

Regular Session, 2004

HOUSE BILL NO. 1650

BY REPRESENTATIVE DURAND

HEALTH: Creates the Health Care Rights of Conscience Act

1 AN ACT

2 To enact Part XVIII-A of Chapter 40 of the Louisiana Revised Statutes of 1950, to be  
3 comprised of R.S. 40:1299.35.19 through 1299.35.25, relative to the Health Care  
4 Rights of Conscience Act; to provide for the title, purpose, and definitions; to provide  
5 for the rights of conscience of health care providers, institutions, and payers; to  
6 provide for civil remedies; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Part XVIII-A of Chapter 40 of the Louisiana Revised Statutes of 1950,  
9 comprised of R.S. 40:1299.35.19 through 1299.35.25, is hereby enacted to read as follows:

10 PART XVIII-A. HEALTH CARE RIGHTS OF CONSCIENCE ACT

11 §1299.35.19. Short title

12 This Part may be known and cited as the "Health Care Rights of Conscience  
13 Act".

14 §1299.35.20. Legislative findings and purposes

15 A. It is the public policy of Louisiana to respect and protect the fundamental  
16 right of conscience of all individuals who provide health care services.

17 B. Without comprehensive protection, health care rights of conscience may  
18 be violated in various ways, such as harassment, demotion, salary reduction, transfer,  
19 termination, loss of staffing privileges, denial of aid or benefits, and refusal to license,  
20 or refusal to certify.

1           C. It is the purpose of this Part to protect as a basic civil right the right of all  
2           health care providers, institutions, and payers to decline to counsel, advise, pay for,  
3           provide, perform, assist, or participate in providing or performing health care services  
4           that violate their consciences. Such health care services may include but are not  
5           limited to abortion, artificial birth control, artificial insemination, assisted  
6           reproduction, human cloning, euthanasia, human embryonic stem cell research, fetal  
7           experimentation, physician-assisted suicide, and sterilization.

8           D. Accordingly, it is the purpose of this Part to prohibit all forms of  
9           discrimination, disqualification, coercion, disability, or liability upon such health care  
10          providers, institutions, and payers that decline to perform any health care service  
11          which violates their conscience.

12          §1299.35.21. Definitions

13                 As used in this Part, the following words and phrases shall have the meaning  
14                 ascribed to them:

15                 (1) "Conscience" means the religious, moral, or ethical principles held by a  
16                 health care provider, health care institution, or health care payer. For purposes of this  
17                 Part, a health care institution or health care payer's conscience shall be determined by  
18                 reference to its existing or proposed religious, moral or ethical guidelines, mission  
19                 statement, constitution, bylaws, articles of incorporation, regulations, or other  
20                 relevant documents.

21                 (2) "Employer" means any individual or entity that pays for or provides health  
22                 benefits or health insurance coverage as a benefit to its employees, whether through  
23                 a third party, a health maintenance organization, a program of self insurance, or some  
24                 other means.

25                 (3) "Health care institution" means any public or private organization,  
26                 corporation, partnership, sole proprietorship, association, agency, network, joint  
27                 venture, or other entity that is involved in providing health care services, including but  
28                 not limited to: hospitals, clinics, medical centers, ambulatory surgical centers, private  
29                 physician's offices, pharmacies, nursing homes, university medical schools and nursing

1 schools, medical training facilities, or other institutions or locations wherein health  
2 care services are provided to any person.

3 (4) "Health care payer" means any entity or employer that contracts for, pays  
4 for, or arranges for the payment of, in whole or in part, any health care service or  
5 product, including but not limited to health maintenance organizations, health plans,  
6 insurance companies, or management services organizations.

7 (5) "Health care provider" means any individual who may be asked to  
8 participate in any way in a health care service, including but not limited to: a  
9 physician, physician's assistant, nurse, nurses' aide, medical assistant, hospital  
10 employee, clinic employee, nursing home employee, pharmacist, pharmacy employee,  
11 researcher, medical or nursing school faculty, student or employee, counselor, social  
12 worker, or any professional, paraprofessional, or any other person who furnishes, or  
13 assists in the furnishing of, health care services.

14 (6) "Health care service" means any phase of patient medical care, treatment  
15 or procedure, including but not limited to the following: patient referral, counseling,  
16 therapy, testing, diagnosis or prognosis, research, instruction, prescribing, dispensing  
17 or administering any device, drug, medication, surgery, or any other care or treatment  
18 rendered by health care providers or health care institutions.

19 (7) "Participate in a health care service" means to counsel, advise, provide,  
20 perform, assist in, refer for, admit for purposes of providing, or participate in  
21 providing, any health care service or any form of such service.

22 (8) "Pay" or "payment" means pay, contract for, or otherwise arrange for  
23 the payment of, in whole or in part.

24 §1299.35.22. Rights of conscience of health care providers; immunity from liability;  
25 discrimination

26 A. A health care provider has the right not to participate, and no health care  
27 provider shall be required to participate, in a health care service that violates his  
28 conscience.

1           B. No health care provider shall be civilly, criminally, or administratively  
2           liable for declining to participate in a health care service that violates his conscience.

3           C. It shall be unlawful for any person, health care provider, health care  
4           institution, public or private institution, public official, or any board which certifies  
5           competency in medical specialties to discriminate against any health care provider in  
6           any manner based on his or her declining to participate in a health care service that  
7           violates his conscience. For purposes of this Part, discrimination includes but is not  
8           limited to: termination, transfer, refusal of staff privileges, refusal of board  
9           certification, adverse administrative action, demotion, loss of career specialty,  
10           reassignment to a different shift, reduction of wages or benefits, refusal to award any  
11           grant, contract, or other program, refusal to provide residency training opportunities,  
12           or any other penalty, disciplinary or retaliatory action.

