

114TH CONGRESS
2D SESSION

S. 2927

To prevent governmental discrimination against providers of health services who decline involvement in abortion, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 12, 2016

Mr. LANKFORD (for himself, Mr. MORAN, and Mr. BLUNT) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To prevent governmental discrimination against providers of health services who decline involvement in abortion, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Conscience Protection
5 Act of 2016”.

6 **SEC. 2. FINDINGS.**

7 Congress finds as follows:

8 (1) Thomas Jefferson stated a conviction com-
9 mon to our Nation’s founders when he declared in

1 1809 that “[n]o provision in our Constitution ought
2 to be dearer to man than that which protects the
3 rights of conscience against the enterprises of the
4 civil authority”.

5 (2) In 1973, the Supreme Court concluded that
6 the government must leave the abortion decision “to
7 the medical judgment of the pregnant woman’s at-
8 tending physician”, recognizing that a physician may
9 choose not to participate in abortion. *Roe v. Wade*,
10 410 U.S. 113, 164 (1973). The Court cited with ap-
11 proval a policy that “neither physician, hospital, nor
12 hospital personnel shall be required to perform any
13 act violative of personally-held moral principles”,
14 410 U.S. at 143 n. 38, and cited State laws uphold-
15 ing this principle. *Doe v. Bolton*, 410 U.S. 179,
16 197–8 (1973).

17 (3) Congress’ enactments to protect this right
18 of conscience in health care include the Church
19 amendment of 1973 (42 U.S.C. 300a–7), the Coats/
20 Snowe amendment of 1996 (42 U.S.C. 238n), and
21 the Hyde/Weldon amendment approved by Con-
22 gresses and Presidents of both parties every year
23 since 2004.

24 (4) None of these laws explicitly provides a
25 “private right of action” so victims of discrimination

1 can defend their conscience rights in court, and ad-
2 ministrative enforcement by the Department of
3 Health and Human Services Office for Civil Rights
4 has been lax, at times allowing cases to languish for
5 years without resolution.

6 (5) Defying the Federal Hyde/Weldon amend-
7 ment, California's Department of Managed Health
8 Care has mandated coverage for all elective abor-
9 tions in all health plans under its jurisdiction. Other
10 States such as New York and Washington have
11 taken or considered similar action, and some States
12 may go further to require all physicians and hos-
13 pitals to provide or facilitate abortions.

14 (6) Members of Congress have repeatedly ques-
15 tioned U.S. Health and Human Services Secretary
16 Sylvia Burwell about California's ongoing violation
17 which began in August 2014. The Department of
18 Health and Human Services has acknowledged Cali-
19 fornia's violations and indicated that the Depart-
20 ment was taking them "seriously" and that the mat-
21 ter would be resolved "expeditiously". Despite nu-
22 merous complaints and calls for prompt enforcement
23 of the Hyde/Weldon amendment in California, how-
24 ever, the Department has failed to resolve the mat-
25 ter.

1 (7) The vast majority of medical professionals
2 do not perform abortions, with 86 percent of ob/gyns
3 unwilling to provide them in a recent study (Obstet-
4 rics & Gynecology, Sept. 2011) and the great major-
5 ity of hospitals choosing to do so in rare cases or not
6 at all. Therefore, a policy requiring all health care
7 providers to be involved in abortion could seriously
8 disrupt the health care system, reducing the number
9 and diversity of providers available to serve the basic
10 health needs of American women and men.

11 (8) A health care provider's decision not to par-
12 ticipate in an abortion, like Congress' decision not to
13 fund most abortions, erects no new barrier to those
14 seeking to perform or undergo abortions but leaves
15 each party free to act as he or she wishes.

16 (9) Such protection poses no conflict with other
17 Federal laws, such as the law requiring emergency
18 stabilizing treatment for a pregnant woman and her
19 unborn child when either is in distress (Emergency
20 Medical Treatment and Active Labor Act). As the
21 Obama administration has said, these areas of law
22 have operated side by side for many years and both
23 should be fully enforced (76 Fed. Reg. 9968–77
24 (2011) at 9973).

1 (10) Reaffirming longstanding Federal policy
2 on conscience rights and providing a right of action
3 in cases where it is violated allows longstanding and
4 widely supported Federal laws to work as intended.

5 **SEC. 3. GOVERNMENTAL DISCRIMINATION AGAINST PRO-**
6 **VIDERS OF HEALTH SERVICES THAT ARE NOT**
7 **INVOLVED IN ABORTION.**

8 Title II of the Public Health Service Act (42 U.S.C.
9 202 et seq.) is amended by inserting after section 245 the
10 following:

11 **“SEC. 245A. GOVERNMENTAL DISCRIMINATION AGAINST**
12 **PROVIDERS OF HEALTH SERVICES THAT ARE**
13 **NOT INVOLVED IN ABORTION.**

14 “(a) IN GENERAL.—Notwithstanding any other law,
15 the Federal Government, and any State or local govern-
16 ment that receives Federal financial assistance, may not
17 penalize, retaliate against, or otherwise discriminate
18 against a health care provider on the basis that the pro-
19 vider does not—

20 “(1) perform, refer for, pay for, or otherwise
21 participate in abortion;

22 “(2) provide or sponsor abortion coverage; or

23 “(3) facilitate or make arrangements for any of
24 the activities specified in this subsection.

