

# SENATE BILL No. 136

January 31, 2013, Introduced by Senators MOOLENAAR, MARLEAU, MEEKHOF, RICHARDVILLE, JANSEN, HILDENBRAND, GREEN, EMMONS, PAVLOV, BOOHER, JONES, PROOS, BRANDENBURG, ROBERTSON, NOFS, WALKER, CASPERSON, PAPPAGEORGE, COLBECK, HUNE and KOWALL and referred to the Committee on Health Policy.

A bill to protect religious liberty and rights of conscience in the areas of health care and medical and scientific research as it pertains to employment, education and training, and participating in health care services and to the purchasing of or providing for the purchase of health insurance; to provide immunity from liability; and to prescribe penalties and provide remedies.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. This act shall be known and may be cited as the  
2 "religious liberty and conscience protection act".

3           Sec. 3. As used in this act:

4           (a) "Conscience" means sincerely held convictions arising from  
5 a belief in God or the tenets of an established religion, or from  
6 the ethical or moral principles of a generally recognized

1 philosophy or belief system that an individual asserting those  
2 convictions can reference as a basis for those convictions. For  
3 purposes of this act, the conscience of an entity shall be  
4 determined by reference to existing or proposed religious, moral,  
5 or ethical guidelines, mission statement, constitution, bylaws,  
6 articles of incorporation, or regulations adhered to by the entity.

7 (b) "Health care payer" or "payer" means an entity or employer  
8 that purchases, contracts for, pays for, arranges payment for, or  
9 facilitates the payment of any health care service, including, but  
10 not limited to, health maintenance organizations, health plans,  
11 health plan sponsors, nonprofit health care corporations, insurance  
12 companies, or management services organizations. Health care payer  
13 does not include an individual.

14 (c) "Health care purchaser" or "purchaser" means an  
15 individual, entity, or employer seeking to purchase or who has  
16 purchased a health insurance contract, policy, or product.

17 (d) "Health care service" or "service" means any of the  
18 following:

19 (i) A phase of patient medical care, treatment, or procedure,  
20 including, but not limited to, patient referral, therapy, testing,  
21 diagnosis or prognosis, research instruction, prescribing, surgery,  
22 dispensing or administering a device, drug, or medication, or other  
23 medical care rendered to a human patient by a health provider or  
24 health facility.

25 (ii) Medical or scientific research directed toward developing  
26 a therapeutic means of treating human illness, disease, or health  
27 condition.

1 (e) "Health facility" means any of the following:

2 (i) A clinical laboratory, as defined in section 20104 of the  
3 public health code, 1978 PA 368, MCL 333.20104.

4 (ii) A county medical care facility, as defined in section  
5 20104 of the public health code, 1978 PA 368, MCL 333.20104.

6 (iii) A freestanding surgical outpatient facility, as defined in  
7 section 20104 of the public health code, 1978 PA 368, MCL  
8 333.20104.

9 (iv) A hospital, as defined in section 20106 of the public  
10 health code, 1978 PA 368, MCL 333.20106.

11 (v) A hospice, as defined in section 20106 of the public  
12 health code, 1978 PA 368, MCL 333.20106.

13 (vi) A hospice residence, as defined in section 21401 of the  
14 public health code, 1978 PA 368, MCL 333.21401.

15 (vii) A nursing home, as defined in section 20109 of the public  
16 health code, 1978 PA 368, MCL 333.20109.

17 (viii) A facility or agency listed in subparagraphs (i) to (vii)  
18 located in a university, college, or other educational institution.

19 (ix) The private practice office of a health professional  
20 licensed or otherwise authorized to engage in the practice of a  
21 health profession under article 15 of the public health code, 1978  
22 PA 368, MCL 333.16101 to 333.18838.

23 (x) A medical clinic that provides health care services.

24 (xi) A public or private institution that provides health care  
25 services.

26 (xii) A teaching institution that provides health care  
27 services.

