

113TH CONGRESS
1ST SESSION

S. 1204

To amend the Patient Protection and Affordable Care Act to protect rights of conscience with regard to requirements for coverage of specific items and services, to amend the Public Health Service Act to prohibit certain abortion-related discrimination in governmental activities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 20, 2013

Mr. COBURN (for himself and Mrs. FISCHER) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Patient Protection and Affordable Care Act to protect rights of conscience with regard to requirements for coverage of specific items and services, to amend the Public Health Service Act to prohibit certain abortion-related discrimination in governmental activities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Health Care Con-
5 science Rights Act”.

1 **SEC. 2. FINDINGS.**

2 Congress finds as follows:

3 (1) As Thomas Jefferson declared to New Lon-
4 don Methodists in 1809, “[n]o provision in our Con-
5 stitution ought to be dearer to man than that which
6 protects the rights of conscience against the enter-
7 prises of the civil authority”.

8 (2) Jefferson’s conviction on respect for con-
9 science is deeply embedded in the history and tradi-
10 tions of our Nation, and codified in numerous Fed-
11 eral laws approved by congressional majorities and
12 Presidents of both parties, including in the Public
13 Health Service Act (42 U.S.C. 201 et seq.); the
14 United States Leadership Against HIV/AIDS, Tu-
15 berculosis, and Malaria Act of 2003 (22 U.S.C.
16 7601 et seq.); the Religious Freedom Restoration
17 Act of 1993 (42 U.S.C. 2000bb et seq.); long-
18 standing provisions on respect for conscience rights
19 in the Federal Employees Health Benefits Program
20 and District of Columbia appropriations; and laws to
21 protect individuals from being forced to participate
22 in Federal executions or prosecutions.

23 (3) Following enactment of the Patient Protec-
24 tion and Affordable Care Act (Public Law 111–148,
25 in this section referred to as “PPACA”), the Fed-
26 eral Government has sought to impose specific re-

1 quirements that infringe on the rights of conscience
2 of those who offer or purchase health coverage.

3 (4) While PPACA provides an exemption for
4 some religious groups that object to participation in
5 health insurance generally, and exempts millions of
6 Americans from most of the Act's provisions, includ-
7 ing the preventive services mandate, it fails to pro-
8 vide statutory protection for those seeking to offer
9 or to purchase health coverage who have a religious
10 or moral objection only to specific items or services.

11 (5) Nurses and other health care providers have
12 increasingly been subjected to discrimination for
13 abiding by their conscience rather than providing,
14 paying for, or referring for abortion.

15 (6) Conscience rights protections for health care
16 providers are an important part of civil rights pro-
17 tections in Federal law and are indispensable to the
18 continued viability of the health care system in the
19 United States. The increasingly significant discrimi-
20 nation suffered by faith-based nonprofit health care
21 providers risks undermining access to high-quality
22 compassionate care for some of the most vulnerable
23 populations in our country.

1 **SEC. 3. APPLYING LONGSTANDING POLICY ON CON-**
2 **SCIENCE RIGHTS TO THE AFFORDABLE CARE**
3 **ACT.**

4 (a) IN GENERAL.—Title I of the Patient Protection
5 and Affordable Care Act (Public Law 111–148) is amend-
6 ed—

7 (1) by redesignating the second section 1563
8 (relating to conforming amendments and as redesignig-
9 nated by section 10107(b)(1) of the Patient Protec-
10 tion and Affordable Care Act) as section 1564;

11 (2) by redesignating the third section 1563 (re-
12 lating to the Sense of the Senate promoting fiscal
13 responsibility) as section 1565; and

14 (3) by adding at the end the following new sec-
15 tion:

16 **“SEC. 1566. RESPECTING CONSCIENCE RIGHTS IN HEALTH**
17 **COVERAGE.**

18 “(a) IN GENERAL.—Notwithstanding any other pro-
19 vision of this title, no provision of this title (and no amend-
20 ment made by this title) shall—

21 “(1) require an individual to purchase indi-
22 vidual health insurance coverage that includes cov-
23 erage of an abortion or other item or service to
24 which such individual has a moral or religious objec-
25 tion, or prevent an issuer from offering or issuing,

1 to such individual, individual health insurance cov-
2 erage that excludes such item or service;

