

# ***In the House of Representatives, U. S.,***

*July 13, 2016.*

*Resolved*, That the bill from the Senate (S. 304) entitled “An Act to improve motor vehicle safety by encouraging the sharing of certain information.”, do pass with the following

## **AMENDMENT:**

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE.***

2       *This Act may be cited as the “Conscience Protection*  
3 *Act of 2016”.*

4 ***SEC. 2. FINDINGS.***

5       *Congress finds as follows:*

6           (1) *Thomas Jefferson stated a conviction com-*  
7 *mon to our Nation’s founders when he declared in*  
8 *1809 that “[n]o provision in our Constitution ought*  
9 *to be dearer to man than that which protects the*  
10 *rights of conscience against the enterprises of the civil*  
11 *authority”.*

12           (2) *In 1973, the Supreme Court concluded that*  
13 *the government must leave the abortion decision “to*  
14 *the medical judgment of the pregnant woman’s at-*  
15 *tending physician”, recognizing that a physician may*  
16 *choose not to participate in abortion. Roe v. Wade,*

1       410 U.S. 113, 164 (1973). The Court cited with ap-  
 2       proval a policy that “neither physician, hospital, nor  
 3       hospital personnel shall be required to perform any  
 4       act violative of personally-held moral principles”, 410  
 5       U.S. at 143 n. 38, and cited State laws upholding  
 6       this principle. *Doe v. Bolton*, 410 U.S. 179, 197–8  
 7       (1973).

8           (3) Congress’s enactments to protect this right of  
 9       conscience in health care include the Church amend-  
 10      ment of 1973 (42 U.S.C. 300a–7), the Coats/Snowe  
 11      amendment of 1996 (42 U.S.C. 238n), and the  
 12      Weldon amendment approved by Congresses and  
 13      Presidents of both parties every year since 2004.

14          (4) None of these laws explicitly provides a “pri-  
 15      vate right of action” so victims of discrimination can  
 16      defend their conscience rights in court, and adminis-  
 17      trative enforcement by the Department of Health and  
 18      Human Services Office for Civil Rights has been lax,  
 19      at times allowing cases to languish for years without  
 20      resolution.

21          (5) Defying the Federal Weldon amendment,  
 22      California’s Department of Managed Health Care has  
 23      mandated coverage for all elective abortions in all  
 24      health plans under its jurisdiction. Other States such  
 25      as New York and Washington have taken or consid-

1        *ered similar action, and some States may go farther*  
 2        *to require all physicians and hospitals to provide or*  
 3        *facilitate abortions. On June 21, 2016, the Adminis-*  
 4        *tration concluded a nearly two-year investigation of*  
 5        *this matter by determining that California's decision*  
 6        *to require insurance plans under the California De-*  
 7        *partment for Managed Health Care authority to cover*  
 8        *all legal abortion services did not violate the Weldon*  
 9        *amendment. This interpretation means that individ-*  
 10       *uals will have to choose between ignoring their con-*  
 11       *science or forgoing health care coverage.*

12            *(6) The vast majority of medical professionals do*  
 13        *not perform abortions, with 86 percent of ob/gyns un-*  
 14        *willing to provide them in a recent study (Obstetrics*  
 15        *& Gynecology, Sept. 2011) and the great majority of*  
 16        *hospitals choosing to do so in rare cases or not at all.*

17            *(7) A health care provider's decision not to par-*  
 18        *ticipate in an abortion, like Congress's decision not to*  
 19        *fund most abortions, erects no new barrier to those*  
 20        *seeking to perform or undergo abortions but leaves*  
 21        *each party free to act as he or she wishes.*

22            *(8) Such protection poses no conflict with other*  
 23        *Federal laws, such as the law requiring emergency*  
 24        *stabilizing treatment for a pregnant woman and her*  
 25        *unborn child when either is in distress (Emergency*

1     *Medical Treatment and Active Labor Act*). As the  
 2     Obama administration has said, these areas of law  
 3     have operated side by side for many years and both  
 4     should be fully enforced (76 *Federal Register* 9968–77  
 5     (2011) at 9973).

6             (9) *Reaffirming longstanding Federal policy on*  
 7     *conscience rights and providing a right of action in*  
 8     *cases where it is violated allows longstanding and*  
 9     *widely supported Federal laws to work as intended.*

10   **SEC. 3. PROHIBITING GOVERNMENTAL DISCRIMINATION**  
 11                   **AGAINST PROVIDERS OF HEALTH SERVICES**  
 12                   **THAT ARE NOT INVOLVED IN ABORTION.**

13     *Title II of the Public Health Service Act (42 U.S.C.*  
 14     *202 et seq.) is amended by inserting after section 245 the*  
 15     *following:*

16   **“SEC. 245A. PROHIBITING GOVERNMENTAL DISCRIMINA-**  
 17                   **TION AGAINST PROVIDERS OF HEALTH SERV-**  
 18                   **ICES THAT ARE NOT INVOLVED IN ABORTION.**

19             “(a) *IN GENERAL.*—Notwithstanding any other law,  
 20     the Federal Government, and any State or local government  
 21     that receives Federal financial assistance, may not penalize,  
 22     retaliate against, or otherwise discriminate against a health  
 23     care provider on the basis that the provider does not—

24                   “(1) perform, refer for, pay for, or otherwise par-  
 25     ticipate in abortion;

1           “(2) provide or sponsor abortion coverage; or

2           “(3) facilitate or make arrangements for any of  
3           the activities specified in this subsection.