1           (xiii) A pharmacy that provides health care services. As used in  
2 this subparagraph, "pharmacy" means that term as defined in section  
3 17707 of the public health code, 1978 PA 368, MCL 333.17707.

4           (xiv) Any other legal entity that provides health care  
5 services.

6           (f) "Health provider" means any of the following:

7           (i) Except as otherwise provided in this subparagraph, a  
8 licensed, registered, or certified individual who is employed, a  
9 contracted, or granted privileges to participate in a health care  
10 service. This subparagraph does not include an individual who is  
11 employed by or under an independent contract with a health care  
12 payer to provide case or disease management services.

13           (ii) A faculty or staff member or a student of a university,  
14 college, or educational institution in an educational program where  
15 a health care service is provided or where education and training  
16 regarding the provision of a health care service is conducted.

17           (g) "Participate in a health care service" means to instruct,  
18 advise, provide, perform, assist in, refer to a particular provider  
19 or institution for, admit for purposes of providing, or conduct  
20 medical or scientific research for a health care service.

21           Sec. 5. (1) A health facility may assert as a matter of  
22 conscience an objection to participating in a health care service  
23 and may decline to participate in a health care service that  
24 violates its conscience pursuant to this section.

25           (2) A health facility shall not assert a matter of conscience  
26 objection under subsection (1) under either of the following  
27 circumstances:

1 (a) The objection is based on the patient's or a group of  
2 patients' status, or a patient's insurance coverage, ability to  
3 pay, or method of payment.

4 (b) The objection is based on a disagreement with a health  
5 provider employed by, under contract to, or granted privileges by  
6 the health facility regarding the medical appropriateness of a  
7 health care service for a specific patient, the patient has  
8 consented to the provision of the health care service, and the  
9 health facility routinely allows that health care service to be  
10 performed for other patients with similar medical conditions.

11 (3) A health facility shall provide notice of its assertion of  
12 an objection to participating in a health care service described in  
13 subsection (1) through written public notice or personally in  
14 writing at the time an individual seeks to obtain that health care  
15 service from the health facility.

16 (4) A health facility's assertion of an objection as described  
17 in subsection (1) to participating in a health care service shall  
18 not be a basis for any of the following:

19 (a) Civil liability to another person.

20 (b) Criminal action.

21 (c) Administrative or licensure action.

22 (d) Eligibility discrimination against the health facility in  
23 a grant, contract, or program.

24 Sec. 7. (1) A health care payer may decline to offer a  
25 contract, policy, or product that pays for, arranges payment for,  
26 or facilitates the payment of a health care service that violates  
27 the conscience of the payer.

1           (2) A health care purchaser may decline to purchase or  
2 financially contribute toward the purchase of a contract, policy,  
3 or product that includes coverage for a health care service that  
4 violates the conscience of the purchaser.

5           (3) A health care payer and any person that owns, operates,  
6 supervises, or manages a health care payer is not civilly,  
7 criminally, or administratively liable because the health care  
8 payer declines to pay for, arrange payment for, or facilitate  
9 payment of a health care service or declines to purchase or offer a  
10 contract, policy, or product that facilitates payment for a health  
11 care service, if the health care service violates the conscience of  
12 the payer.

13           (4) A person, public or private institution, or public  
14 official shall not discriminate against a health care payer or any  
15 person, association, corporation, or other entity operating an  
16 existing health care payer or attempting to establish a new health  
17 care payer, in any manner, including, but not limited to, denial,  
18 deprivation, or disqualification with respect to licensure, aid,  
19 assistance, benefit, privilege, or authorization because the health  
20 care payer is planning, proposing, or operating a health care payer  
21 that declines to pay for or arrange payment of a health care  
22 service that violates the conscience of the payer.

23           (5) A public official, agency, or other entity shall not deny  
24 any form of aid, assistance, grants, or benefits to, or in any  
25 other manner coerce, disqualify, or discriminate against, a health  
26 care payer because the existing or proposed health care payer  
27 declines to pay for or arrange for the payment of a health care

1 service that violates the conscience of the payer.

