



## 2020 South Dakota Legislature

# Senate Bill 109

Introduced by: **Senator Stalzer**

1 **An Act to provide protections for health care decisions governed by conscience.**

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

3 **Section 1.** That a NEW SECTION be added:

4 **36-2B-1. Definitions.**

5 As used in this chapter:

6 (1) "Conscience" means:

7 (a) The ethical, moral, philosophical, or religious beliefs or principles held by  
8 any health care provider; or

9 (b) The ethical, moral, philosophical, or religious beliefs or principles reflected  
10 in the governing or guidance documents of a health care institution or  
11 payer, including articles of incorporation, bylaws, directives, mission  
12 statements, policies, and regulations;

13 (2) "Disclosure" means a formal or informal communication or transmission, but does  
14 not include a communication or transmission concerning policy decisions that  
15 lawfully exercise discretionary authority, unless the health care provider engaged  
16 in the disclosure reasonably believes that the disclosure evinces:

17 (a) A violation of any law, regulation, or rule;

18 (b) A violation of any standard of care or other ethical guideline for the provision  
19 of a health care service; or

20 (c) An abuse of authority, gross mismanagement, a gross waste of funds, or a  
21 substantial and specific danger to public health or safety;

22 (3) "Discrimination" means any adverse action taken against or any threat of adverse  
23 action communicated to a health care provider, a health care institution, or a health  
24 care payer, regarding a decision not to participate in a health care service on the  
25 basis of conscience, and includes:

26 (a) Adverse administrative action;

- 1            (b) Creation of impediments to acquisitions, affiliations, or mergers;  
2            (c) Creation of impediments to expansion or improvements;  
3            (d) Demotion from current position;  
4            (e) Denial of board certification;  
5            (f) Denial of financial aid and other assistance;  
6            (g) Denial of grants, contracts, or other opportunities;  
7            (h) Denial, revocation, or suspension of licensure;  
8            (i) Denial of residency training opportunities;  
9            (j) Denial of staff privileges;  
10           (k) Increased administrative duties;  
11           (l) Loss of career specialty;  
12           (m) Reduction in compensation;  
13           (n) Reassignment to a different shift or job title;  
14           (o) Termination of employment;  
15           (p) Transfer from current position; and  
16           (q) Any other disciplinary action, penalty, or retaliatory action, whether  
17                executed or threatened;  
18           (4) "Health care institution" means any public or private ambulatory surgical center,  
19                clinic, hospital, medical center, medical school, medical training facility, nursing  
20                home, nursing school, pharmacy, physician's office, physician organization,  
21                professional association, or any other entity in which or location at which health  
22                care services are performed;  
23           (5) "Health care payer" means any employer, health maintenance organization, health  
24                plan, insurance company, management services organization, or any other entity  
25                that pays for, or arranges for the payment of, in whole or in part, any health care  
26                service provided to a patient;  
27           (6) "Health care provider" means:  
28                (a) Allied health professional;  
29                (b) Certified nurse practitioner;  
30                (c) Counselor;  
31                (d) Employee of a health care institution;  
32                (e) Laboratory technician;  
33                (f) Medical assistant;  
34                (g) Medical school faculty and students;  
35                (h) Nursing school faculty and students;

- 1            (i) Psychology and counseling faculty and students;  
2            (j) Physician;  
3            (k) Physician assistant;  
4            (l) Nurse;  
5            (m) Nurse aide;  
6            (n) Pharmacist;  
7            (o) Pharmacy technician;  
8            (p) Medical researcher;  
9            (q) Social worker; or  
10           (r) Any other person who facilitates or participates in the provision of health  
11           care services to any person;  
12        (7) "Health care service" means medical care provided to a patient at any time during  
13           a course of treatment and includes:  
14           (a) Diagnosis;  
15           (b) Dispensing or administering any drug, device, or medication;  
16           (c) Initial examination;  
17           (d) Psychological therapy or counseling;  
18           (e) Referral;  
19           (f) Research;  
20           (g) Testing;  
21           (h) Therapy; and  
22           (i) Any other care or necessary service performed or provided by a health care  
23           provider; and  
24        (8) "Participate" means to admit, advise, assist with, counsel, facilitate, perform,  
25           provide, refer, or take part in the provision of a health care service.

26        **Section 2.** That a NEW SECTION be added:

27                    **36-2B-2. Right of nonparticipation based on conscience--Discrimination**  
28        **prohibited.**

29                    A health care provider has the right not to participate in any health care service  
30                    that violates the provider's conscience. A health care provider may not be discriminated  
31                    against if the provider exercises this right.

32                    A health care institution has the right not to participate in any health care service  
33                    that violates the institution's conscience. A health care institution may not be  
34                    discriminated against if the institution exercises this right.

1           A health care payer has the right not to pay for any health care service that violates  
2           the payer's conscience. A health care payer may not be discriminated against if the payer  
3           exercises this right.

4           No health care provider, health care institution, or health care payer may be civilly  
5           or criminally liable, or subject to any administrative action for exercising the right of  
6           conscience with respect to a health care service.

7       **Section 3.** That a NEW SECTION be added:

8           **36-2B-3. Religiously-based institutions or payers--Exception.**

9           This Act does not apply to any employment-related decisions of a religiously-based  
10          health care institution or health care payer that employees only persons of a particular  
11          religion.

12       **Section 4.** That a NEW SECTION be added:

13          **36-2B-4. Reporting of alleged violation.**

14          A health care provider may not be discriminated against as a result of reporting or  
15          providing disclosable information regarding an alleged violation of this Act to any person,  
16          public or private, charged with enforcing or having the authority to enforce this Act.

17       **Section 5.** That a NEW SECTION be added:

18          **36-2B-5. Action for damages.**

19          A civil action for damages or injunctive relief, or both, may be brought by a health  
20          care provider, health care institution, or health care payer, for any violation of this Act.  
21          Any additional burden or expense on another health care provider, health care institution,  
22          or health care payer, arising from the exercise of the right of conscience, is not a defense  
23          to any violation of this Act.

24       **Section 6.** That a NEW SECTION be added:

25          **36-2B-6. Treble damages--Injunctive relief.**

26          Any person aggrieved by a violation of this Act may commence a civil action. A  
27          court may award treble damages for a violation of this Act, together with costs and  
28          reasonable attorney's fees. A damage award under this section is cumulative and may not  
29          be limited by any other available remedies.

30          A court may also provide injunctive relief under this Act.