

LEGISLATURE OF NEBRASKA

ONE HUNDRED THIRD LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 564

Introduced by Nelson, 6; Bloomfield, 17; Brasch, 16; Carlson, 38;
Johnson, 23; Kintner, 2; Scheer, 19.

Read first time January 23, 2013

Committee: Judiciary

A BILL

1 FOR AN ACT relating to health care; to amend sections 38-126 and
2 38-179, Reissue Revised Statutes of Nebraska; to adopt
3 the Health Care Freedom of Conscience Act; to subject
4 rules and regulations to the act; to provide for grounds
5 for disciplining health care credentials; to provide
6 severability; and to repeal the original sections.

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

1 Section 1. Sections 1 to 8 of this act shall be known and
2 may be cited as the Health Care Freedom of Conscience Act.

3 Sec. 2. (1) It is the public policy of Nebraska to
4 respect and protect the fundamental right of conscience of all
5 individuals who provide health care.

6 (2) Without comprehensive protection, health care rights
7 of conscience may be violated in various ways, such as harassment,
8 demotion, salary reduction, transfer, termination, loss of staffing
9 privileges, denial of aid or benefits, administrative penalty,
10 punishment, or sanction, and refusal to license or refusal to
11 certify.

12 (3) It is the purpose of the Health Care Freedom of
13 Conscience Act to protect as a basic civil right the right of each
14 health care provider or institution to decline to participate in any
15 health care function that violates their respective consciences.

16 (4) Accordingly, it is the purpose of the Health Care
17 Freedom of Conscience Act to prohibit all forms of discrimination
18 against any health care provider or institution that declines to
19 participate in any health care function that violates their
20 respective consciences.

21 Sec. 3. For purposes of the Health Care Freedom of
22 Conscience Act:

23 (1) Conscience means the religious beliefs, moral
24 convictions, or ethical principles held by any health care provider
25 or health care facility. For purposes of this subdivision, a health

1 care facility's conscience shall be determined by reference to its
2 existing religious, moral, or ethical guidelines, mission statement,
3 constitution, bylaws, articles of incorporation, regulations, or
4 other relevant documents;

5 (2) Health care facility means any health care facility
6 or health care service as defined by the Health Care Facility
7 Licensure Act and any medical school, medical training facility,
8 laboratory, or diagnostic facility;

9 (3) Health care function means any phase of patient
10 health care, treatment, or procedure, including, but not limited to,
11 diagnosis or prognosis, instruction, patient referral, prescribing,
12 dispensing, or administering any device, drug, or medication,
13 research, counseling, surgery, testing, therapy, or any other care or
14 treatment rendered by a health care provider or a health care
15 facility;

16 (4) Health care provider means any individual who may be
17 asked to participate in any way in any health care function,
18 including, but not limited to, any employee of a health care
19 facility, student at a health care facility, certified nurse midwife,
20 registered nurse, clinical nurse specialist, nurse practitioner,
21 nurse, licensed practical nurse-certified, mental health
22 practitioner, pharmacist, physician, physician assistant,
23 psychologist, or psychiatrist; and

24 (5) Participate means to counsel, advise, provide,
25 perform, assist in, refer for, admit for purposes of providing, or

1 participate in providing any health care function or any form of such
2 function.

3 Sec. 4. (1) A health care provider has the right not to
4 participate in any health care function that violates his or her
5 conscience. No health care provider shall be required to participate
6 in any health care function that violates his or her conscience.

7 (2) A health care facility has the right not to
8 participate in any health care function that violates its conscience.
9 No health care facility shall be required to participate in any
10 health care function that violates its conscience.

11 Sec. 5. (1) No health care provider shall be civilly,
12 criminally, or administratively liable for declining to participate
13 in any health care function that violates his or her conscience.

14 (2) No health care facility shall be civilly, criminally,
15 or administratively liable for declining to provide or participate in
16 any health care function that violates its conscience.

17 Sec. 6. Nothing in the Health Care Freedom of Conscience
18 Act shall be construed to authorize or immunize any health care
19 provider's or health care facility's refusal:

20 (1) To comply with the requirements of the Pain-Capable
21 Unborn Child Protection Act, sections 28-325 to 28-346, section
22 38-2021, or sections 71-6901 to 71-6911; or

23 (2) To provide a health care function if the denial of
24 such health care function will, in reasonable medical judgment,
25 result in or hasten the death of a patient and if the provision for

1 such health care function is directed by the patient or a person
2 authorized to make health care decisions for the patient:

3 (a) On the basis of a view that treats extending the life
4 of an elderly, disabled, or terminally ill individual as of lower
5 value than extending the life of an individual who is younger,
6 nondisabled, or not terminally ill; or

7 (b) On the basis of disagreement with how the patient or
8 person authorized to make health care decisions for the patient
9 values the balance between extending the length of the patient's life
10 and the risk of disability.