2 (6) Subject to subsection (7), this section does not relieve  
3 an individual who received a health care service or who is  
4 responsible for the payment, in whole or in part, of a health care  
5 service that has been received by a patient, from paying for that  
6 health care service unless that individual provided notice of his  
7 or her objection to that health care service under this section  
8 before the service was rendered. This subsection and subsection (7)  
9 do not apply to the parent or guardian of an unemancipated minor  
10 who is responsible for payment of the minor's health care service,  
11 unless the health care service was provided with the consent of the  
12 parent or guardian.

13 (7) An individual who received a health care service or who is  
14 responsible for the payment, in whole or in part, of a health care  
15 service that has been received by a patient is responsible for the  
16 individual's share of the payment for a health care service that is  
17 provided under any of the following circumstances:

18 (a) The health care service was provided under the stated  
19 wishes of the competent patient.

20 (b) The health care service is stipulated under an existing  
21 power of attorney for health care or a durable power of attorney  
22 and designation of patient advocate under part 5 of article V of  
23 the estates and protected individuals code, 1998 PA 386, MCL  
24 700.5501 to 700.5520.

25 (c) In the absence of the stated wishes of the patient, the  
26 health care service is in the best interests of the patient as  
27 determined by or is consistent with the orders of the attending

1 physician or his or her designee.

2       Sec. 9. (1) Except as otherwise provided in subsection (2),  
3 not later than 6 months after the effective date of this act, an  
4 employer that employs, contracts with, or grants privileges to a  
5 health provider shall adopt and implement a policy to address  
6 situations in which the health provider has an objection to  
7 participating in a health care service as a matter of conscience.  
8 An employer that is subject to this subsection and that, on the  
9 effective date of this act, already has an adopted and implemented  
10 policy in effect that complies with this section is not required to  
11 adopt and implement a new policy. An employer shall comply with all  
12 of the following with regard to its policy described in this  
13 subsection:

14       (a) The employer shall include a statement that the health  
15 provider will not be penalized for expressing an objection to  
16 participating in a health care service as a matter of conscience or  
17 for requesting accommodation to avoid participating in a health  
18 care service as a matter of conscience.

19       (b) The employer shall establish a process by which the health  
20 provider may request an accommodation to address the health  
21 provider's objection to participating in a health care service as a  
22 matter of conscience. The employer may require that the health  
23 provider make his or her request for an accommodation in writing.

24       (c) The employer shall establish a process by which requests  
25 for accommodation under this section are granted or denied and  
26 notice of that decision is given to the requesting health provider.

27       (2) Subsection (1) does not apply and this subsection applies



1 to an employer that is a county medical care facility as defined in  
2 section 20104 of the public health code, 1978 PA 368, MCL  
3 333.20104, and to an employer that is a nursing home as defined in  
4 section 20109 of the public health code, 1978 PA 368, MCL  
5 333.20109. Beginning 6 months after the effective date of this act,  
6 a health provider who is employed by, under contract with, or  
7 granted privileges by a county medical care facility or nursing  
8 home may request accommodation to avoid participating in a health  
9 care service to which the health provider objects as a matter of  
10 conscience but only for a health care service that is an act to  
11 remove a life-sustaining device including a ventilator or apparatus  
12 for nonoral hydration or nutrition or is patient care subsequent to  
13 the removal of a life-sustaining device. The health provider shall  
14 make the request for accommodation under this subsection in writing  
15 and give the written request directly to his or her supervisor  
16 assigned by the employer. The health provider shall include in the  
17 written request under this subsection an explanation of his or her  
18 objection and the health care service described in this subsection  
19 to which he or she specifically objects as a matter of conscience.

20 (3) A health provider may make a request for accommodation  
21 under this section under any of the following conditions:

22 (a) Upon being offered employment, entering into a contract,  
23 or privileges being granted.

