or retaliation. The bill is not meant to stop abortions

or research from occurring but to protect medical professionals and their beliefs. As medical technology advances, it is imperative to provide protection for health care providers.

Testifying for the bill were Speaker Jones; Missouri Family Network; Missouri Baptist Convention, Christian Life Commission; Concerned Women for America; Campaign Life Missouri; Missouri Catholic Conference; Missouri Family Policy Council; Missouri Right to Life; and Missouri Association of Osteopathic Physicians and Surgeons.

OPPONENTS: Those who oppose the bill say that the way "conscience" is defined in the bill will cause human resources departments in hospitals to delve into an employee's private life to determine whether he or she meets the conscience definition. The bill could prevent rape victims from receiving access to all information about possible consequences of rape, including unintended pregnancy. In certain emergencies, such as an ectopic pregnancy, the bill could deny a woman care until the situation actually becomes emergent, which would risk the woman's health. A woman experiencing a miscarriage could receive improper care. There is a longstanding history in the United States that those businesses practicing in the secular world must set aside religious objections to properly perform job tasks, and the bill disregards this practice.

Testifying against the bill were Planned Parenthood Affiliates in Missouri; Wayne Lee; Mustafa Abdullah, ACLU of Eastern Missouri; Ed Weisbart; and Missouri Hospital Association.