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HOUSE BILL NO. 303

INTRODUCED BY A. REGIER, T. MCGILLVRAY, K. REGIER, D. ZOLNIKOV, D. LENZ, J. HINKLE, F. MANDEVILLE, W. MCKAMEY, M. NOLAND, M. REGIER, J. TREBAS, S. VINTON, B. BEARD, J. FULLER, K. BOGNER, T. MOORE, J. SCHILLINGER, K. SEEKINS-CROWE, J. GILLETTE, G. OBLANDER, T. FALK, G. KMETZ, J. ETCHART

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING PROTECTIONS FOR MEDICAL PRACTITIONER, HEALTH CARE INSTITUTION, AND HEALTH CARE PAYER ACTIONS BASED ON CONSCIENCE; PROVIDING PROTECTIONS FOR OBJECTING TO PARTICIPATING IN HEALTH CARE SERVICES BASED ON CONSCIENCE; PROVIDING FREE SPEECH PROTECTIONS; PROVIDING WHISTLEBLOWER PROTECTIONS; PROVIDING IMMUNITY; LIMITING GOVERNMENTAL LIABILITY; PROVIDING REMEDIES; AMENDING SECTIONS 37-1-308 AND 50-20-111, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 7], unless the context requires otherwise, the following definitions apply:

(1) (a) "Conscience" means the ethical, moral, or religious beliefs or principles held by a medical practitioner, health care institution, or health care payer.

(b) With respect to institutional or corporate persons, as opposed to individual persons, the term is determined by reference to that entity or body's governing documents, including but not limited to published ethical, moral, or religious guidelines or directives, mission statements, constitutions, articles of incorporation, bylaws, policies, or regulations.

(2) (a) "Discrimination" means an adverse action taken against, or a threat of adverse action communicated to, a medical practitioner, health care institution, or health care payer as a result of the medical practitioner, health care institution, or health care payer's refusal to participate in a health care service on the basis of conscience, including but not limited to termination of employment, transfer from current position, demotion from current position, adverse administrative action, reassignment to a different shift or job title,

1 increased administrative duties, denial of staff privileges, denial of board certification, loss of career specialty,  
2 reduction of wages, benefits, or privileges, refusal to award a grant, contract, or other program, refusal to  
3 provide residency training opportunities, denial, deprivation, or disqualification of licensure, withholding or  
4 disqualifying from financial aid and other assistance, impediment of the creation or improvement of a health  
5 care institution or health care payer, impediment of the acquisition or merger of a health care institution or  
6 health care payer, the threat of any of the preceding actions, or any other penalty, disciplinary, or retaliatory  
7 action, whether executed or threatened.

8 (b) The term does not include the negotiation or purchase of insurance by a nongovernment entity.

9 (3) (a) "Health care institution" means a public or private hospital, outpatient center for primary  
10 care, medical center, physician organization, professional association, outpatient center for surgical services,  
11 private physician's office, pharmacy, long-term care facility, medical school, nursing school, medical training  
12 facility, or any other entity or location in which health care services are performed.

13 (b) The term includes but is not limited to organizations, corporations, partnerships, associations,  
14 agencies, networks, sole proprietorships, or joint ventures.

15 (4) "Health care payer" means an employer, health plan, health maintenance organization,  
16 insurance company, management services organization, or another entity that pays for or arranges for payment  
17 for a health care service, in whole or in part.

18 (5) "Health care service" means medical research or medical care provided to a patient at any time  
19 during the patient's course of treatment, including but not limited to initial examination, testing, diagnosis,  
20 referral, dispensing or administration of a drug, medication, or device, psychological therapy or counseling,  
21 research, prognosis, therapy, record-making procedures, notes related to treatment, set up, or performance of  
22 a surgery or procedure, or any other care or service performed or provided by a medical practitioner.

23 (6) (a) "Medical practitioner" means a person who is or may be asked to participate in a health  
24 care service.