24 (b) At the time he or she adopts sincerely held convictions  
25 under which he or she objects as a matter of conscience to  
26 participate in the health care service for which he or she is  
27 requesting an accommodation under this section.

1 (c) Within 24 hours after he or she is asked to participate or  
2 after he or she has received notice or become aware that he or she  
3 is scheduled to participate in a health care service to which he or  
4 she objects as a matter of conscience.

5 (4) An employer shall not ask a prospective health provider  
6 regarding his or her objection as a matter of conscience or  
7 potential objection as a matter of conscience to participate in a  
8 health care service unless participation in that health care  
9 service meets the following requirements, as applicable:

10 (a) The health care service is a regular or substantial  
11 portion of the normal course of duties for the employed or  
12 contracted position or under staff privileges the prospective  
13 health provider is seeking.

14 (b) For an employer described in subsection (2), the health  
15 care service is a health care service to which a health provider  
16 may object to participate in as a matter of conscience under  
17 subsection (2).

18 (5) An employer shall not refuse to employ, enter into a  
19 contract with, or grant privileges to a health provider because the  
20 health provider is known by the employer to have previously  
21 requested or is currently requesting accommodation under this  
22 section unless participation in that health care service meets the  
23 following requirements, as applicable:

24 (a) The health care service is a regular or substantial  
25 portion of the normal course of duties for the employed or  
26 contracted position or under staff privileges.

27 (b) For an employer described in subsection (2), the health

1 care service is a health care service to which a health provider  
2 may object to participate in as a matter of conscience under  
3 subsection (2).

4 (6) An employer shall not penalize a health provider for  
5 expressing an objection to participating in a health care service  
6 as a matter of conscience or for requesting accommodation to avoid  
7 participating in a health care service as a matter of conscience.

8 (7) Upon receipt of a request for accommodation to avoid  
9 participating in a health care service under this section, an  
10 employer shall do all of the following:

11 (a) Give a written acknowledgment of the health provider's  
12 request within 24 hours after receipt of that request. The employer  
13 shall include in the written acknowledgment a description of the  
14 timeline for granting or denying the request.

15 (b) Promptly grant or deny the request and give notice of that  
16 decision to the health provider. If the request for accommodation  
17 is denied, the employer shall give the notice in writing and shall  
18 include the reasons for the denial.

19 (c) Within 7 days after granting a health provider's request,  
20 the employer shall develop a plan for accommodation with the health  
21 provider to ensure that the health provider will not be scheduled  
22 or requested to participate in the health care service to which he  
23 or she objects as a matter of conscience.

24 (8) An employer shall retain a health provider's request for  
25 accommodation submitted under this section for the duration of the  
26 health provider's employment or period of contract or privileges. A  
27 health provider's request for accommodation that is granted under

1 this section is valid for the duration of the health provider's  
2 employment or period of contract or privileges or until rescinded  
3 by the health provider in writing.

4 (9) The protections afforded to a health provider under this  
5 section do not apply to a health provider who has submitted to his  
6 or her employer a request for an accommodation to avoid  
7 participating in a health care service under any of the following  
8 circumstances:

9 (a) A patient's condition, in the reasonable medical judgment  
10 of an attending physician, medical director, or registered nurse,  
11 requires immediate action to avoid permanent physical harm to the  
12 patient and no other qualified health provider is available to  
13 provide that health care service.

14 (b) There is a public health emergency.

15 (c) The health provider first submits a request  
16 contemporaneously to a patient's requiring or requesting the  
17 objectionable health care service and no other health provider is  
18 available to provide the health care service.

19 (d) The request is based on a patient's or a group of  
20 patients' status or insurance coverage, ability to pay, or method  
21 of payment.

22 (e) The request is made in the presence of a patient seeking a  
23 health care service to which the health provider objects.

24 (10) This section does not relieve a health provider from a  
25 duty that exists under current standards of acceptable health care  
26 practice and procedure to inform a patient of the patient's  
27 condition, prognosis, or risk of receiving or forgoing relevant

1 health care services for the condition, including the availability  
2 of a health care service to which the health provider objects as a  
3 matter of conscience.