3 “(2) require a sponsor (or, in the case of health
4 insurance coverage offered to students through an
5 institution of higher education, the institution of
6 higher education offering such coverage) to sponsor,
7 purchase, or provide any health benefits coverage or
8 group health plan that includes coverage of an abor-
9 tion or other item or service to which such sponsor
10 or institution, respectively, has a moral or religious
11 objection, or prevent an issuer from offering or
12 issuing to such sponsor or institution, respectively,
13 health insurance coverage that excludes such item or
14 service;

15 “(3) require an issuer of health insurance cov-
16 erage or the sponsor of a group health plan to in-
17 clude, in any such coverage or plan, coverage of an
18 abortion or other item or service to which such
19 issuer or sponsor has a moral or religious objection;
20 or

21 “(4) authorize the imposition of a tax, penalty,
22 fee, fine, or other sanction, or the imposition of cov-
23 erage of the item or service to which there is a moral
24 or religious objection, in relation to health insurance

1 coverage or a group health plan that excludes an
2 item or service pursuant to this section.

3 “(b) RESTRICTION ON CONTRARY GOVERNMENTAL
4 ACTION.—No provision in this title (or amendment made
5 by this title) or law, regulation, guideline or other govern-
6 mental action that implements such provision or amend-
7 ment, or derives its authority therefrom, shall be given
8 legal effect to the extent that it violates this section.

9 “(c) NO EFFECT ON OTHER LAWS.—Nothing in this
10 section shall be construed to preempt, modify, or otherwise
11 have any effect on—

12 “(1) the Civil Rights Act of 1964;

13 “(2) the Americans with Disabilities Act of
14 1990;

15 “(3) the Pregnancy Discrimination Act of 1978;

16 “(4) the Mental Health Parity Act of 1996; or

17 “(5) any other State or Federal law, other than
18 a provision in this title (or an amendment made by
19 this title) or a law, regulation, guideline or other
20 governmental action that implements such provision
21 or amendment or derives its authority therefrom.

22 “(d) AGGREGATE ACTUARIAL VALUE.—Nothing in
23 this section shall be construed to prohibit the Secretary
24 from issuing regulations or other guidance to ensure that
25 health insurance coverage or group health plans excluding

1 abortion or other items or services under this section shall
 2 have an aggregate actuarial value at least equivalent to
 3 that of health insurance coverage or group health plans
 4 at the same level of coverage that do not exclude such
 5 items or services.

6 “(e) CONTINUED APPLICATION OF NONDISCRIMINA-
 7 TION RULES.—Nothing in this section shall be construed
 8 to permit a health insurance issuer, group health plan, or
 9 other health care provider to act in a manner inconsistent
 10 with subparagraph (B) or (D) of section 1302(b)(4).”.

11 (b) CLERICAL AMENDMENT.—The table of contents
 12 of the Patient Protection and Affordable Care Act (Public
 13 Law 111–148) is amended—

14 (1) by striking the following items:

“1563. Conforming amendments.

“1563. Sense of the Senate promoting fiscal responsibility.”;

15 and

16 (2) by inserting after the item relating to the
 17 section 1563 relating to small business procurement
 18 the following items:

“1564. Conforming amendments.

“1565. Sense of the Senate promoting fiscal responsibility.

“1566. Respecting conscience rights in health coverage.”.

19 **SEC. 4. ABORTION NONDISCRIMINATION FOR HEALTH**
 20 **CARE PROVIDERS.**

21 Section 245 of the Public Health Service Act (42
 22 U.S.C. 238n) is amended—

1 (1) in the section heading, by striking “**AND**
2 **LICENSING OF PHYSICIANS**” and inserting “, **LI-**
3 **CENSING, AND PRACTICE OF PHYSICIANS AND**
4 **OTHER HEALTH CARE ENTITIES**”;

5 (2) in subsection (a), by amending paragraph
6 (1) to read as follows:

7 “(1) the entity refuses—

8 “(A) to undergo training in the perform-
9 ance of induced abortions;

10 “(B) to require or provide such training;

11 “(C) to perform, participate in, provide
12 coverage of, or pay for induced abortions; or

13 “(D) to provide referrals for such training
14 or such abortions;”;

15 (3) in subsection (b)(1), by striking “stand-
16 ards” and inserting “standard”;

17 (4) in subsection (c), by amending paragraphs
18 (1) and (2) to read as follows:

19 “(1) The term ‘financial assistance’, with re-
20 spect to a government program, means governmental
21 payments to cover the cost of health care services or
22 benefits, or other Federal payments, grants, or loans
23 to promote or otherwise facilitate health-related ac-
24 tivities.

