

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 59

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO THE MEDICAL ETHICS DEFENSE ACT; AMENDING TITLE 54, IDAHO CODE,  
2 BY THE ADDITION OF A NEW CHAPTER 13, TITLE 54, IDAHO CODE, TO PROVIDE  
3 A SHORT TITLE, TO PROVIDE LEGISLATIVE FINDINGS AND PURPOSE, TO DEFINE  
4 TERMS, TO PROVIDE FOR THE RIGHT OF CONSCIENCE OF HEALTH CARE PROVIDERS,  
5 TO PROVIDE FOR WHISTLEBLOWER PROTECTION, TO PROVIDE FOR FREE SPEECH  
6 PROTECTION FOR HEALTH CARE PROVIDERS, TO PROVIDE FOR CIVIL REMEDIES,  
7 AND TO PROVIDE SEVERABILITY; AND DECLARING AN EMERGENCY.  
8

9 Be It Enacted by the Legislature of the State of Idaho:

10 SECTION 1. That Title 54, Idaho Code, be, and the same is hereby amended  
11 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-  
12 ter 13, Title 54, Idaho Code, and to read as follows:

13 CHAPTER 13

14 MEDICAL ETHICS DEFENSE ACT

15 54-1301. SHORT TITLE. This act shall be known and may be cited as the  
16 "Medical Ethics Defense Act."

17 54-1302. LEGISLATIVE FINDINGS AND PURPOSE. (1) The legislature finds  
18 that the right of conscience is a fundamental and inalienable right. It was  
19 central to the founding of the United States, has been deeply rooted in the  
20 nation's history and tradition for centuries, and has been central to the  
21 practice of medicine, through the Hippocratic oath, for millennia.

22 (2) Despite its preeminent importance, however, threats to the right  
23 of conscience of health care professionals, health care institutions, and  
24 health care payers have become increasingly common and severe in recent  
25 years. The swift pace of scientific advancement and the expansion of medical  
26 capabilities, along with the creation of new rights for patients to access  
27 certain procedures and the mistaken notion that health care professionals,  
28 health care institutions, and health care payers are mere public utilities,  
29 promise to make the current crisis worse, unless something is done to secure  
30 the right of conscience.

31 (3) With this purpose in mind, the legislature declares that it is the  
32 public policy of the state of Idaho to protect the right of conscience for  
33 health care professionals, health care institutions, and health care pay-  
34 ers.

35 (4) As the right of conscience is fundamental, no health care profes-  
36 sional, health care institution, or health care payer should be required to  
37 participate in or pay for any medical procedure, treatment, or service, or  
38 prescribe or pay for any medication, to which he objects on the basis of con-  
39 science, whether such conscience is informed by religious, moral, or ethical  
40 beliefs or principles.

1 (5) It is the purpose of this chapter to protect health care profes-  
2 sionals, health care institutions, and health care payers from discrimina-  
3 tion, punishment, and retaliation as a result of any instance of conscien-  
4 tious medical objection.

5 54-1303. DEFINITIONS. For the purpose of this chapter:

6 (1) "Conscience" means the ethical, moral, or religious beliefs or  
7 principles held by any health care provider. Conscience with respect to in-  
8 stitutional entities or corporate bodies, as opposed to individual persons,  
9 is determined by reference to that entity's or body's governing documents,  
10 including but not limited to any published ethical, moral, or religious  
11 guidelines or directives, mission statements, constitutions, articles of  
12 incorporation, bylaws, policies, or regulations.

13 (2) "Discrimination" or "discriminated against" means any adverse  
14 action taken against, or any threat of adverse action communicated to, any  
15 health care provider as a result of exercising rights pursuant to sections  
16 54-1304 and 54-1305, Idaho Code. Discrimination includes but is not limited  
17 to any penalty or disciplinary or retaliatory action, whether executed or  
18 threatened. Discrimination does not include the negotiation or purchase  
19 of, or the refusal to use or purchase, insurance or medical procedures,  
20 treatments, or services by an individual or nongovernmental entity, nor does  
21 it include good faith efforts to accommodate conscientious objections of a  
22 health care provider.

23 (3) "Essential functions" means the fundamental job duties of an em-  
24 ployment position. A function can be essential if, among other things, the  
25 position exists specifically to perform that function, there are a limited  
26 number of other employees who could perform the function, or the function is  
27 specialized and the individual is hired based on his ability to perform the  
28 function. The term does not include the marginal functions of a position.

29 (4) "Health care institution" means any organization, corporation,  
30 partnership, association, agency, network, sole proprietorship, joint  
31 venture, or other entity that provides medical procedures, treatments, or  
32 services.

33 (5) "Health care payer" means any employer, health plan, health mainte-  
34 nance organization, insurance company, or management services organization  
35 or any other entity that pays for any medical procedure, treatment, or ser-  
36 vice provided to any patient or client, including to contract for, arrange  
37 for payment of, reimburse, or remunerate, whether payment is made in whole or  
38 in part.