4 (11) A health provider's objection to participating in a  
5 health care service as a matter of conscience as authorized under  
6 this section shall not be the basis for any of the following:

7 (a) Civil liability to another person.

8 (b) Criminal action.

9 (c) Administrative or licensure action.

10 (d) Eligibility discrimination against the health provider in  
11 a grant, contract, or program, unless participating in the health  
12 care service is an objective of the grant, contract, or program.

13 (12) Notwithstanding any law to the contrary, a county medical  
14 care facility or nursing home that has granted a request for an  
15 accommodation under this section to a full-time health provider may  
16 include that health provider as a full-time equivalent for the  
17 purposes of staffing levels and staffing ratios.

18 Sec. 10. (1) Not later than 6 months after the effective date  
19 of this act, a university, college, or educational institution  
20 where education and training regarding the provision of a health  
21 care service is conducted shall adopt and implement a policy  
22 applicable to its students or faculty or staff members that  
23 complies with section 9. A university, college, or educational  
24 institution described in this section that, on the effective date  
25 of this act, already has an adopted and implemented policy in  
26 effect that complies with this section and section 9 is not  
27 required to adopt and implement a new policy.

1           (2) A university, college, or educational institution  
2 described in subsection (1) shall not refuse admission to an  
3 individual or penalize a student or a member of its faculty or  
4 staff for expressing an objection to participating in a health care  
5 service as a matter of conscience or for requesting accommodation  
6 to avoid participating in a health care service as a matter of  
7 conscience.

8           Sec. 11. A civil action for damages or reinstatement of  
9 employment, or both, may be brought against a person, including,  
10 but not limited to, a governmental agency, health facility, or  
11 other employer, for penalizing or discriminating against a health  
12 provider, including, but not limited to, penalizing or  
13 discriminating in hiring, promotion, transfer, a term or condition  
14 of employment, licensing, or granting of staff privileges or  
15 appointments, solely because that health provider has submitted a  
16 request for accommodation under section 9 or 10. Civil damages may  
17 be awarded equal to the amount of proven damages and attorney fees.  
18 A civil action filed under this section may include a petition for  
19 injunctive relief against a person alleged to have penalized or  
20 discriminated against a health provider as described in this  
21 section.

22           Sec. 12. This act does not excuse or limit the liability of a  
23 health care payer, health facility, or health provider for a  
24 refusal to participate in a health care service under any of the  
25 following circumstances:

26           (a) The payer, facility, or provider has entered into a  
27 contract specifically to participate in the health care service.

1 (b) The health care provider was employed, contracted with, or  
2 granted privileges by an employer after the effective date of this  
3 act and participation in the health care service objected to is a  
4 regular or substantial portion of the normal course of duties for  
5 the employed or contracted position or under staff privileges.

6 (c) The payer, facility, or provider has accepted federal or  
7 state money for the sole purpose of, and specifically conditioned  
8 upon, participation in the health care service.

9 Sec. 13. A person who violates this act is responsible for a  
10 state civil infraction and may be ordered to pay a fine of not more  
11 than \$1,000.00 for each day the violation continues or a fine of  
12 not more than \$1,000.00 for each occurrence.

13 Sec. 14. This act does not repeal, supersede, or alter the  
14 conscience provisions of sections 20181 to 20184 of the public  
15 health code, 1978 PA 368, MCL 333.20181 to 333.20184, nor does this  
16 act add additional requirements or conditions to the conscience  
17 provisions of those sections.

18 Sec. 15. This act does not diminish or affect the rights of a  
19 patient residing in a county medical care facility or a nursing  
20 home, as those rights are enumerated in sections 20201 to 20203 and  
21 section 21765 of the public health code, 1978 PA 368, MCL 333.20201  
22 to 333.20203 and 333.21765, and in 42 CFR 483.10.