25 (b) The term includes but is not limited to physicians, nurse practitioners, physician assistants,  
26 nurses, nurse aides, allied health professionals, medical assistants, hospital employees, employees of an  
27 outpatient center for primary care, outpatient center for surgical services, or long-term care facility, pharmacists,  
28 pharmacy technicians, pharmacy employees, medical school faculty and students, nursing school faculty and

1 students, psychology and counseling faculty and students, medical researchers, laboratory technicians,  
2 counselors, social workers, or any other person who facilitates or participates in a health care service.

3 (7) "Participate in a health care service" means to provide, perform, assist with, facilitate, refer for,  
4 counsel for, advise with regard to, admit for the purposes of providing, or take part in any way in providing a  
5 health care service.

6 (8) "Person" means one or more individuals, partnerships, associations, or corporations.

7  
8 **NEW SECTION. Section 2. Right of conscience for health care institutions and health care**

9 **payers -- immunity -- exceptions.** (1) (a) A health care institution or health care payer may not be required to  
10 participate in or pay for a health care service that violates the health care institution's or health care payer's  
11 conscience, including by permitting the use of its facilities.

12 (b) An insurance company shall list any health care service that it may refuse to pay for on the  
13 basis of conscience in the applicable policy.

14 (2) Except as provided in subsection (5), refusal to participate in or pay for a health care service  
15 under this section may not give rise to liability of the health care institution or health care payer for damages  
16 allegedly arising from the refusal or be the basis for any discrimination, discipline, or other recriminatory action  
17 against the health care institution, health care payer, or any personnel, agent, or governing board.

18 (3) Nothing in this section may be construed to relieve a health care institution of the requirement  
19 to provide emergency medical treatment to all patients set forth in 42 U.S.C. 1395dd.

20 (4) This section is supplemental to and may not be construed as modifying or limiting the rights  
21 and remedies provided in Title 50, chapter 5, part 5, and 50-20-111.

22 (5) The immunity provisions of this section do not apply to a health care institution or health care  
23 payer owned or operated by the state or a political subdivision of the state.

24  
25 **NEW SECTION. Section 3. Right of conscience for medical practitioners -- affirmative consent**

26 **for abortion services -- immunity -- exceptions.** (1) A medical practitioner has the right not to participate in a  
27 health care service that violates the medical practitioner's conscience. A health care institution may not be held  
28 liable for the exercise of conscience not to participate in a health care service by a medical practitioner

1 employed, contracted, or granted admitting privileges by the health care institution.

2 (2) A health care institution may require the exercise of conscience as a basis for not participating  
3 in a health care service to be made in writing and signed by the medical practitioner objecting. A writing made  
4 under this subsection may refer only generally to the grounds of "conscience".

5 (3) A medical practitioner's refusal to participate in a health care service based on an exercise of  
6 conscience may not be a consideration with respect to staff privileges of a health care institution or a basis for  
7 discrimination, discipline, or other recriminatory action against the medical practitioner.

8 (4) A medical practitioner may not be scheduled for, assigned, or requested to directly or indirectly  
9 perform, facilitate, refer for, or participate in an abortion unless the medical practitioner first affirmatively  
10 consents in writing as provided in 50-20-111.

11 (5) Except as provided under Article II, section 18, of the Montana constitution, a medical  
12 practitioner may not be held liable for damages allegedly arising from the exercise of conscience not to  
13 participate in a health care service.

14 (6) This section is supplemental to and may not be construed as modifying or limiting the rights  
15 and remedies provided in Title 50, chapter 5, part 5, and 50-20-111.

16  
17 **NEW SECTION. Section 4. Exercise of conscience not grounds for loss of privileges,**  
18 **immunities, or public benefits.** The exercise of conscience not to participate in a health care service by a  
19 medical practitioner, health care institution, or health care payer may not be grounds for loss of any privileges  
20 or immunities or for the loss of any public benefits. This section is supplemental to and may not be construed as  
21 modifying or limiting the rights and remedies provided in Title 50, chapter 5, part 5, and 50-20-111.