4           “(b) *RULE OF CONSTRUCTION.*—Nothing in this sec-  
5           tion shall be construed—

6           “(1) to prevent any health care provider from  
7           voluntarily electing to participate in abortions or  
8           abortion referrals;

9           “(2) to prevent any health care provider from  
10          voluntarily electing to provide or sponsor abortion  
11          coverage or health benefits coverage that includes  
12          abortion;

13          “(3) to prevent an accrediting agency, the Fed-  
14          eral government, or a State or local government from  
15          establishing standards of medical competency applica-  
16          ble only to those who have knowingly, voluntarily,  
17          and specifically elected to perform abortions, or from  
18          enforcing contractual obligations applicable only to  
19          those who, as part of such contract, knowingly, volun-  
20          tarily, and specifically elect to provide abortions;

21          “(4) to affect, or be affected by, section 1867 of  
22          the Social Security Act (42 U.S.C. 1395dd, commonly  
23          referred to as the ‘Emergency Medical Treatment and  
24          Active Labor Act’); or

1           “(5) to supersede any law enacted by any State  
2       for the purpose of regulating insurance, except as  
3       specified in subsection (a).

4           “(c) *ADMINISTRATION.*—The Secretary shall designate  
5       the Director of the Office for Civil Rights of the Department  
6       of Health and Human Services—

7           “(1) to receive complaints alleging a violation of  
8       this section, section 245 of this Act, or any of sub-  
9       sections (b) through (e) of section 401 of the Health  
10      Programs Extension Act of 1973; and

11          “(2) to pursue the investigation of such com-  
12      plaints in coordination with the Attorney General.

13          “(d) *DEFINITIONS.*—For purposes of this section:

14          “(1) *FEDERAL FINANCIAL ASSISTANCE.*—The  
15      term ‘Federal financial assistance’ means Federal  
16      payments to cover the cost of health care services or  
17      benefits, or other Federal payments, grants, or loans  
18      to promote or otherwise facilitate health-related ac-  
19      tivities.

20          “(2) *HEALTH CARE PROVIDER.*—The term  
21      ‘health care provider’ means—

22              “(A) an individual physician, nurse, or  
23              other health care professional;

24              “(B) a hospital, health system, or other  
25              health care facility or organization (including a

1        *party to a proposed merger or other collaborative*  
 2        *arrangement relating to health services, and an*  
 3        *entity resulting therefrom);*

4                *“(C) a provider-sponsored organization, an*  
 5        *accountable care organization, or a health main-*  
 6        *tenance organization;*

7                *“(D) a social services provider that provides*  
 8        *or authorizes referrals for health care services;*

9                *“(E) a program of training in the health*  
 10        *professions or an applicant to or participant in*  
 11        *such a program;*

12                *“(F) an issuer of health insurance coverage;*  
 13        *or*

14                *“(G) a group health plan or student health*  
 15        *plan, or a sponsor or administrator thereof.*

16                *“(3) STATE OR LOCAL GOVERNMENT THAT RE-*  
 17        *CEIVES FEDERAL FINANCIAL ASSISTANCE.—The term*  
 18        *‘State or local government that receives Federal fi-*  
 19        *nancial assistance’ includes every agency and other*  
 20        *governmental unit and subdivision of a State or local*  
 21        *government, if such State or local government, or any*  
 22        *agency or governmental unit or subdivision thereof,*  
 23        *receives Federal financial assistance.*

1 **“SEC. 245B. CIVIL ACTION FOR CERTAIN VIOLATIONS.**

2 “(a) *IN GENERAL.*—A qualified party may, in a civil  
3 action, obtain appropriate relief with regard to a des-  
4 ignated violation.

5 “(b) *DEFINITIONS.*—For purposes of this section:

6 “(1) *QUALIFIED PARTY.*—The term ‘qualified  
7 party’ means—

8 “(A) *the Attorney General of the United*  
9 *States; or*

10 “(B) *any person or entity adversely affected*  
11 *by the designated violation.*

12 “(2) *DESIGNATED VIOLATION.*—The term ‘des-  
13 ignated violation’ means an actual or threatened vio-  
14 lation of—

15 “(A) *section 245 or 245A of this Act; or*

16 “(B) *any of subsections (b) through (e) of*  
17 *section 401 of the Health Programs Extension*  
18 *Act of 1973 regarding an objection to abortion.*

19 “(c) *ADMINISTRATIVE REMEDIES NOT REQUIRED.*—  
20 *An action under this section may be commenced, and relief*  
21 *may be granted, without regard to whether the party com-*  
22 *mencing the action has sought or exhausted available ad-*  
23 *ministrative remedies.*

24 “(d) *DEFENDANTS IN ACTIONS UNDER THIS SECTION*  
25 *MAY INCLUDE GOVERNMENTAL ENTITIES AS WELL AS*  
26 *OTHERS.*—



1           “(1) *IN GENERAL.*—*An action under this section*  
 2           *may be maintained against, among others, a party*  
 3           *that is a Federal or State governmental entity. Relief*  
 4           *in an action under this section may include money*  
 5           *damages even if the defendant is such a governmental*  
 6           *entity.*

7           “(2) *DEFINITION.*—*For the purposes of this sub-*  
 8           *section, the term ‘State governmental entity’ means a*  
 9           *State, a local government within a State, and any*  
 10          *agency or other governmental unit or subdivision of*  
 11          *a State or of such a local government.*

12          “(e) *NATURE OF RELIEF.*—*In an action under this*  
 13          *section, the court shall grant—*

14               “(1) *all necessary equitable and legal relief, in-*  
 15               *cluding, where appropriate, declaratory relief and*  
 16               *compensatory damages, to prevent the occurrence,*  
 17               *continuance, or repetition of the designated violation*  
 18               *and to compensate for losses resulting from the des-*  
 19               *ignated violation; and*

1           “(2) to a prevailing plaintiff, reasonable attor-  
2       neys’ fees and litigation expenses as part of the  
3       costs.”.

Attest:

*Clerk.*



114<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 304**

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**AMENDMENT**