HOUSE BILL 1044
By Terry

SENATE BILL 955

By Haile

AN ACT to amend Tennessee Code Annotated, Title 63, relative to rights of conscience and free speech.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 63, Chapter 1, is amended by adding the following as a new part:

63-1-901. Short title.

This part is known and may be cited as the "Medical Ethics Defense Act."

63-1-902. Part definitions.

As used in this part:

(1) "Conscience":

(A) Means the sincerely held ethical, moral, or religious beliefs or principles held by a healthcare provider; and

(B) With respect to institutional entities or corporate bodies, is determined by reference to that entity or body's governing documents, including, but not limited to, ethical, moral, or religious guidelines, directives, mission statements, constitutions, articles of incorporation, bylaws, policies, or regulations;

(2) "Discriminatory action":

(A) Means an adverse action taken against, or a threat of adverse action communicated to, a healthcare provider as a result of the healthcare provider exercising a right protected in this part;

(B) Includes, but is not limited to, any penalty or disciplinary or retaliatory action, whether executed or threatened; and

(C) Does not include:

(i) The negotiation or purchase of, or the refusal to use or purchase, insurance or healthcare procedures, treatments, or services by an individual or non-government entity; or

(ii) Good faith efforts to accommodate conscientious objections of a healthcare provider;

(3) "Healthcare institution" means any organization, corporation, partnership, association, agency, network, sole proprietorship, joint venture, or other entity that provides healthcare procedures, treatments, or services;

(4) "Healthcare payer":

(A) Means any employer, health plan, health maintenance organization, insurance company, management services organization, or other entity that pays for any healthcare procedure, treatment, or service provided to a patient or client; and

(B) Includes an entity that contracts for, arranges for payment of, reimburses, or remunerates such payments, whether payment is made in whole or in part;

(5) "Healthcare procedures, treatments, or services":

(A) Means medical research or healthcare provided to a patient or client at any time over the course of treatment; and

(B) Includes, but is not limited to, testing; diagnosis; record-making; referral; prescribing, dispensing, or administering any drug, medication, or

device; therapy or counseling; and preparation or arrangement for a surgical procedure;

(6) "Healthcare professional" means a person who participates in any way in a healthcare procedure, treatment, or service;

(7) "Healthcare provider" means a healthcare professional, healthcare institution, or healthcare payer; and

(8) "Participate" means to provide, perform, assist with, facilitate, refer for, counsel for, advise with regard to, admit for the purposes of providing, or take part in any way in providing any healthcare procedure, treatment, or service.

63-1-903. Conscience protection for healthcare providers.

(a)

(1) A healthcare provider must not be required to participate in or pay for a healthcare procedure, treatment, or service that violates the conscience of the healthcare provider.

(2) The right described in subdivision (a)(1):

(A) Is limited to a particular healthcare procedure, treatment, or service, and does not waive or modify any duty a healthcare provider may have to provide or pay for healthcare procedures, treatments, or services that do not violate the healthcare provider's conscience; and

(B) Does not permit a healthcare payer to decline payment for a healthcare procedure, treatment, or service it is contractually obligated to pay for under the terms of a contract with an insured party.

(b) The exercise of the right described in subsection (a) must not be used as the basis for:

(1) A civil cause of action;

(2) A criminal prosecution; or

(3) Discriminatory action.

(c) Subsections (a) and (b) do not apply to:

(1) Procedures, treatments, or services governed by federal law, including the Emergency Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. § 1395dd; or

(2) The right of a religious healthcare provider to make employment, staffing, contracting, administrative, and admitting privilege decisions consistent with its religious beliefs if it holds itself out to the public as religious and has internal operating policies or procedures that implement its religious purpose or mission.

63-1-904. Whistleblower protections.

(a) A healthcare provider must not be discriminated against because the healthcare provider:

(1) Provided, caused to be provided, or is about to provide or cause to be provided information relating to an act or omission the healthcare provider reasonably believes to be a violation of this part to the healthcare provider's employer, the attorney general and reporter, a state agency charged with protecting healthcare rights of conscience, the United States department of health and human services' office of civil rights, or another federal agency charged with protecting healthcare rights of conscience; or

(2) Testified, assisted, or participated, or is about to testify, assist, or participate, in a proceeding concerning such violation.

(b) Unless the disclosure is specifically prohibited by law, a healthcare provider must not be discriminated against because the healthcare provider discloses

information, including through a formal or informal communication, transmission, or discussion, that the healthcare provider reasonably believes evinces:

(1) A violation of any law, rule, or regulation;

(2) A violation of an ethical guideline for the provision of a medical procedure, treatment, or service; or

(3) Gross mismanagement, a gross waste of funds, an abuse of authority, practices or methods of treatment that may put patient health at risk, or a substantial and specific danger to public health or safety.

63-1-905. Free speech protection.

(a) Any political subdivision of this state that regulates the practice of a healthcare procedure, treatment, or service in this state shall not reprimand or sanction a healthcare provider, nor deny or revoke, or threaten to deny or revoke, a license, certification, or registration of a healthcare provider for engaging in speech, expression, or association that is protected from government interference by the First Amendment to the United States Constitution, unless the political subdivision demonstrates by clear and convincing evidence that the healthcare provider's speech, expression, or association was the direct cause of physical harm to a person with whom the healthcare provider had a practitioner-patient relationship within the three (3) years immediately preceding the incident of physical harm.

(b) A political subdivision of this state shall not refuse to issue certification to an individual because the individual has engaged in speech, expression, or association that is protected from government interference by the First Amendment to the United States Constitution, as long as the individual was not providing medical advice or treatment to a specific patient.

(c) Notwithstanding § 63-1-117, a political subdivision of this state, including the department of health and the board of medical examiners, or another department or board regulating the practice of a medical healthcare procedure, treatment, or service in this state, and any specialty board or other recognizing agency approved or recognized by a political subdivision of this state, must provide a healthcare provider with any complaints the political subdivision has received which are based on speech, expression, or association that is protected from government interference by the First Amendment to the United States Constitution and may result in the revocation of the healthcare provider's license, certification, or registration, within twenty-one (21) days after receipt of the complaint. The political subdivision, specialty board, or recognizing agency shall pay the healthcare provider an administrative penalty of five hundred dollars ($500) for each day the complaint is not provided to the healthcare provider after twenty-one (21) days.

63-1-906. Remedy.

(a)

(1) A party aggrieved by a violation of this part may commence a civil action in a court of competent jurisdiction, and upon the finding of a violation is entitled to an award of injunctive and declaratory relief, and to recover damages sustained, along with the costs of the action and reasonable attorney fees.

(2) Damages described in subdivision (a)(1) are cumulative and are in no way limited by other remedies which may be available under another federal, state, or municipal law.

(b) Any additional burden or expense on another healthcare provider arising from the exercise of the right of conscience protected in this part is not a defense to a violation of this part.

(c) A civil action must not be brought against an individual who declines to use or purchase a healthcare procedure, treatment, or service from a specific healthcare provider for exercising the rights described in § 63-1-903(a).

63-1-907. Severability.

If any provision of this section is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, then the provision must be construed so as to give it the maximum effect permitted by law, unless such holding is one of utter invalidity or unenforceability, in which event such provision is deemed severable from this part and does not affect the remainder of this part or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

SECTION 2. The headings in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 3. This act takes effect upon becoming a law, the public welfare requiring it.