22  
23 **NEW SECTION. Section 5. Whistleblower protections.** (1) A medical practitioner or health care  
24 institution may not be discriminated against because the medical practitioner or health care institution:  
25 (a) provides, causes to be provided, or intends to provide or cause to be provided information  
26 relating to a suspected violation of [sections 1 through 7] to the medical practitioner or health care institution's  
27 employer, the attorney general, any agency charged with protecting health care rights of conscience, the United  
28 States department of health and human services, the United States office for civil rights, or any other federal

1 agency charged with protecting health care rights of conscience;

2 (b) testifies or intends to testify in a proceeding concerning a violation of [sections 1 through 7]; or

3 (c) assists or participates, or intends to assist or participate, in a proceeding.

4 (2) Except as provided in subsection (3), it is unlawful to discriminate against a medical practitioner  
5 because the medical practitioner discloses information that the medical practitioner reasonably believes  
6 evinces:

7 (a) a violation of any law, rule, or regulation;

8 (b) a violation of any standard of care or ethical guidelines for the provision of any health care  
9 service; or

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

12 (3) Nothing in this section may be construed to exempt a person from the requirements of Title 50,  
13 chapter 16, the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d, et seq., or  
14 any other applicable confidentiality and patient privacy requirements.

15  
16 **NEW SECTION. Section 6. Free speech protections -- notification of complaints -- penalty.** (1)

17 The department of public health and human services, a licensing board operating under Title 37, or any other  
18 entity that grants licensure or certification may not reprimand, sanction, or revoke or threaten to revoke a  
19 license, certificate, or registration of a medical practitioner who is licensed or certified by the department or  
20 board for engaging in speech or expressive activity protected under the first amendment to the U.S.  
21 constitution, unless the department or board demonstrates beyond a reasonable doubt that the medical  
22 practitioner's speech was the direct cause of physical harm to a person with whom the medical practitioner had  
23 a practitioner-patient relationship within the 3 years immediately preceding the incident of physical harm.

24 (2) (a) Within 14 days of receiving a complaint that may result in revocation of a medical  
25 practitioner's license, the department, licensing board, or other licensing or certification entity shall provide the  
26 medical practitioner with a copy of the complaint.

27 (b) If the department, licensing board, or other licensing or certification entity fails to provide the  
28 complaint within 14 days of receipt, the department or licensing board shall pay the medical practitioner an

1 administrative penalty of \$500 for each week of noncompliance.

2

3 NEW SECTION. Section 7. Unlawful interference. (1) It is unlawful to interfere or attempt to  
4 interfere with the right not to participate in a health care service or the whistleblower and free speech rights and  
5 protections authorized by [sections 1 through 7], whether by duress, coercion, or any other means.

6 (2) A medical practitioner, health care institution, or health care payer injured by unlawful  
7 interference is entitled to:

8 (a) injunctive relief, when appropriate, including but not limited to reinstatement of a medical  
9 practitioner to the medical practitioner's previous position, reinstatement of board certification, and relicensure  
10 of a health care institution or health care payer;

11 (b) monetary damages for injuries suffered; and

12 (c) reasonable costs and attorney fees.

13 (3) This section is supplemental to and may not be construed as modifying or limiting the rights  
14 and remedies provided in Title 50, chapter 5, part 5, and 50-20-111.

15

16 **Section 8.** Section 37-1-308, MCA, is amended to read:

17 **"37-1-308. Unprofessional conduct -- complaint -- investigation -- immunity -- exceptions.** (1)

18 Except as provided in subsections (4) and (5), a person, government, or private entity may submit a written  
19 complaint to the department charging a licensee or license applicant with a violation of this part and specifying  
20 the grounds for the complaint.

21 (2) (a) If the department receives a written complaint or otherwise obtains information that a  
22 licensee or license applicant may have committed a violation of this part, the department may, with the  
23 concurrence of a member of the screening panel established in 37-1-307, investigate to determine whether  
24 there is reasonable cause to believe that the licensee or license applicant has committed the violation.