13           §1299.35.23. Rights of conscience of health care institutions; immunity from liability;  
14           discrimination; denial of aid

15           A. A health care institution has the right not to participate, and no health care  
16           institution shall be required to participate, in a health care service that violates its  
17           conscience.

18           B. A health care institution that declines to provide or participate in a health  
19           care service that violates its conscience shall not be civilly, criminally, or  
20           administratively liable if the institution provides a consent form to be signed by a  
21           patient before admission to the institution stating that it reserves the right to decline  
22           to provide or participate in health care services that violate its conscience.

23           C. It shall be unlawful for any person, public or private institution, or public  
24           official to discriminate against any health care institution, or any person, association,  
25           corporation, or other entity attempting to establish a new health care institution or  
26           operating an existing health care institution, in any manner, including but not limited  
27           to: any denial, deprivation or disqualification with respect to licensure; any aid  
28           assistance, benefit or privilege, including staff privileges; or any authorization,  
29           including authorization to create, expand, improve, acquire, or affiliate or merge with

1 any health care institution, because such health care institution, or person, association,  
2 or corporation planning, proposing, or operating a health care institution, declines to  
3 participate in a health care service which violates the health care institution's  
4 conscience.

5 D. It shall be unlawful for any public official, agency, institution, or entity to  
6 deny any form of aid, assistance, grants, or benefits, or in any other manner to coerce,  
7 disqualify, or discriminate against any person, association, corporation, or other entity  
8 attempting to establish a new health care institution or operating an existing health  
9 care institution because the existing or proposed health care institution declines to  
10 participate in a health care service contrary to the health care institution's conscience.

11 §1299.35.24. Rights of conscience of health care payers; immunity from liability;  
12 discrimination; denial of aid

13 A. A health care payer has the right to decline to pay, and no health care  
14 payer shall be required to pay for or arrange for the payment of any health care  
15 service or product that violates its conscience.

16 B. No health care payer and no person, association, corporation, or other  
17 entity that owns, operates, supervises, or manages a health care payer shall be civilly  
18 or criminally liable by reason of the health care payer's declining to pay for or arrange  
19 for the payment of any health care service that violates its conscience.

20 C. It shall be unlawful for any person, public or private institution, or public  
21 official to discriminate against any health care payer, or any person, association,  
22 corporation, or other entity: (i) attempting to establish a new health care payer; or (ii)  
23 operating an existing health care payer, in any manner, including but not limited to:  
24 any denial, deprivation, or disqualification with respect to licensure, aid, assistance,  
25 benefit, privilege, or authorization, including but not limited to any authorization to  
26 create, expand, improve, acquire, or affiliate or merge with, any health care payer,  
27 because a health care payer, or a person, association, corporation, or other entity  
28 planning, proposing, or operating a health care payer declines to pay for or arrange  
29 for the payment of any health care service that violates its conscience.

1           D. It shall be unlawful for any public official, agency, institution, or entity to  
2           deny any form of aid, assistance, grants, or benefits, or in any other manner to coerce,  
3           disqualify, or discriminate against any health care payer, or any person, association,  
4           corporation, or other entity attempting to establish a new health care payer or  
5           operating an existing health care payer because the existing or proposed health care  
6           payer declines to pay for, or arrange for the payment of, any health care service that  
7           is contrary to its conscience.

8           §1299.35.25. Civil remedies

9           A. A civil action for damages or injunctive relief, or both, may be brought for  
10          the violation of any provision of this Part. It shall not be a defense to any claim  
11          arising out of the violation of this Part that such violation was necessary to prevent  
12          additional burden or expense on any other health care provider, health care institution,  
13          individual, or patient.

14          B. Any individual, association, corporation, entity, or health care institution  
15          injured by any public or private individual, association, agency, entity, or corporation  
16          by reason of any conduct prohibited by this Part may commence a civil action. Upon  
17          finding a violation of this Part, the aggrieved party shall be entitled to recover  
18          threefold the actual damages, including pain and suffering, sustained by such  
19          individual, association, corporation, entity, or health care institution, the costs of the  
20          action, and reasonable attorney's fees; but in no case shall recovery be less than five-  
21          thousand dollars for each violation in addition to costs of the action and reasonable  
22          attorney's fees. These damage remedies shall be cumulative, and not exclusive of  
23          other remedies afforded under any other state or federal law.

24          C. The court in such civil action may award injunctive relief, including but not  
25          limited to ordering reinstatement of a health care provider to his prior job position.

26          Section 2. This Act shall become effective upon signature by the governor or, if not  
27          signed by the governor, upon expiration of the time for bills to become law without signature  
28          by the governor, as provided in Article III, Section 18 of the Constitution of Louisiana. If

- 1 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
2 effective on the day following such approval.
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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument.

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Durand

HB No. 1650

**Abstract:** Creates the Health Care Rights of Conscience Act.

Proposed law provides for the legislative findings and purpose of proposed law.

Proposed law provides for definitions.

Proposed law provides for rights of health care providers, institutions, and payers. Provides for the health care providers, institutions, and payers immunity from liability and prohibition against discrimination,

Proposed law provides for health care institutions and payers right to deny aid.

Proposed law provides for civil liabilities for violations of proposed law.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds 40:1299.35.19-1299.35.25)