

House File 571

S-5078

1 Amend House File 571, as amended, passed, and reprinted by
2 the House, as follows:

3 1. By striking everything after the enacting clause and
4 inserting:

5 <Section 1. SHORT TITLE. This Act shall be known and may be
6 cited as the "Medical Ethics Defense Act".

7 Sec. 2. NEW SECTION. 135S.1 **Definitions.**

8 As used in this chapter, unless the context otherwise
9 requires:

10 1. a. "*Conscience*" means the ethical, moral, or religious
11 beliefs or principles held by a medical practitioner or health
12 care institution.

13 b. With respect to persons who are institutions,
14 corporations, or other legal entities, "*conscience*" is
15 determined by reference to that entity's governing documents
16 including but not limited to published ethical, moral, or
17 religious guidelines or directives, mission statements,
18 constitutions, articles of incorporation, bylaws, policies, or
19 regulations.

20 2. "*Discrimination*" means an adverse action, including but
21 not limited to any penalty, disciplinary, or retaliatory action
22 taken against, or a threat of adverse action communicated
23 to, a medical practitioner or health care institution as a
24 result of the refusal of the medical practitioner or health
25 care institution to participate in a health care service on
26 the basis of conscience. "*Discrimination*" not does include
27 the negotiation or purchase of insurance or a health care
28 service by a nongovernmental entity or individual, the refusal
29 to use or purchase insurance or a health care service by
30 a nongovernmental entity or individual, or a health care
31 institution's good-faith effort to accommodate a medical
32 practitioner's or health care institution's exercise of
33 conscience.

34 3. "*Health care institution*" means an organization,
35 corporation, partnership, association, agency, network, sole

1 proprietorship, joint venture, or other entity that provides
2 a health care service.

3 4. "*Health care service*" means medical research and medical
4 care provided to a patient or client at any time during the
5 patient's or client's course of treatment, including but
6 not limited to testing; diagnosis; record making; referral;
7 prescribing, dispensing, or administering any drug, medication,
8 or device; therapy or counseling; and preparation or
9 arrangement for a surgical procedure.

10 5. "*Medical practitioner*" means a person who facilitates
11 or participates, or who is asked to facilitate or participate
12 in a health care service, including but not limited to a
13 health-related professional licensed by a board designated in
14 section 147.13, and any other person licensed, certified, or
15 otherwise authorized or permitted by the laws of this state
16 to administer a health care service in the ordinary course
17 of business or in the practice of a profession. "*Medical*
18 *practitioner*" includes any student enrolled in an educational
19 institution who is a prospective medical practitioner.

20 6. "*Participate in a health care service*" means to provide,
21 perform, assist with, facilitate, refer for, provide counseling
22 for, advise with regard to, admit for the purposes of
23 providing, or take part in a health care service in any way.

24 Sec. 3. NEW SECTION. 135S.2 **Exercise of conscience for**
25 **health care institutions and medical practitioners — exception.**

26 1. a. A medical practitioner or health care institution
27 has the right not to participate in or pay for a health care
28 service that violates the medical practitioner's or health
29 care institution's conscience. A medical practitioner shall
30 inform the medical practitioner's employer of the nature of the
31 medical's practitioner's objection based on the practitioner's
32 conscience. This paragraph shall not be construed to waive or
33 modify a duty a medical practitioner or health care institution
34 may have to participate in a health care service that does not
35 violate the medical practitioner's conscience.

1 *b.* A medical practitioner or health care institution who
2 refuses to participate in a health care service under this
3 section shall not be discriminated against for the medical
4 practitioner's or health care institution's exercise of
5 conscience.

6 2. This section shall not be construed to relieve a health
7 care institution of the requirement to provide emergency
8 medical services to individuals as required under 42 U.S.C.
9 §1395dd.

10 3. Notwithstanding any other provision of this chapter to
11 the contrary, a medical practitioner or health care institution
12 that holds itself out to the public as religion-based, states
13 in the entity's governing documents that the entity has a
14 religious purpose or mission, and that has internal operating
15 policies or procedures that implement the entity's religious
16 beliefs, shall have the right to make employment, staffing,
17 contracting, and admitting privilege decisions consistent with
18 the entity's religious beliefs.

19 Sec. 4. NEW SECTION. 135S.3 **Exercise of conscience —**
20 **immunity.**

21 1. A medical practitioner or health care institution shall
22 not be civilly, criminally, or administratively liable for the
23 medical practitioner's or health care institution's good-faith
24 exercise of conscience.

25 2. A health care institution shall not be civilly,
26 criminally, or administratively liable for the good-faith
27 exercise of conscience by a medical practitioner employed,
28 contracted, or granted admitting privileges by the health care
29 institution.

30 Sec. 5. NEW SECTION. 135S.4 **Whistleblower protections.**

31 1. A medical practitioner or health care institution shall
32 not be discriminated against because the medical practitioner
33 or health care institution does any of the following:

34 *a.* Provides, causes to be provided, or intends to provide
35 or cause to be provided information relating to a suspected

1 violation of this chapter to the medical practitioner's or
2 health care institution's employer, the attorney general, any
3 state agency charged with protecting health care rights of
4 conscience, the United States department of health and human
5 services, the United States commission on civil rights, or any
6 other federal agency charged with protecting health care rights
7 of conscience.

8 *b.* Testifies or intends to testify in a proceeding
9 concerning a violation of this chapter.

