Session of 2001 2 **HOUSE BILL No. 2491** 3 4 5 By Committee on Federal and State Affairs 6 7 2 - 128 AN ACT concerning the health care professionals' rights of conscience. 9 10 Be it enacted by the Legislature of the State of Kansas: 11 Section 1. This act may be known and cited as the health care pro-12 viders' rights of conscience act. 13 Sec. 2. (a) It is the public policy of the state of Kansas to respect and 14 protect the fundamental rights of conscience of all individuals who pro-15 vide health care services. 16 (b) Without a comprehensive civil rights act for health care profes-17 sionals, religious beliefs and rights of conscience may be violated in var-18 ious ways, such as harassment, demotion, salary reduction, transfer, ter-19 20 mination, loss of staffing privileges, denial of aid or benefits and refusal to license or certify. 21 22 (c) It is the purpose of this act to protect as a basic civil right the right of all individuals and entities to decline to counsel, advise, pay for, 23 provide, perform, assist, refer for or participate in providing or perform-24 ing health care services that violate their religious or moral convictions. 25 26 Such health care services may include abortion, artificial insemination, assisted reproduction, artificial birth control, cloning, human stem cell 27 and fetal experimentation, physician-assisted suicide and euthanasia. 28 (d) Accordingly, it is the purpose of this act to prohibit all forms of 29 30 discrimination, disqualification, coercion, disability or liability upon such individuals or entities that decline to perform any health care service 31 based on religious or moral convictions. 32 Sec. 3. As used in this act, the following definitions apply: 33 (a) "Health care service" means any phase of patient medical care, 34 treatment or procedure, including the following: Therapy, diagnosis or 35 prognosis, research, instruction, prescribing or administering any device, 36 37 drug or medication, surgery or any other care or treatment rendered by health care providers or health care institutions. 38 "Health care professional" means any individual who may be 39 (b) asked to participate in a health care service, including a physician, phy-40 sician's assistant, nurse, nurses' aide, medical assistant, hospital employee, 41

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clinic employee, nursing home employee, pharmacist, pharmacy em-

ployee, medical or nursing school faculty, student or employee, counselor,

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social worker or any professional, paraprofessional or any other person
 who furnishes or assists in the furnishing of health care services.

"Health care institution" means any public or private organization, 3 (c) corporation, partnership, sole proprietorship, association, agency, net-4 work, joint venture or other legal entity that is involved in providing health 5 care services, including hospitals, clinics, medical centers, ambulatory sur-6 gical centers, private physician's offices, pharmacies, nursing homes, uni-7 versity medical schools and nursing schools, medical training facilities or 8 other institutions or locations where health care services are provided to 9 10 any person.

(d) "Health care payer" means any entity or employer that pays for
any health care service or product including health maintenance organizations, health plans, insurance companies, management service organization and employers that pay for or provide health insurance coverage
as a benefit to their employees.

16 (e) "Includes" and "including" is a term of illustration, not limitation.

(f) "Participate" in a health care service means to counsel, advise,
provide, perform, assist in, refer for, admit for purposes of providing or
participate in providing any health care service or any form of such
service.

(g) "Pay" or "payment" means pay, contract for or otherwise arrangefor the payment of, in whole or in part.

(h) "Religious or moral convictions" means the religious or moral
principles sincerely held by an individual and the policies adopted by a
health care institution or health care payer that are based on sincerely
held religious or moral principles.

Sec. 4. (a) A health care professional has the right not to participate,
and no health care professional shall be required to participate in a health
care service that violates such individual's religious or moral convictions.

30 (b) No health care professional shall be civilly, criminally or admin31 istratively liable for declining to participate in a health care service that
32 violates such individual's religious or moral convictions.

(c) It shall be unlawful for any person, health care professional, health 33 care institution, public or private institution, public official or any board 34 which certifies competency in medical specialties to discriminate against 35 a health care professional in any manner based on such health care pro-36 37 fessional's declining to participate in a health care service that violates such individual's religious or moral convictions. For purposes of this act, 38 discrimination includes termination, transfer, refusal of staff privileges, 39 40 refusal of board certification, adverse administrative action, demotion, loss of career specialty, reassignment to a different shift, reduction of 41 wages or benefits, refusal to award any grant, contract or other program, 42 refusal to provide residency training opportunities or any other penalty, 43

1 disciplinary or retaliatory action.

2 Sec. 5. (a) A health care institution has the right not to participate, 3 and no health care institution shall be required to participate in a health 4 care service that violates its religious or moral convictions.