11 Sec. 7. (1) It shall be a violation of the Health Care
12 Freedom of Conscience Act for any person, health care provider,
13 health care entity, public or private entity, public official, or
14 board which certifies competency in medical specialties to
15 discriminate against any health care provider in any manner based on
16 his or her declining to participate in any health care function that
17 violates his or her conscience. For purposes of this subsection,
18 discrimination includes termination, transfer, refusal of staff
19 privileges, refusal of board certification, adverse administrative
20 action, demotion, loss of career specialty, reassignment to a
21 different shift, reduction of wages or benefits, refusal to award any
22 grant, contract, or other program, refusal to provide residency
23 training opportunities, or any other penalty or disciplinary action.

24 (2) Notwithstanding subsection (1) of this section,
25 subject to a collective-bargaining agreement that covers a health

1 care provider, an employer may take action that is otherwise defined
2 as discriminatory under the Health Care Freedom of Conscience Act
3 against an employee who is a health care provider who declines to
4 participate in any health care function that violates his or her
5 conscience if at the time of such declination the health care
6 function in question constitutes a regular or substantial portion of
7 the employee's current and defined position and the employer has not
8 refused to reasonably accommodate the employee. For purposes of this
9 subsection, regular or substantial portion means fifty percent or
10 more of the employee's daily or weekly hours of duty.

11 (3) It shall be a violation of the Health Care Freedom of
12 Conscience Act for any person, any private entity, or any public
13 official, agency, facility, or entity to discriminate in any manner
14 against any health care facility or any person, association,
15 corporation, or other entity planning or proposing a new health care
16 facility or operating an existing health care facility. For purposes
17 of this subsection, discrimination includes, but is not limited to,
18 any denial, deprivation, or disqualification with respect to
19 licensure, any form of aid, assistance, grant, benefit, or privilege,
20 including staff privileges, or any authorization, including
21 authorization to create, expand, improve, acquire, or affiliate or
22 merge with any health care facility, or in any other manner to
23 coerce, disqualify, or discriminate against any health care facility
24 or person, association, corporation, or other entity planning,
25 proposing, or operating a health care facility, because the existing

1 or proposed health care facility declines to participate in any
2 health care function that violates the health care facility's
3 conscience.

4 Sec. 8. (1) A civil action for damages or injunctive
5 relief, or both, may be brought for any violation of the Health Care
6 Freedom of Conscience Act. Subject to section 7 of this act, it shall
7 not be a defense to any claim arising out of a violation of the act
8 that such violation was necessary to prevent additional burden or
9 expense on any other health care provider, health care facility,
10 individual, or patient.

11 (2) Any health care provider or health care facility
12 aggrieved by any public or private individual, association, agency,
13 entity, or corporation by reason of any conduct prohibited by the
14 Health Care Freedom of Conscience Act may commence a civil action. If
15 the result of the action is a finding of a violation of the act, the
16 aggrieved party shall be entitled to recover actual damages,
17 including pain and suffering, sustained by such individual,
18 association, corporation, entity, or health care facility. Damages
19 shall be cumulative and not exclusive of other remedies afforded
20 under any other state or federal law.

21 (3) The court in any such civil action may award
22 injunctive relief, including, but not limited to, ordering
23 reinstatement of a health care provider to his or her prior job
24 position.

25 Sec. 9. Section 38-126, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 38-126 To protect the health, safety, and welfare of the
3 public and to insure to the greatest extent possible the efficient,
4 adequate, and safe practice of health services, health-related
5 services, and environmental services:

6 (1)(a) The appropriate board may adopt rules and
7 regulations to:

8 (i) Specify minimum standards required for a credential,
9 including education, experience, and eligibility for taking the
10 credentialing examination;

11 (ii) Designate credentialing examinations, specify the
12 passing score on credentialing examinations, and specify standards,
13 if any, for accepting examination results from other jurisdictions;

14 (iii) Set continuing competency requirements in
15 conformance with section 38-145;

