

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 461**

Introduced by Pirsch, 4.

Read first time January 14, 2011

Committee: Judiciary

A BILL

1 FOR AN ACT relating to civil rights; to adopt the Freedom of

2 Conscience Act; and to provide severability.

3 Be it enacted by the people of the State of Nebraska,

1           Section 1. This act shall be known and may be cited as  
2 the Freedom of Conscience Act.

3           Sec. 2. For purposes of the Freedom of Conscience Act:

4           (1) Abortion means the use or prescription of any  
5 instrument, medicine, drug, or any other substance or device  
6 intentionally to terminate the pregnancy of a female known to be  
7 pregnant, with an intention other than to increase the probability of  
8 a live birth, to preserve the life or health of the child after live  
9 birth, or to remove a dead fetus who died as the result of natural  
10 causes, accidental trauma, or a criminal assault on the pregnant  
11 woman or her unborn child, and which causes the premature termination  
12 of the pregnancy. Abortion does not include the prescription of  
13 contraceptives;

14           (2) Health care facility means any public or private  
15 organization, corporation, authority, partnership, sole  
16 proprietorship, association, agency, network, joint venture, or other  
17 entity that is involved in providing health care services, including  
18 a hospital, a clinic, a medical center, an ambulatory surgical  
19 center, a private physician's office, a pharmacy, a nursing home, a  
20 university hospital, a medical school, a nursing school, a medical  
21 training facility, an inpatient health care facility, or any other  
22 place where health care services are provided;

23           (3) Human embryo means a human organism from a single  
24 cell stage up to eight weeks development that is derived by  
25 fertilization, parthenogenesis, cloning, or any other means from one

1 or more human gametes or human diploid cells;

2 (4) In vitro human embryo means a human embryo, whether  
3 cryopreserved or not, living outside of a woman's body;

4 (5) Participate in means to perform, practice, engage in,  
5 assist in, recommend, counsel in favor of, make referrals for,  
6 prescribe, dispense, or administer drugs or devices or otherwise  
7 promote or encourage; and

8 (6) Person means any individual, corporation, industry,  
9 firm, partnership, association, venture, trust, institution, federal,  
10 state or local governmental instrumentality, agency, or body or any  
11 other legal entity however organized.

12 Sec. 3. (1) A health care facility shall not discriminate  
13 against an employee or prospective employee by refusing to reasonably  
14 accommodate the religious observance or practice of the employee or  
15 prospective employee, unless the health care facility can demonstrate  
16 that the accommodation would pose an undue hardship on the health  
17 care facility in any of the following circumstances:

18 (a) An abortion. However, this section shall not apply if  
19 the pregnant woman suffers from a physical disorder, physical injury,  
20 or physical illness which, as certified by a physician, causes the  
21 woman to be in imminent danger of death unless an abortion is  
22 immediately performed or induced and there are no other competent  
23 personnel available to attend to the woman;

24 (b) An experiment or medical procedure that destroys an  
25 in vitro human embryo or uses cells or tissue derived from the

1 destruction of an in vitro human embryo;

2 (c) An experiment or medical procedure on an in vitro  
3 human embryo that is not related to the beneficial treatment of the  
4 in vitro human embryo;

5 (d) An experiment or medical procedure on a developing  
6 child in an artificial or natural womb, at any stage of development,  
7 that is not related to the beneficial treatment of the developing  
8 child;

9 (e) A procedure, including a transplant procedure, that  
10 uses fetal tissue or organs that come from a source other than a  
11 stillbirth or miscarriage; or

12 (f) An act that intentionally causes or assists in  
13 causing the death of an individual.

14 (2) Nothing in this section permits a health care  
15 provider or insurer that otherwise provides, performs, or covers an  
16 item or procedure to refuse to do so for a person based on a judgment  
17 that (a) discounts the value of the person's life because of his or  
18 her age or disability or (b) views the person as not meriting  
19 treatment because of an innate personal characteristic, other than a  
20 characteristic that would reduce the procedure's clinical  
21 effectiveness or increase its risks.