5 (b) No health care institution shall be civilly, criminally or adminis-6 tratively liable for declining to participate in a health care service that 7 violates the institution's moral or religious convictions.

(c) It shall be unlawful for any person, public or private institution or 8 public official to discriminate against any health care institution or person, 9 association or corporation attempting to establish a new health care in-10 stitution or operating an existing health care institution in any manner, 11 including any denial, deprivation or disgualification with respect to licen-12 sure; any aid, assistance, benefit or privilege, including staff privileges; or 13 any authorization, including authorization to create, expand, improve, ac-14 quire or affiliate or merge with any health care institution, because such 15 health care institution or person, association or corporation planning, pro-16 posing or operating a health care institution, declines to participate in a 17 health care service which violates the health care institution's religious or 18 moral convictions as reflected in its existing or proposed ethical guide-19 lines, mission statement, constitution, bylaws, articles of incorporation, 20 rules and regulations or other policies. 21

(d) It shall be unlawful for any public official, agency, institution or 22 entity to deny any form of aid, assistance, grants or benefits, or in any 23 other manner to coerce, disqualify or discriminate against any person, 24 association or corporation attempting to establish a new health care in-25 26 stitution or operating an existing health care institution because the existing or proposed health care institution declines to participate in a health 27 care service contrary to the health care institution's religious or moral 28 convictions as reflected in its existing or proposed ethical guidelines, mis-29 30 sion statement, constitution, bylaws, articles of incorporation, rules and regulations or other policies. 31

Sec. 6. (a) A health care payer has the right to decline to pay, and,
no health care payer shall be required to pay, for any health care service
or product that violates its religious or moral convictions.

(b) No health care payer and no person, association or corporation
that owns, operates, supervises or manages a health care payer shall be
civilly or criminally liable by reason of the health care payer's declining
to pay for any health care service that violates its religious or moral convictions as reflected in its ethical guidelines, mission statement, constitution, bylaws, articles of incorporation, regulations or other policies.

41 (c) It shall be unlawful for any person, public or private institution or
42 public official to discriminate against any health care payer or any person,
43 association or corporation (1) attempting to establish a new health care

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payer, or (2) operating an existing health care payer, in any manner, in-1 cluding any denial, deprivation or disqualification with respect to licen-2 sure or any aid, assistance, benefit, privilege or authorization, including 3 any authorization to create, expand, improve, acquire or affiliate or merge 4 with any health care payer because the health care payer or a person, 5 association or corporation planning, proposing or operating a health care 6 payer declines to pay for any health care service that violates its religious 7 or moral convictions, as reflected in the existing or proposed ethical 8 guidelines, mission statement, constitution, bylaws, articles of incorpo-9 ration, regulations or other policies. 10

(d) It shall be unlawful for any public official, agency, institution or 11 entity to deny any form of aid, assistance, grants or benefits or in any 12 other manner to coerce, disqualify or discriminate against any health care 13 payer or any person, association or corporation attempting to establish a 14 new health care payer or operating an existing health care payer because 15 the existing or proposed health care payer declines to pay for any health 16 care service that is contrary to its religious or moral convictions, as re-17 flected in its existing or proposed ethical guidelines, mission statement, 18 constitution, bylaws, articles of incorporation, rules and regulations or 19 other written policies. 20

Sec. 7. (a) A civil action for damages or injunctive relief or both may be brought for the violation of any provision of this act. It shall not be a defense to any claim arising out of the violation of this act that such violation was necessary to prevent additional burden or expense on any other health care professional, health care institution, individual or patient.

(b) Any individual, association, corporation, entity or health care in-27 stitution injured by any public or private individual, association, agency, 28 entity or corporation by reason of any conduct prohibited by this act may 29 commence a civil action. Upon finding a violation of this act, the aggrieved 30 party shall be entitled to recover threefold the actual damages, including 31 pain and suffering, sustained by such individual, association, corporation, 32 entity or health care institution, the costs of the action and reasonable 33 attorney fees; but in no case shall recovery be less than \$5,000 for each 34 violation in addition to costs of the action and reasonable attorney fees. 35 These damage remedies shall be cumulative and not exclusive of other 36 37 remedies afforded under any other state or federal law.

(c) The court in such civil action may award injunctive relief, including ordering reinstatement of a health care professional to such health
care professional's prior job position.

41 Sec. 8. The provisions of the act are declared to be severable and if 42 any provision, word, phrase or clause of the act or the application thereof 43 to any person shall be held invalid, such invalidity shall not affect the

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- validity of the remaining portions of this act.
 Sec. 9. This act shall take effect and be in force from and after its
- publication in the statute book.