HOUSE BILL 1364

J3, J2, J5

By: Delegates Cox, Arikan, Boteler, Mautz, McComas, and Rose
Introduced and read first time: February 11, 2022
Assigned to: Health and Government Operations

A BILL ENTITLED

AN ACT concerning

Health Care Freedom of Conscience Act

FOR the purpose of authorizing health care providers and health care practitioners to decline to participate in a health care service that violates their conscience; authorizing health care payors to decline to pay for health care services or health care products that violate their conscience; establishing certain civil, criminal, and administrative immunity; prohibiting a unit of State or local government or a person from discriminating against health care providers, health care practitioners, or health care payors and certain other persons because the person declines or will decline to take certain actions that violate their conscience; and generally relating to the freedom of conscience for health care providers, health care practitioners, and health care payors.

BY renumbering
Article – Insurance
Section 15–801
to be Section 15–801.1
Annotated Code of Maryland
(2017 Replacement Volume and 2021 Supplement)

BY adding to
Article – Health – General
Section 24–1801 through 24–1805 to be under the new subtitle “Subtitle 18. Health Care Freedom of Conscience Act”
Annotated Code of Maryland
(2019 Replacement Volume and 2021 Supplement)

BY adding to
Article – Insurance
Section 15–801
Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That Section(s) 15–801 of Article – Insurance of the Annotated Code of Maryland be
renumbered to be Section(s) 15–801.1.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
as follows:

Article – Health – General

SUBTITLE 18. HEALTH CARE FREEDOM OF CONSCIENCE ACT.

24–1801.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
INDICATED.

(B) “CONSCIENCE” MEANS RELIGIOUS, MORAL, OR ETHICAL PRINCIPLES
HELD BY A PERSON AND PROVIDED FOR IN A PERSON’S:

(1) RELIGIOUS, MORAL, OR ETHICAL GUIDELINES; OR

(2) MISSION STATEMENT, CONSTITUTION, BYLAWS, ARTICLES OF
INCORPORATION, REGULATIONS, OR OTHER RELEVANT DOCUMENTS.

(C) “DISCRIMINATE” INCLUDES TERMINATE, TRANSFER, REFUSING STAFF
PRIVILEGES, REFUSING BOARD CERTIFICATION, CARRYING OUT ADVERSE
ADMINISTRATIVE ACTION, DEMOTION, CAUSING THE LOSS OF A CAREER SPECIALTY,
REASSIGNMENT TO A DIFFERENT SHIFT, REDUCING WAGES, REDUCING BENEFITS,
REFUSAL TO AWARD A GRANT OR CONTRACT, REFUSAL TO PROVIDE TRAINING
OPPORTUNITIES, ISSUING A PENALTY, OR CONDUCTING ANY OTHER DISCIPLINARY
ACTION.

(D) “HEALTH CARE PRACTITIONER” MEANS AN INDIVIDUAL WHO
REGULARLY PARTICIPATES IN A HEALTH CARE SERVICE AND WHO IS NOT A HEALTH
CARE PROVIDER, INCLUDING A PHARMACY EMPLOYEE, A RESEARCHER, A MEDICAL
OR NURSING SCHOOL FACULTY MEMBER, A STUDENT, OR AN EMPLOYEE OR ANY
PROFESSIONAL OR PARAPROFESSIONAL WHO FURNISHES OR ASSISTS IN THE
FURNISHING OF HEALTH CARE SERVICES.

(E) “HEALTH CARE PROVIDER” HAS THE MEANING STATED IN § 19–132 OF
THIS ARTICLE.
(F) (1) “Health care service” has the meaning stated in § 19–132 of this article.

(2) “Health care service” includes research, instruction, or any other care or treatment rendered by health care providers.

(G) “Participate in a health care service” means to counsel, advise, provide, perform, assist in, refer for, admit for purposes of providing, or participate in providing a health care service or any form of a health care service.

(H) “Payor” has the meaning stated in § 19–132 of this article.

24–1802.

(A) The General Assembly finds that:

(1) It is the public policy of the State to respect and protect the fundamental right of conscience of health care providers and health care practitioners; and

(2) Without comprehensive protection, health care rights of conscience may be violated in various ways, including harassment, demotion, salary reduction, transfer, termination, loss of staffing privileges, denial of aid or benefits, and refusal to license or refusal to certify.

(B) Based on the findings in subsection (A) of this section, it is the purpose of this subtitle to:

(1) Protect as a basic civil right, the right of all health care providers, health care practitioners, and payors to decline to counsel, advise, pay for, provide, perform, assist, or participate in providing or performing health care services that violate their consciences, including:

   (I) Abortion;

   (II) Artificial birth control;

   (III) Sterilization;

   (IV) Artificial insemination;
(V) ASSISTED REPRODUCTION;

(VI) HUMAN EMBRYONIC STEM CELL RESEARCH AND FETAL EXPERIMENTATION;

(VII) HUMAN CLONING; AND

(VIII) PHYSICIAN–ASSISTED SUICIDE AND EUTHANASIA; AND

(2) PROHIBIT ALL FORMS OF DISCRIMINATION, DISQUALIFICATION, COERCION, DISABILITY, OR LIABILITY ON HEALTH CARE PROVIDERS, HEALTH CARE PRACTITIONERS, AND PAYORS THAT DECLINE TO PERFORM OR PROVIDE A HEALTH CARE SERVICE THAT VIOLATES THEIR CONSCIENCES.