1 “(b) RULE OF CONSTRUCTION.—Nothing in this sec-
2 tion shall be construed—

3 “(1) to prevent any health care provider from
4 voluntarily electing to participate in abortions or
5 abortion referrals;

6 “(2) to prevent any health care provider from
7 voluntarily electing to provide or sponsor abortion
8 coverage or health benefits coverage that includes
9 abortion;

10 “(3) to prevent an accrediting agency or a Fed-
11 eral, State or local government from establishing
12 standards of medical competency applicable only to
13 those who have knowingly, voluntarily, and specifi-
14 cally elected to perform abortions, or from enforcing
15 contractual obligations applicable only to those who,
16 as part of such contract, knowingly, voluntarily, and
17 specifically elect to provide abortions;

18 “(4) to affect, or be affected by, section 1867
19 of the Social Security Act (42 U.S.C. 1395dd, com-
20 monly referred to as the ‘Emergency Medical Treat-
21 ment and Active Labor Act’); or

22 “(5) to supersede any law enacted by any State
23 for the purpose of regulating insurance, except as
24 specified in subsection (a).

1 “(c) ADMINISTRATION.—The Secretary shall des-
2 ignate the Director of the Office for Civil Rights of the
3 Department of Health and Human Services—

4 “(1) to receive complaints alleging a violation of
5 this section, section 245 of this Act, or any of sub-
6 sections (b) through (e) of section 401 of the Health
7 Programs Extension Act of 1973; and

8 “(2) to pursue the investigation of such com-
9 plaints in coordination with the Attorney General.

10 “(d) DEFINITIONS.—For purposes of this section:

11 “(1) FEDERAL FINANCIAL ASSISTANCE.—The
12 term ‘Federal financial assistance’ means Federal
13 payments to cover the cost of health care services or
14 benefits, or other Federal payments, grants, or loans
15 to promote or otherwise facilitate health-related ac-
16 tivities.

17 “(2) HEALTH CARE PROVIDER.—The term
18 ‘health care provider’ means—

19 “(A) an individual physician or other
20 health professional;

21 “(B) a hospital, health system, or other
22 health care facility or organization (including a
23 party to a proposed merger or other collabo-
24 rative arrangement relating to health services,
25 and an entity resulting therefrom);

1 “(C) a provider-sponsored organization, an
2 accountable care organization, or a health
3 maintenance organization;

4 “(D) a social services provider that pro-
5 vides or authorizes referrals for health care
6 services;

7 “(E) a program of training in the health
8 professions or an applicant to or participant in
9 such a program;

10 “(F) an issuer of health insurance cov-
11 erage; or

12 “(G) a group health plan or student health
13 plan, or a sponsor or administrator thereof.

14 “(3) STATE OR LOCAL GOVERNMENT THAT RE-
15 CEIVES FEDERAL FINANCIAL ASSISTANCE.—The
16 term ‘State or local government that receives Fed-
17 eral financial assistance’ includes every agency and
18 other governmental unit and subdivision of a State
19 or local government, if such State or local govern-
20 ment, or any agency or governmental unit or sub-
21 division thereof, receives Federal financial assist-
22 ance.

1 **“SEC. 245B. CIVIL ACTION FOR CERTAIN VIOLATIONS.**

2 “(a) IN GENERAL.—A qualified party may, in a civil
3 action, obtain appropriate relief with regard to a des-
4 ignated violation.

5 “(b) DEFINITIONS.—For purposes of this section:

6 “(1) QUALIFIED PARTY.—The term ‘qualified
7 party’ means—

8 “(A) the Attorney General of the United
9 States; or

10 “(B) any person or entity adversely af-
11 fected by the designated violation.

12 “(2) DESIGNATED VIOLATION.—The term ‘des-
13 ignated violation’ means an actual or threatened vio-
14 lation of—

15 “(A) section 245 or 245A of this Act; or

16 “(B) any of subsections (b) through (e) of
17 section 401 of the Health Programs Extension
18 Act of 1973 regarding an objection to abortion.

19 “(c) ADMINISTRATIVE REMEDIES NOT REQUIRED.—
20 An action under this section may be commenced, and relief
21 may be granted, without regard to whether the party com-
22 mencing the action has sought or exhausted available ad-
23 ministrative remedies.

24 “(d) DEFENDANTS IN ACTIONS UNDER THIS SEC-
25 TION MAY INCLUDE GOVERNMENTAL ENTITIES AS WELL
26 AS OTHERS.—

1 “(1) IN GENERAL.—An action under this sec-
2 tion may be maintained against, among others, a
3 party that is a Federal or State governmental entity.
4 Relief in an action under this section may include
5 money damages even if the defendant is such a gov-
6 ernmental entity.

7 “(2) DEFINITION.—For the purposes of this
8 subsection, the term ‘State governmental entity’
9 means a State, a local government within a State,
10 and any agency or other governmental unit or sub-
11 division of a State or of such a local government.

12 “(e) NATURE OF RELIEF.—In an action under this
13 section, the court shall grant—

14 “(1) all necessary equitable and legal relief, in-
15 cluding, where appropriate, declaratory relief and
16 compensatory damages, to prevent the occurrence,
17 continuance, or repetition of the designated violation
18 and to compensate for losses resulting from the des-
19 ignated violation; and

20 “(2) to a prevailing plaintiff, reasonable attor-
21 neys’ fees and litigation expenses as part of the
22 costs.”.

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