39 (6) "Health care professional" means any person who is authorized to  
40 participate in any way in any medical procedure, treatment, or service. This  
41 includes but is not limited to:

- 42 (a) Doctors;
- 43 (b) Nurses;
- 44 (c) Clinical nurse specialists;
- 45 (d) Nurse aides;
- 46 (e) Physician assistants;
- 47 (f) Medical assistants;
- 48 (g) Allied health professionals;
- 49 (h) Employees of a hospital, clinic, nursing home, or pharmacy;

- 1 (i) Pharmacists and pharmacy technicians;  
2 (j) Faculty and students of a medical school, nursing school, or school  
3 of psychology or counseling;  
4 (k) Medical researchers and laboratory technicians;  
5 (l) Psychologists, psychiatrists, and counselors; and  
6 (m) Social workers.  
7 (7) "Health care provider" means a health care professional, health  
8 care institution, or health care payer.  
9 (8) "Medical procedure, treatment, or service" means medical research  
10 or health care provided to any patient or client at any time over the course  
11 of treatment. This includes but is not limited to testing, diagnosis,  
12 record-making, referral, prescribing, dispensing, or administering any  
13 drug, medication, or device, therapy or counseling, and preparation or ar-  
14 rangement for a surgical procedure.  
15 (9) "Participate" means to provide, perform, assist with, facilitate,  
16 refer for, counsel for, advise to pursue, admit for the purposes of provid-  
17 ing, or take part in any way in providing any medical procedure, treatment,  
18 or service.

19 54-1304. RIGHT OF CONSCIENCE OF HEALTH CARE PROVIDERS. (1) Health care  
20 providers shall have the right of conscience and, pursuant to this right,  
21 shall not be required to participate in or pay for a medical procedure,  
22 treatment, or service that violates such health care provider's conscience.

23 (2) The exercise of the right of conscience is limited to conscience-  
24 based objections to a particular medical procedure, treatment, or service.  
25 This section may not be construed to waive or modify any duty a health care  
26 provider may have to provide or pay for medical procedures, treatments, or  
27 services that do not violate the provider's conscience.

28 (3) A health care professional shall communicate to the health care  
29 professional's employer a conscience-based objection when it occurs or as  
30 soon as reasonably possible to allow an employer to make necessary staffing  
31 adjustments without delaying the provision of health care services. Nothing  
32 in this chapter shall prevent an employer from requiring an employee to dis-  
33 close the employee's conscience-based objections at the time of hiring, but  
34 such disclosure shall not limit the rights protected by this chapter.

35 (4) Conscience-based objections shall be provided in writing by an em-  
36 ployee if requested by the employer.

37 (5) A health care payer shall not decline payment for a medical proce-  
38 dure, treatment, or service that it is contractually obligated to pay for un-  
39 der the terms of its contract with an insured party.

40 (6) No health care provider shall be discriminated against in any man-  
41 ner as a result of exercising the right of conscience pursuant to subsection  
42 (1) of this section.

43 (7) No health care provider shall be civilly, criminally, or adminis-  
44 tratively liable for exercising the right of conscience described in subsec-  
45 tion (1) of this section, and no health care institution shall be civilly,  
46 criminally, or administratively liable for the exercise of the right of con-  
47 science described in subsection (1) of this section by a health care profes-  
48 sional employed, contracted, or granted admitting privileges by the health  
49 care institution.

1 (8) Nothing in this chapter shall be construed to impede the right of a  
2 religious health care provider to make employment, staffing, contracting,  
3 administrative, and admitting privilege decisions consistent with such  
4 health care provider's religious beliefs if such health care provider holds  
5 itself out to the public as religious and has internal operating policies or  
6 procedures that implement its religious purpose or mission.

7 (9) To the extent that this chapter provides broader rights of con-  
8 science than that provided by section 18-611, Idaho Code, this chapter  
9 controls over section 18-611, Idaho Code. To the extent that this chapter  
10 is not enforceable with respect to any rights of conscience protected by  
11 section 18-611, Idaho Code, then section 18-611, Idaho Code, shall control.

12 (10) Nothing in this chapter shall affect the rights of conscience pro-  
13 vided for in section 18-612, Idaho Code, to the extent that those rights are  
14 broader in scope than those provided for in this chapter.

15 (11) Nothing in this chapter shall be construed to override the require-  
16 ment to provide emergency medical treatment to all patients as set forth in  
17 42 U.S.C. 1395dd.

18 (12) The protections in this chapter shall not apply if an employee is  
19 unable to perform any essential function, the employer cannot transfer the  
20 employee to a suitable alternative position for which the employee is quali-  
21 fied, and the employer is otherwise unable to accommodate the employee with-  
22 out imposing an undue hardship on the employer.