25 (b) If the complaint alleges an activity by a licensee whose free speech rights are protected under  
26 [section 6], the department or licensing board receiving the complaint must comply with the notification  
27 requirements of [section 6].

28 (3) A person or private entity, but not a government entity, filing a complaint under this section in

1 good faith is immune from suit in a civil action related to the filing or contents of the complaint.

2 (4) A person under legal custody of a county detention center or incarcerated under legal custody  
3 of the department of corrections may not file a complaint under subsection (1) against a licensed or certified  
4 provider of health care or rehabilitative services for services that were provided to the person while detained or  
5 confined in a county detention center or incarcerated under legal custody of the department of corrections  
6 unless the complaint is first reviewed by a correctional health care review team provided for in 37-1-331.

7 (5) A board member may file a complaint with the board on which the member serves or otherwise  
8 act in concert with a complainant in developing, authoring, or initiating a complaint to be filed with the board if  
9 the board member determines that there are reasonable grounds to believe that a particular statute, rule, or  
10 standard has been violated."  
11

12 **Section 9.** Section 50-20-111, MCA, is amended to read:

13 **"50-20-111. Right to refuse participation in abortion -- affirmative consent required.** (1) No

14 private hospital or health care facility shall be required contrary to the religious or moral tenets or the stated  
15 religious beliefs or moral convictions of its staff or governing board to admit any person for the purpose of  
16 abortion or to permit the use of its facilities for such purpose. Such refusal shall not give rise to liability of such  
17 hospital or health care facility or any personnel or agent or governing board thereof to any person for damages  
18 allegedly arising from such refusal or be the basis for any discriminatory, disciplinary, or other recriminatory  
19 action against such hospital or health care facility or any personnel, agent, or governing board thereof.

20 ~~(2)~~ A person may not be scheduled, assigned, or requested to directly or indirectly perform,  
21 facilitate, refer for, or participate in an abortion unless the person first affirmatively consents in writing to  
22 perform, facilitate, refer for, or participate in the abortion.

23 ~~(2)(3)~~ (a) All persons shall have the right to refuse to advise concerning, perform, assist, or participate  
24 in abortion because of religious beliefs or moral convictions.

25 (b) If requested by any hospital or health care facility or person desiring an abortion, ~~such a~~ refusal  
26 shall be in writing signed by the person refusing, but may refer generally to the grounds of "religious beliefs and  
27 moral convictions". The refusal of any person to advise concerning, perform, assist, or participate in abortion  
28 shall not be a consideration in respect of staff privileges of any hospital or health care facility or a basis for any

1 discriminatory, disciplinary, or other recriminatory action against such person, nor shall such person be liable to  
2 any person for damages allegedly arising from refusal.

3 ~~(3)~~(4) It shall be unlawful to interfere or attempt to interfere with the right of refusal authorized by this  
4 section. The person injured thereby shall be entitled to injunctive relief, when appropriate, and shall further be  
5 entitled to monetary damages for injuries suffered.

6 ~~(4)~~(5) Such refusal by any hospital or health care facility or person shall not be grounds for loss of  
7 any privileges or immunities to which the granting of consent may otherwise be a condition precedent or for the  
8 loss of any public benefits.

9 ~~(5)~~(6) As used in this section, the term "person" includes one or more individuals, partnerships,  
10 associations, and corporations."  
11

12 NEW SECTION. Section 10. Codification instruction. [Sections 1 through 7] are intended to be  
13 codified as an integral part of Title 50, chapter 4, and the provisions of Title 50, chapter 4, apply to [sections 1  
14 through 7].  
15

16 NEW SECTION. Section 11. Severability. If a part of [this act] is invalid, all valid parts that are  
17 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
18 the part remains in effect in all valid applications that are severable from the invalid applications.  
19

20 NEW SECTION. Section 12. Applicability. [This act] applies to insurance policies issued on or after  
21 [the effective date of this act].  
22

- END -