16 (iv) Set standards for waiver of continuing competency
17 requirements in conformance with section 38-146;

18 (v) Set standards for courses of study; and

19 (vi) Specify acts in addition to those set out in section
20 38-179 that constitute unprofessional conduct; and

21 (b) The department shall promulgate and enforce such
22 rules and regulations;

23 (2) For professions or businesses that do not have a
24 board created by statute:

25 (a) The department may adopt, promulgate, and enforce

1 such rules and regulations; and

2 (b) The department shall carry out any statutory powers
3 and duties of the board;

4 (3) The department, with the recommendation of the
5 appropriate board, if any, may adopt, promulgate, and enforce rules
6 and regulations for the respective profession, other than those
7 specified in subdivision (1) of this section, to carry out the
8 Uniform Credentialing Act; and

9 (4) The department may adopt, promulgate, and enforce
10 rules and regulations with general applicability to carry out the
11 Uniform Credentialing Act.

12 All rules and regulations shall be subject to the Health
13 Care Freedom of Conscience Act.

14 Sec. 10. Section 38-179, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 38-179 For purposes of section 38-178, unprofessional
17 conduct means any departure from or failure to conform to the
18 standards of acceptable and prevailing practice of a profession or
19 the ethics of the profession, regardless of whether a person,
20 consumer, or entity is injured, or conduct that is likely to deceive
21 or defraud the public or is detrimental to the public interest,
22 including, but not limited to:

23 (1) Receipt of fees on the assurance that an incurable
24 disease can be permanently cured;

25 (2) Division of fees, or agreeing to split or divide the

1 fees, received for professional services with any person for bringing
2 or referring a consumer other than (a) with a partner or employee of
3 the applicant or credential holder or his or her office or clinic,
4 (b) with a landlord of the applicant or credential holder pursuant to
5 a written agreement that provides for payment of rent based on gross
6 receipts, (c) with a former partner or employee of the applicant or
7 credential holder based on a retirement plan or separation agreement,
8 or (d) by a person credentialed pursuant to the Water Well Standards
9 and Contractors' Practice Act;

10 (3) Obtaining any fee for professional services by fraud,
11 deceit, or misrepresentation, including, but not limited to,
12 falsification of third-party claim documents;

13 (4) Cheating on or attempting to subvert the
14 credentialing examination;

15 (5) Assisting in the care or treatment of a consumer
16 without the consent of such consumer or his or her legal
17 representative;

18 (6) Use of any letters, words, or terms, either as a
19 prefix, affix, or suffix, on stationery, in advertisements, or
20 otherwise, indicating that such person is entitled to practice a
21 profession for which he or she is not credentialed;

22 (7) Performing, procuring, or aiding and abetting in the
23 performance or procurement of a criminal abortion;

24 (8) Knowingly disclosing confidential information except
25 as otherwise permitted by law;

1 (9) Commission of any act of sexual abuse, misconduct, or
2 exploitation related to the practice of the profession of the
3 applicant or credential holder;

4 (10) Failure to keep and maintain adequate records of
5 treatment or service;

6 (11) Prescribing, administering, distributing,
7 dispensing, giving, or selling any controlled substance or other drug
8 recognized as addictive or dangerous for other than a medically
9 accepted therapeutic purpose;

10 (12) Prescribing any controlled substance to (a) oneself
11 or (b) except in the case of a medical emergency (i) one's spouse,
12 (ii) one's child, (iii) one's parent, (iv) one's sibling, or (v) any
13 other person living in the same household as the prescriber;

14 (13) Failure to comply with any federal, state, or
15 municipal law, ordinance, rule, or regulation that pertains to the
16 applicable profession;

17 (14) Disruptive behavior, whether verbal or physical,
18 which interferes with consumer care or could reasonably be expected
19 to interfere with such care; ~~and~~

20 (15) Violating the Health Care Freedom of Conscience Act;
21 and

22 ~~(15)-(16)~~ Such other acts as may be defined in rules and
23 regulations.

24 Nothing in this section shall be construed to exclude
25 determination of additional conduct that is unprofessional by

1 adjudication in individual contested cases.

2 Sec. 11. If any section in this act or any part of any
3 section is declared invalid or unconstitutional, the declaration
4 shall not affect the validity or constitutionality of the remaining
5 portions.

6 Sec. 12. Original sections 38-126 and 38-179, Reissue
7 Revised Statutes of Nebraska, are repealed.