

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

904M0528

HOUSE BILL NO. 1184

Introduced by: Representative Van Etten and Senator Greenfield

1 FOR AN ACT ENTITLED, An Act to provide that health care providers and institutions need
2 not participate in certain health care services.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "Health care institution," any public or private organization, corporation, partnership,
6 sole proprietorship, association, agency, network, joint venture, or other entity that
7 is involved in providing health care services, including hospitals, clinics, medical
8 centers, ambulatory surgical centers, private physician's offices, pharmacies, nursing
9 homes, university medical schools and nursing schools, medical training facilities,
10 or other institutions or locations wherein health care services are provided to any
11 person;

12 (2) "Health care provider," any person who may be asked to participate in any way in a
13 health care service, including a physician; physician's assistant; nurse practitioner;
14 nurse; nurses' aide; medical assistant; hospital employee; clinic employee; nursing
15 home employee; pharmacist; pharmacy employee; researcher; medical or nursing
16 school faculty, student, or employee; counselor; social worker; or any professional,



1 paraprofessional, or any other person who furnishes, or assists in the furnishing of,
2 health care services;

3 (3) "Health care service," any phase of patient medical care, treatment, or procedure,
4 including the following: patient referral; counseling; therapy; testing; diagnosis or
5 prognosis; research; instruction; prescribing, dispensing or administering any device,
6 drug, or medication; surgery; or any other care or treatment rendered by any health
7 care provider or health care institution;

8 (4) "Participate," in a health care service, to counsel, advise, provide, perform, assist in,
9 refer for, admit for purposes of providing, or participate in providing, any health care
10 service or any form of such service.

11 Section 2. For the purposes of this Act, conscience means the religious, moral, or ethical
12 principles held by a health care provider or health care institution. A health care institution's
13 conscience shall be determined by reference to its existing or proposed religious, moral, or
14 ethical guidelines, mission statement, constitution, bylaws, articles of incorporation, regulations,
15 or other relevant documents.

16 Section 3. No health care provider is required to participate in a health care service that
17 violates the provider's conscience.

18 Section 4. No health care provider is civilly or administratively liable for declining to
19 participate in a health care service that violates the provider's conscience.

20 Section 5. No person, health care provider, health care institution, public or private
21 institution, public official, or any board that certifies competency in medical specialties may
22 discriminate against any health care provider in any manner based on the provider's declining
23 to participate in a health care service that violates the provider's conscience. For purposes of this
24 section, discrimination includes termination, transfer, refusal of staff privileges, refusal of board

1 certification, adverse administrative action, demotion, loss of career specialty, unreasonable
2 reassignment to a different shift, reduction of wages or benefits, refusal to award any grant,
3 contract, or other program, refusal to provide residency training opportunities, or any other
4 penalty, or disciplinary or retaliatory action.

5 Section 6. No health care institution is required to participate in a health care service that
6 violates its conscience.

7 Section 7. No health care institution that declines to provide or participate in a health care
8 service that violates its conscience is civilly or administratively liable if the institution provides
9 a consent form to be signed by a patient before admission to the institution stating that it
10 reserves the right to decline to provide or participate in health care services that violate its
11 conscience.

12 Section 8. No person, public or private institution, or public official may discriminate
13 against any health care institution, or any person, association, corporation, or other entity
14 attempting to establish a new health care institution or operating an existing health care
15 institution, in any manner. For the purposes of this section, discrimination includes any denial,
16 deprivation, or disqualification with respect to licensure; any aid assistance, benefit, or privilege,
17 including staff privileges; or any authorization, including authorization to create, expand,
18 improve, acquire, or affiliate or merge with any health care institution, because such health care
19 institution, or person, association, or corporation planning, proposing, or operating a health care
20 institution, declines to participate in a health care service that violates the health care
21 institution's conscience.

22 Section 9. No public official, agency, institution, or entity may deny any form of aid,
23 assistance, grant, or benefit, or in any other manner coerce, disqualify, or discriminate against
24 any person, association, corporation, or other entity attempting to establish a new health care

1 institution or operating an existing health care institution because the existing or proposed health
2 care institution declines to participate in a health care service contrary to the health care
3 institution's conscience.

4 Section 10. A civil action for damages or injunctive relief; or both, may be brought for the
5 violation of any provision of this Act. It is not a defense to any claim arising out of the violation
6 of this Act that such violation was necessary to prevent additional burden or expense on any
7 other health care institution, person, or patient.

8 Section 11. Any person, association, corporation, entity, or health care institution injured
9 by any public or private person, association, agency, entity, or corporation by reason of any
10 conduct prohibited by this Act may commence a civil action. Upon finding a violation of this
11 Act, the aggrieved party may recover threefold the actual damages, including pain and suffering,
12 sustained by such person, association, corporation, entity, or health care institution, the costs of
13 the action, and reasonable attorney's fees. However, in no case may recovery be less than five
14 thousand dollars for each violation in addition to costs of the action and reasonable attorney's
15 fees. These damage remedies shall be cumulative, and not exclusive of other remedies afforded
16 under any other state or federal law.

17 Section 12. The court in such civil action may award injunctive relief; including ordering
18 reinstatement of a health care provider to the provider's prior job position.