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HOUSE BILL NO. 303

INTRODUCED BY A. REGIER, T. MCGILLVRAY, K. REGIER, D. ZOLNIKOV, D. LENZ, J. HINKLE, F. MANDEVILLE, W. MCKAMEY, M. NOLAND, M. REGIER, J. TREBAS, S. VINTON, B. BEARD, J. FULLER, K. BOGNER, T. MOORE, J. SCHILLINGER, K. SEEKINS-CROWE, J. GILLETTE, G. OBLANDER, T. FALK, G. KMETZ, J. ETCHART

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING PROTECTIONS FOR MEDICAL PRACTITIONER, HEALTH CARE INSTITUTION, AND HEALTH CARE PAYER ACTIONS BASED ON CONSCIENCE; PROVIDING PROTECTIONS FOR OBJECTING TO PARTICIPATING IN HEALTH CARE SERVICES BASED ON CONSCIENCE; PROVIDING FREE SPEECH PROTECTIONS; PROVIDING WHISTLEBLOWER PROTECTIONS; PROVIDING IMMUNITY; LIMITING GOVERNMENTAL LIABILITY; PROVIDING REMEDIES; AMENDING SECTIONS 37-1-308 AND 50-20-111, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Definitions.** As used in [sections 1 through 7], unless the context requires otherwise, the following definitions apply:

(1) (a) "Conscience" means the ethical, moral, or religious beliefs or principles held by a medical practitioner, health care institution, or health care payer.

(b) With respect to institutional or corporate persons, as opposed to individual persons, the term is determined by reference to that entity or body's governing documents, including but not limited to published ethical, moral, or religious guidelines or directives, mission statements, constitutions, articles of incorporation, bylaws, policies, or regulations.

(2) (a) "Discrimination" means an adverse action taken against, or a threat of adverse action communicated to, a medical practitioner, health care institution, or health care payer as a result of the medical practitioner, health care institution, or health care payer's refusal to participate in a health care service on the basis of conscience, including but not limited to termination of employment, transfer from current position, demotion from current position, adverse administrative action, reassignment to a different shift or job title,

1 students, psychology and counseling faculty and students, medical researchers, laboratory technicians,  
2 counselors, social workers, or any other person who facilitates or participates in a health care service.

3 (7) "Participate in a health care service" means to provide, perform, assist with, facilitate, refer for,  
4 counsel for, advise with regard to, admit for the purposes of providing, or take part in any way in providing a  
5 health care service.

6 (8) "Person" means one or more individuals, partnerships, associations, or corporations.

7

8 **NEW SECTION. Section 2. Right of conscience for health care institutions and health care**

9 **payers -- immunity -- exceptions.** (1) (a) A health care institution or health care payer may not be required to  
10 participate in or pay for a health care service that violates the health care institution's or health care payer's  
11 conscience, including by permitting the use of its facilities.

12 (b) An insurance company shall list any health care service that it may refuse to pay for on the  
13 basis of conscience in the applicable policy.

14 (2) ~~Except as provided in subsection (5), refusal~~ **Refusal** to participate in or pay for a health care  
15 service under this section may not give rise to liability of the health care institution or health care payer for  
16 damages allegedly arising from the refusal or be the basis for any discrimination, discipline, or other  
17 recriminatory action against the health care institution, health care payer, or any personnel, agent, or governing  
18 board.

19 (3) Nothing in this section may be construed to relieve a health care institution of the requirement  
20 to provide emergency medical treatment to all patients set forth in 42 U.S.C. 1395dd.

21 (4) This section is supplemental to and may not be construed as modifying or limiting the rights  
22 and remedies provided in Title 50, chapter 5, part 5, and 50-20-111.

23 ~~(5) The immunity provisions of this section do not apply to a health care institution or health care~~  
24 ~~payer owned or operated by the state or a political subdivision of the state.~~

25

26 **NEW SECTION. Section 3. Right of conscience for medical practitioners -- affirmative consent**

27 **for abortion services -- immunity -- exceptions.** (1) A medical practitioner has the right not to participate in a  
28 health care service that violates the medical practitioner's conscience. A health care institution may not be held

1 shall not be a consideration in respect of staff privileges of any hospital or health care facility or a basis for any  
2 discriminatory, disciplinary, or other recriminatory action against such person, nor shall such person be liable to  
3 any person for damages allegedly arising from refusal.

4 ~~(3)~~(4) It shall be unlawful to interfere or attempt to interfere with the right of refusal authorized by this  
5 section. The person injured thereby shall be entitled to injunctive relief, when appropriate, and shall further be  
6 entitled to monetary damages for injuries suffered.

7 ~~(4)~~(5) Such refusal by any hospital or health care facility or person shall not be grounds for loss of  
8 any privileges or immunities to which the granting of consent may otherwise be a condition precedent or for the  
9 loss of any public benefits.

10 ~~(5)~~(6) As used in this section, the term "person" includes one or more individuals, partnerships,  
11 associations, and corporations."  
12

13 **NEW SECTION. Section 10. Codification instruction.** [Sections 1 through 7] are intended to be  
14 codified as an integral part of Title 50, chapter 4, and the provisions of Title 50, chapter 4, apply to [sections 1  
15 through 7].  
16

17 **NEW SECTION. Section 11. Severability.** If a part of [this act] is invalid, all valid parts that are  
18 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
19 the part remains in effect in all valid applications that are severable from the invalid applications.  
20

21 **NEW SECTION. Section 12. Two-thirds vote required.** Because [section 2] limits governmental  
22 liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each  
23 house of the legislature for passage.  
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25 **NEW SECTION. Section 13. Applicability.** [This act] applies to insurance policies issued on or after  
26 [the effective date of this act].  
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