1 “(2) The term ‘health care entity’ includes an
2 individual physician or other health professional, a
3 postgraduate physician training program, a partici-
4 pant in a program of training in the health profes-
5 sions, a hospital, a provider-sponsored organization
6 as defined in section 1855(d) of the Social Security
7 Act, a health maintenance organization, an account-
8 able care organization, an issuer of health insurance
9 coverage, any other kind of health care facility, orga-
10 nization, or plan, and an entity that provides or au-
11 thorizes referrals for health care services.”;

12 (5) by adding at the end of subsection (c) the
13 following new paragraph:

14 “(4) The term ‘State or local government that
15 receives Federal financial assistance’ includes any
16 agency or other governmental unit of a State or
17 local government if such government receives Fed-
18 eral financial assistance.”;

19 (6) by redesignating subsection (c) as sub-
20 section (d); and

21 (7) by inserting after subsection (b) the fol-
22 lowing new subsection:

23 “(c) ADMINISTRATION.—The Secretary shall des-
24 ignate the Director of the Office for Civil Rights of the
25 Department of Health and Human Services—

1 “(1) to receive complaints alleging a violation of
 2 this section, section 1566 of the Patient Protection
 3 and Affordable Care Act, or any of subsections (b)
 4 through (e) of section 401 of the Health Programs
 5 Extension Act of 1973; and

6 “(2) to pursue the investigation of such com-
 7 plaints, in coordination with the Attorney General.”.

8 **SEC. 5. REMEDIES FOR VIOLATIONS OF FEDERAL CON-**
 9 **SCIENCE LAWS.**

10 Title II of the Public Health Service Act (42 U.S.C.
 11 202 et seq.) is amended by inserting after section 245 the
 12 following:

13 **“SEC. 245A. CIVIL ACTION FOR CERTAIN VIOLATIONS.**

14 “(a) IN GENERAL.—A qualified party may, in a civil
 15 action, obtain appropriate relief with regard to a des-
 16 ignated violation.

17 “(b) DEFINITIONS.—In this section—

18 “(1) the term ‘qualified party’ means—

19 “(A) the Attorney General; or

20 “(B) any person or entity adversely af-
 21 fected by the designated violation; and

22 “(2) the term ‘designated violation’ means an
 23 actual or threatened violation of section 245 of this
 24 Act, section 1566 of the Patient Protection and Af-
 25 fordable Care Act, or any of subsections (b) through

1 (e) of section 401 of the Health Programs Extension
2 Act of 1973.

3 “(c) ADMINISTRATIVE REMEDIES NOT REQUIRED.—
4 An action under this section may be commenced, and relief
5 may be granted, without regard to whether the party com-
6 mencing the action has sought or exhausted available ad-
7 ministrative remedies.

8 “(d) DEFENDANTS IN ACTIONS UNDER THIS SEC-
9 TION MAY INCLUDE GOVERNMENTAL ENTITIES AS WELL
10 AS OTHERS.—

11 “(1) IN GENERAL.—An action under this sec-
12 tion may be maintained against, among others, a
13 party that is a Federal or State governmental entity.
14 Relief in an action under this section may include
15 money damages even if the defendant is such a gov-
16 ernmental entity.

17 “(2) DEFINITION.—For the purposes of this
18 subsection, the term ‘State governmental entity’
19 means a State, a local government within a State,
20 or any agency or other governmental unit or author-
21 ity of a State or of such a local government.

22 “(e) NATURE OF RELIEF.—The court shall grant—

23 “(1) all necessary equitable and legal relief, in-
24 cluding, where appropriate, declaratory relief and
25 compensatory damages, to prevent the occurrence,

1 continuance, or repetition of the designated violation
2 and to compensate for losses resulting from the des-
3 ignated violation; and

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

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