

# SENATE BILL No. 972

February 10, 2004, Introduced by Senators PATTERSON, BIRKHOLZ, GILBERT, BROWN, KUIPERS, McMANUS, GARCIA, CROPSEY, GOSCHKA, HARDIMAN, JELINEK and ALLEN and referred to the Committee on Health Policy.

A bill to provide standards for personnel policies to protect the right of conscience of health care providers who conscientiously object to providing or participating in certain health care services under certain circumstances; to provide for protection from certain liability; and to provide for penalties and remedies.

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

1       Sec. 1. This act shall be known and may be cited as the  
2 "conscientious objector policy act".

3       Sec. 3. As used in this act:

4       (a) "Health facility" means a health facility or agency as  
5 defined in section 20106 of the public health code, 1978 PA 368,  
6 MCL 333.20106, a private physician office, or a public or private  
7 institution, teaching institution, pharmacy, corporation,  
8 partnership, or sole proprietorship that provides a health care

1 service to an individual.

2 (b) "Health care provider" means a person licensed or  
3 registered under article 15 of the public health code, 1978 PA  
4 368, MCL 333.16101 to 333.18838, a student of a health facility,  
5 or another person who is employed by or under contract to a  
6 health facility and directly participates in the provision of a  
7 health care service.

8 (c) "Health care service" means the provision or withdrawal  
9 of, or research or experimentation involving, a medical  
10 treatment, procedure, device, medication, drug, or other  
11 substance intended to affect the physical or mental condition of  
12 an individual.

13 (d) "Medical director" mean that term as defined in section  
14 20906 of the public health code, 1978 PA 368, MCL 333.20906.

15 (e) "Participate" or "participating" means, at a minimum, to  
16 counsel, refer, perform, administer, prescribe, dispense, treat,  
17 withhold, withdraw, diagnose, test, evaluate, train, research,  
18 prepare, or provide material or physical assistance in a health  
19 care services.

20 Sec. 5. (1) A health care provider may assert as a matter  
21 of conscience an objection to providing or participating in a  
22 health care service that conflicts with his or her sincerely held  
23 religious or moral beliefs.

24 (2) A health care provider shall notify his or her employer  
25 in writing of a conscientious objection described in subsection  
26 (1).

27 (3) A health care provider may assert his or her

1 conscientious objection under any of the following conditions:

2 (a) Upon being offered employment.

3 (b) At the time the health care provider adopts a religious  
4 or moral belief system that conflicts with participation in a  
5 health care service.

6 (c) At any other time the health care provider considers it  
7 necessary to assert a conscientious objection.

8 (d) Within 24 hours after receiving notice that he or she may  
9 be asked or scheduled to participate in a health care service to  
10 which he or she conscientiously objects. If the health care  
11 provider is given less than 24 hours' notice that he or she has  
12 been scheduled to participate in an objectionable health care  
13 service, the health care provider shall assert an objection,  
14 either orally or in writing, as soon as it is practicable.

15 Sec. 7. (1) An employer shall retain a health care  
16 provider's written objection filed under section 5 for the  
17 duration of the health care provider's employment. The written  
18 objection is valid for the duration of the health care provider's  
19 employment or until rescinded by the health care provider in  
20 writing.

21 (2) After receiving a written objection pursuant to section  
22 5, an employer shall not require the objecting health care  
23 provider to provide or participate in the objectionable health  
24 care service.

25 (3) If a health care provider asserts an objection under  
26 section 5 less than 24 hours prior to the scheduled health care  
27 service, the employer shall make a reasonable effort to exclude

1 the health care provider from participating in the health care  
2 service or find a replacement for the health care provider.

3 (4) An employer shall not refuse employment or staff  
4 privileges to a health care provider who has exercised his or her  
5 right to assert an objection to providing or participating in a  
6 health care service under section 5, unless participation in that  
7 health care service is indicated as a part of the normal course  
8 of duties in the posting of the availability of the position for  
9 employment or staff privileges.

10 (5) A medical school or other institution for the education  
11 or training of a health care provider shall not refuse admission  
12 to an individual or penalize that individual because the  
13 individual has filed in writing with the medical school or other  
14 institution a conscientious objection to participating in a  
15 health care service under this act.

16 Sec. 9. Except as provided in section 11, a health care  
17 provider's objection to providing or participating in a health  
18 care service as described in section 5 shall not be the basis for  
19 1 or more of the following:

- 20 (a) Civil liability to another person.
- 21 (b) Criminal action.
- 22 (c) Administrative or licensure action.
- 23 (d) Termination of employment or refusal of staff privileges  
24 at a health facility.
- 25 (e) An involuntary change in terms or conditions of  
26 employment or other disciplinary action, including, but not  
27 limited to, termination of employment, by the health care

1 provider's employer.

2       Sec. 11. (1) The protections afforded to a health care  
3 provider under this act do not apply under any of the following  
4 circumstances:

5       (a) A health care provider shall not assert an objection to a  
6 health care service if a patient's condition, in the reasonable  
7 medical judgment of an attending physician or medical director,  
8 requires immediate action to prevent the death of that patient.

9       (b) A health care provider shall not assert an objection to  
10 providing or participating in a health care service based on the  
11 classification of a patient or group of patients protected under  
12 the Elliot-Larsen civil rights act, 1976 PA 453, MCL 37.2101 to  
13 37.2804, or based on a disease or other medical condition.

14       (c) A health care provider shall not make an objection known  
15 to or in the presence of a patient who is or may be the subject  
16 of the health care service to which the health care provider is  
17 objecting.

18       (2) If a health care provider asserts an objection to a  
19 health care service that at the time the objection is asserted  
20 constitutes a regular or substantial portion of the health care  
21 provider's current and defined position, the employer may give  
22 the health care provider not less than 6 months' notice of the  
23 termination of his or her employment. As used in this section,  
24 "regular or substantial portion" means that 10% or more of the  
25 health care provider's daily or weekly hours of duty consist of  
26 providing or participating in that health care service.

27       (3) This act does not relieve a health care provider from a

1 duty that exists under another statute or other law pertaining to  
2 current standards of acceptable health care practice and  
3 procedure to inform a patient of the patient's condition,  
4 prognosis, and risks of receiving health care services for the  
5 condition. However, this subsection does not impose a duty on a  
6 health care provider to counsel, recommend, or refer a health  
7 care service to which the health care provider has asserted an  
8 objection as described in section 5.

9       Sec. 13. (1) A civil action for damages or reinstatement of  
10 employment, or both, may be brought against a person, including,  
11 but not limited to, a governmental agency, health facility, or  
12 other employer, for penalizing or discriminating against a health  
13 care provider, including, but not limited to, penalizing or  
14 discriminating in hiring, promotion, transfer, a term or  
15 condition of employment, licensing, or granting of staff  
16 privileges or appointments, because that health care provider has  
17 asserted an objection to participating in a health care service  
18 under section 5. Civil damages may be awarded equal to 3 times  
19 the amount of proven damages and attorney fees. A civil action  
20 filed under this subsection may include a petition for injunctive  
21 relief against a person alleged to have penalized or  
22 discriminated against a health care provider as described in this  
23 subsection.

24       (2) A person who violates this act is responsible for a state  
25 civil infraction and may be ordered to pay a fine of not more  
26 than \$1,000.00 for each day the violation continues or a fine of  
27 not more than \$1,000.00 for each occurrence.