24–1803.

(A) (1) A HEALTH CARE PROVIDER OR HEALTH CARE PRACTITIONER MAY DECLINE TO PARTICIPATE IN A HEALTH CARE SERVICE THAT VIOLATES THE CONSCIENCE OF THE HEALTH CARE PROVIDER OR HEALTH CARE PRACTITIONER.

(2) A HEALTH CARE PAYOR MAY DECLINE TO PAY OR ARRANGE PAYMENT FOR A HEALTH CARE SERVICE OR HEALTH CARE PRODUCT THAT VIOLATES THE CONSCIENCE OF THE PAYOR.

(B) (1) A HEALTH CARE PROVIDER OR A HEALTH CARE PRACTITIONER IS NOT CIVILLY, CRIMINALLY, OR ADMINISTRATIVELY LIABLE FOR DECLINING TO PARTICIPATE IN A HEALTH CARE SERVICE THAT VIOLATES THE CONSCIENCE OF THE HEALTH CARE PROVIDER OR HEALTH CARE PRACTITIONER.

(2) A HEALTH CARE PROVIDER THAT IS A HEALTH CARE FACILITY IS NOT CIVILLY, CRIMINALLY, OR ADMINISTRATIVELY LIABLE FOR DECLINING TO PARTICIPATE IN A HEALTH CARE SERVICE IF THE HEALTH CARE FACILITY PROVIDES A CONSENT FORM TO BE SIGNED BY A PATIENT BEFORE ADMISSION TO THE FACILITY STATING THAT THE HEALTH CARE FACILITY RESERVES THE RIGHT TO DECLINE TO PARTICIPATE IN A HEALTH CARE SERVICE THAT VIOLATES ITS CONSCIENCE.

(3) A PAYOR OR PERSON THAT OWNS, OPERATES, SUPERVISES, OR MANAGES A PAYOR IS NOT CIVILLY OR CRIMINALLY LIABLE FOR DECLINING TO PAY FOR OR ARRANGE PAYMENT FOR A HEALTH CARE SERVICE OR HEALTH CARE PRODUCT THAT VIOLATES THE CONSCIENCE OF THE HEALTH CARE PAYOR.

(C) A UNIT OF STATE OR LOCAL GOVERNMENT OR PERSON MAY NOT
DISCRIMINATE AGAINST:

(1) A HEALTH CARE PROVIDER OR HEALTH CARE PRACTITIONER BASED ON THE HEALTH CARE PROVIDER OR HEALTH CARE PRACTITIONER DECLINING TO PARTICIPATE IN A HEALTH CARE SERVICE THAT VIOLATES THE CONSCIENCE OF THE HEALTH CARE PROVIDER OR HEALTH CARE PRACTITIONER;

(2) A HEALTH CARE PROVIDER OR A PERSON ATTEMPTING TO ESTABLISH A HEALTH CARE PROVIDER BECAUSE THE PROPOSED OR EXISTING HEALTH CARE PROVIDER DECLINES OR WILL DECLINE TO PARTICIPATE IN A HEALTH CARE SERVICE THAT VIOLATES THE CONSCIENCE OF THE HEALTH CARE PROVIDER; OR

(3) A PAYOR OR A PERSON ATTEMPTING TO ESTABLISH A PAYOR BECAUSE THE PROPOSED OR EXISTING PAYOR DECLINES OR WILL DECLINE TO PAY FOR OR ARRANGE PAYMENT FOR A HEALTH CARE SERVICE OR PRODUCT THAT VIOLATES THE CONSCIENCE OF THE PAYOR.

24–1804.

(A) (1) A CIVIL ACTION FOR DAMAGES OR INJUNCTIVE RELIEF, OR BOTH, MAY BE BROUGHT AGAINST A PERSON OR A UNIT OF STATE OR LOCAL GOVERNMENT FOR A VIOLATION OF THIS SUBTITLE.

(2) IT IS NOT A DEFENSE TO A CLAIM ARISING OUT OF THE VIOLATION THAT A VIOLATION WAS NECESSARY TO PREVENT ADDITIONAL BURDEN OR EXPENSE ON A HEALTH CARE PROVIDER.

(B) (1) ON A FINDING OF A VIOLATION OF THIS SUBTITLE BY A COURT OF COMPETENT JURISDICTION, THE AGGRIEVED PARTY IS ENTITLED TO RECOVER:

(i) TREBLE DAMAGES, INCLUDING PAIN AND SUFFERING SUSTAINED BY THE INDIVIDUAL, ASSOCIATION, CORPORATION, ENTITY, OR HEALTH CARE PROVIDER;

(ii) COURT COSTS; AND

(iii) REASONABLE COUNSEL FEES.

(2) A RECOVERY BY AN AGGRIEVED PARTY IN AN ACTION BROUGHT UNDER THIS SECTION SHALL BE NOT LESS THAN $5,000 FOR EACH VIOLATION IN ADDITION TO COURT COSTS AND REASONABLE ATTORNEY’S FEES.
(3) The damage remedies provided in this subsection shall be cumulative and not exclusive of other remedies afforded under state or federal law.

24–1805.

This subtitle may be cited as the Maryland Health Care Freedom of Conscience Act.

Article – Insurance

15–801.

The requirements in this subtitle are subject to the Maryland Health Care Freedom of Conscience Act.

Section 3. And be it further enacted, That this Act shall take effect October 1, 2022.