22 Sec. 4. (1) No health care facility is required to admit  
23 any patient or to allow the use of the health care facility for the  
24 purpose of performing any of the acts specified in section 3 of this  
25 act.

1           (2) A physician, physician's assistant, registered nurse,  
2 practical nurse, pharmacist, any employee thereof, or any other  
3 person who is an employee of, member of, or associated with the staff  
4 of a health care facility in which the performance of an activity  
5 specified in section 3 of this act has been authorized who, in  
6 writing, refuses or states an intention to refuse to participate in  
7 the activity on moral or religious grounds shall not be required to  
8 participate in the activity and shall not be disciplined by the  
9 respective licensing board or authorized regulatory agency for  
10 refusing or stating an intention to refuse to participate in the  
11 practice with respect to the activity.

12           (3) A physician, physician's assistant, registered nurse,  
13 practical nurse, pharmacist, any employee thereof, or any other  
14 person who is an employee of, member of, or associated with the staff  
15 of a health care facility is immune from liability for any damage  
16 caused by the refusal of the person to participate in an activity  
17 specified in section 3 of this act on moral or religious grounds.

18           Sec. 5. (1) This state or a state health insurance  
19 exchange may not require a religiously affiliated health insurance  
20 plan or issuer to cover any of the circumstances specified in section  
21 3 of this act which are contrary to its religious or moral precepts.

22           (2) Any health insurance plan or health insurance issuer  
23 offering coverage within this state shall accommodate the  
24 conscientious objection of a purchaser or of an individual or  
25 institutional health care provider, when any of the acts specified in

1 section 3 is contrary to their religious or moral precepts.

2           Sec. 6. (1) No health care facility, school, or employer  
3 shall discriminate against any person with regard to admission,  
4 hiring or firing, tenure, term, condition, or privilege of  
5 employment, student status, or staff status on the ground that the  
6 person refuses or states an intention to refuse, whether or not in  
7 writing, to participate in an activity specified in section 3 of this  
8 act, if the refusal is based on religious or moral precepts.

9           (2) No person shall be required to:

10           (a) Participate in an activity specified in section 3 of  
11 this act if the individual's participation in the activity is  
12 contrary to the person's religious beliefs or moral convictions;

13           (b) Make facilities available for an individual to  
14 participate in an activity specified in section 3 of this act if the  
15 person prohibits the activity from taking place in the facilities on  
16 the basis of religious beliefs or moral convictions; or

17           (c) Provide any personnel to participate in an activity  
18 specified in section 3 of this act if the activity is contrary to  
19 religious beliefs or moral convictions of the personnel.

20           Sec. 7. (1) A person who is adversely affected by conduct  
21 that is in violation of the Freedom of Conscience Act may bring a  
22 civil action for equitable relief, including reinstatement or  
23 damages, or both reinstatement and damages. An action under this  
24 subsection may be commenced against the state and any office,  
25 department, agency, authority, institution, association, or other

1 body in state government created or authorized to be created by the  
2 Constitution of the State of Nebraska or any law. An action under  
3 this subsection shall be commenced within one year after the cause of  
4 action accrues or be forever barred.

5 (2) If judgment is rendered in favor of the plaintiff in  
6 any action described in subsection (1) of this section, the court  
7 shall also render judgment for reasonable attorney's fees in favor of  
8 the plaintiff against the defendant. If judgment is rendered in favor  
9 of the defendant and the court finds that the plaintiff's suit was  
10 frivolous and brought in bad faith, the court shall also render  
11 judgment for reasonable attorney's fees in favor of the defendant  
12 against the plaintiff.

13 Sec. 8. If any section in this act or any part of any  
14 section is declared invalid or unconstitutional, the declaration  
15 shall not affect the validity or constitutionality of the remaining  
16 portions.