23 54-1305. WHISTLEBLOWER PROTECTION. (1) No health care provider shall  
24 be discriminated against in any manner because the health care provider:

25 (a) Provided, caused to be provided, or is about to provide or cause to  
26 be provided information relating to any act or omission the health care  
27 provider reasonably believes to be a violation of any provision of this  
28 chapter to a health care professional's employer, the attorney general  
29 of Idaho, any state agency charged with protecting health care rights of  
30 conscience, the United States department of health and human services  
31 office of civil rights, or any other federal agency charged with pro-  
32 tecting health care rights of conscience; or

33 (b) Testified, assisted, or participated, or is about to testify, as-  
34 sist, or participate in a proceeding concerning such violation.

35 (2) Unless the disclosure is specifically prohibited by law, no health  
36 care provider shall be discriminated against in any manner because the  
37 health care provider disclosed any information that the health care provider  
38 reasonably believes evinces:

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

40 (b) Any violation of any ethical guidelines for the provision of any  
41 medical procedure or service; or

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

45 (3) Subsection (2) of this section shall not apply when the disclosure  
46 concerns the lawful exercise of discretionary decision-making authority  
47 unless the health care provider reasonably believes that the disclosure  
48 evinces a violation or misconduct listed in subsection (2) of this section.

1           54-1306. FREE SPEECH PROTECTION FOR HEALTH CARE PROVIDERS. (1) The de-  
2 department of health and welfare, the state board of medicine, or any other  
3 department or board regulating the practice of a medical procedure, treat-  
4 ment, or service in the state may not reprimand or sanction a health care  
5 provider or deny or revoke or threaten to deny or revoke a license, certi-  
6 fication, or registration of a health care provider for engaging in speech,  
7 expression, or association that is protected from government interference  
8 by the first amendment to the United States constitution, unless the depart-  
9 ment or board demonstrates by clear and convincing evidence that the health  
10 care provider's speech, expression, or association was the direct cause of  
11 physical harm to a person with whom the health care provider had a practi-  
12 tioner-patient relationship within the three (3) years immediately preced-  
13 ing the incident of physical harm.

14           (2) The department of health and welfare, the state board of medicine,  
15 or any other department or board regulating the practice of a medical proce-  
16 dure, treatment, or service in the state shall not contract with, nor shall  
17 it recognize, approve, or require an individual to obtain certifications or  
18 credentials issued or approved by, a specialty board or other recognizing  
19 agency that revokes the certification of, or refuses to issue certification  
20 to, an individual because the individual has engaged in speech, expression,  
21 or association that is protected from government interference by the first  
22 amendment to the United States constitution, provided such individual was  
23 not providing medical advice or treatment to a specific patient.

24           (3) The department of health and welfare, the state board of medicine,  
25 or any other department or board regulating the practice of a medical proce-  
26 dure, treatment, or service in the state shall provide a health care provider  
27 with any complaints it has received that are based on speech, expression,  
28 or association that is protected from government interference by the first  
29 amendment to the United States constitution and may result in the revoca-  
30 tion of the health care provider's license, certification, or registration,  
31 within twenty-one (21) days after receipt of the complaint. The department  
32 or board shall pay the health care provider an administrative penalty of  
33 five hundred dollars (\$500) for each day the complaint is not provided to the  
34 health care provider after the specified twenty-one (21) days.

35           54-1307. CIVIL REMEDIES. (1) A cause of action for damages or injunc-  
36 tive relief, or both, may be brought by any health care provider for any vi-  
37 olation of any provision of this chapter. Any additional burden or expense  
38 on another health care professional, health care institution, or health care  
39 payer arising from the exercise of the right of conscience shall not be a de-  
40 fense to any violation of this chapter. However, no cause of action may be  
41 brought against an individual who declines to use or purchase a medical pro-  
42 cedure or services from a specific health care professional, health care in-  
43 stitution, or health care payer for exercising the rights granted in sec-  
44 tions 54-1304(1), 54-1305, and 54-1306, Idaho Code.

45           (2) Any party aggrieved by any violation of this chapter may commence a  
46 civil action and shall be entitled, upon the finding of a violation, to:

47           (a) Injunctive relief, when appropriate, including but not limited to  
48 reinstatement of a health care professional's previous position, rein-

1 statement of board certification, and relicensure of a health care in-  
2 stitution or health care payer;  
3 (b) Actual damages for injuries suffered; and  
4 (c) Reasonable costs and attorney's fees.  
5 (3) Such damages shall be cumulative and in no way limited by any other  
6 remedies that may be available under any other federal, state, or municipal  
7 law.

8 54-1308. SEVERABILITY. The provisions of this chapter are hereby de-  
9 clared to be severable and if any provision of this chapter or the applica-  
10 tion of such provision to any person or circumstance is declared invalid for  
11 any reason, such declaration shall not affect the validity of the remaining  
12 portions of this chapter.

13 SECTION 2. An emergency existing therefor, which emergency is hereby  
14 declared to exist, this act shall be in full force and effect on and after its  
15 passage and approval.