10 *c.* Assists or participates, or intends to assist or
11 participate, in a proceeding under this chapter.

12 2. It shall be unlawful to discriminate against a medical
13 practitioner or health care institution because the medical
14 practitioner or health care institution discloses information
15 that the medical practitioner or health care institution
16 reasonably believes evidences any of the following:

17 *a.* A violation of any law or rule.

18 *b.* A violation of any standard of care or ethical guidelines
19 for the provision of any health care service.

20 *c.* Gross mismanagement, a gross waste of funds, an abuse
21 of authority, practices or methods of treatment that may put a
22 patient or client health at risk, or a substantial and specific
23 danger to public health or safety.

24 3. This section shall not be construed to exempt a
25 person from the requirements of the federal Health Insurance
26 Portability and Accountability Act of 1996, Pub. L. No.
27 104-191, including amendments thereto and regulations
28 promulgated thereunder, or any other applicable confidentiality
29 and patient or client privacy requirements.

30 **Sec. 6. NEW SECTION. 135S.5 Free speech protections —**
31 **notification of complaints — penalty.**

32 1. The department of health and human services, a licensing
33 board designated under chapter 147, or any other state
34 licensing or certifying entity of a medical practitioner
35 shall not reprimand, sanction, or revoke or threaten to

1 revoke a license or certification of a medical practitioner
2 or health care institution who is licensed or certified
3 by the department, licensing board, or other licensing or
4 certifying entity, for engaging in speech, expressive activity,
5 or association protected under the first amendment to the
6 Constitution of the United States, unless the department,
7 licensing board, or other licensing or certifying entity
8 demonstrates by clear and convincing evidence that the medical
9 practitioner's or health care institution's speech, expressive
10 activity, or association was the direct cause of physical harm
11 to a person with whom the medical practitioner or health care
12 institution had a medical practitioner-patient or medical
13 practitioner-client relationship within the three years
14 immediately preceding the incident of physical harm.

15 2. *a.* Within twenty-one days of receipt of a complaint
16 that alleges a violation of speech, expressive activity, or
17 association protected under subsection 1 that may result
18 in revocation of a medical practitioner's or health care
19 institution's license, certification, or registration, the
20 department, licensing board, or other licensing or certifying
21 entity shall provide the medical practitioner or health care
22 institution with a copy of the complaint.

23 *b.* If the department, licensing board, or other licensing
24 or certifying entity fails to provide a copy of the complaint
25 to the medical practitioner or health care institution within
26 twenty-one days of receipt, the department, licensing board,
27 or other certifying entity shall pay the medical practitioner
28 or health care institution an administrative penalty of five
29 hundred dollars for each day of noncompliance.

30 3. The state shall not contract with, recognize, approve,
31 or require a medical practitioner or health care institution
32 to obtain a certification or credential issued or approved
33 by the department of health and human services, a licensing
34 board designated under chapter 147, or any other licensing or
35 certifying entity of a medical practitioner or health care

1 institution that revokes or refuses to issue a certification
2 or credential to the medical practitioner or health care
3 institution if the medical practitioner or health care
4 institution is in compliance with this chapter and did not
5 provide medical advice or treatment to a patient or client.

6 Sec. 7. NEW SECTION. 135S.6 Unlawful interference —
7 relief.

8 1. It is unlawful for a person to interfere or attempt to
9 interfere with the exercise of conscience not to participate in
10 a health care service, or in the whistleblower or free speech
11 rights and protections under this chapter, whether by duress,
12 coercion, or any other means.

13 2. A health care institution or medical practitioner that
14 alleges injury by unlawful interference by a person under
15 this chapter may bring a civil action in a court of competent
16 jurisdiction. If a court of competent jurisdiction finds a
17 person liable under this section, the court may order any of
18 the following:

19 a. Injunctive relief, when appropriate, including but not
20 limited to reinstatement of a medical practitioner to the
21 medical practitioner's previous position, or reinstatement
22 or reactivation of licensure or certification of a medical
23 practitioner, or reactivation or reinstatement of licensure of
24 a health care institution.

25 b. Monetary damages for injuries suffered.

26 c. Reasonable costs and attorney fees.

27 3. The rights, remedies, and prohibitions contained in this
28 chapter shall be in addition to and cumulative of any other
29 right, remedy, or prohibition accorded by common law or state
30 or federal law. This chapter shall not be construed to deny,
31 abrogate, or impair any such common law or statutory right,
32 remedy, or prohibition.

33 4. Any additional burden or expense to another medical
34 practitioner or health care institution arising from the
35 exercise of conscience pursuant to this chapter shall not be a

1 defense to a violation of this chapter.

2 5. A person shall not bring a civil action against a person
3 who declines to use or purchase a health care service from a
4 medical practitioner or health care institution because of the
5 medical practitioner's or health care institution's exercise of
6 conscience under this chapter.

7 Sec. 8. NEW SECTION. 135S.7 **Severability.**

8 If any provision of this chapter or its application to any
9 person or circumstance is held invalid, the invalidity shall
10 not affect other provisions or applications of this chapter
11 which can be given effect without the invalid provision or
12 application, and to this end the provisions of this chapter are
13 severable.>

14 2. Title page, lines 1 and 2, by striking <practitioners,
15 health care institutions, and health care payors> and inserting
16 <practitioners and health care institutions,>

JEFF TAYLOR