

JULY 8, 2016

RULES COMMITTEE PRINT 114-61
TEXT OF S. 304, MOTOR VEHICLE SAFETY
WHISTLEBLOWER ACT

[Showing the text of the Conscience Protection Act of 2016.]

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
11 civil 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*,
17 410 U.S. 113, 164 (1973). The Court cited with ap-
18 proval a policy that “neither physician, hospital, nor

1 hospital personnel shall be required to perform any
2 act violative of personally-held moral principles”,
3 410 U.S. at 143 n. 38, and cited State laws uphold-
4 ing this principle. *Doe v. Bolton*, 410 U.S. 179,
5 197–8 (1973).

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

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

19 (5) Defying the Federal Weldon amendment,
20 California’s Department of Managed Health Care
21 has mandated coverage for all elective abortions in
22 all health plans under its jurisdiction. Other States
23 such as New York and Washington have taken or
24 considered similar action, and some States may go
25 farther to require all physicians and hospitals to pro-

1 vide or facilitate abortions. On June 21, 2016, the
2 Administration concluded a nearly two-year inves-
3 tigation of this matter by determining that Califor-
4 nia's decision to require insurance plans under the
5 California Department for Managed Health Care au-
6 thority to cover all legal abortion services did not
7 violate the Weldon amendment. This interpretation
8 means that individuals will have to choose between
9 ignoring their conscience or forgoing health care cov-
10 erage.

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

17 (7) A health care provider's decision not to par-
18 ticipate in an abortion, like Congress's decision not
19 to fund most abortions, erects no new barrier to
20 those seeking to perform or undergo abortions but
21 leaves 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–
5 77 (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 govern-
21 ment that receives Federal financial assistance, may not
22 penalize, retaliate against, or otherwise discriminate
23 against a health care provider on the basis that the pro-
24 vider does not—

1 “(1) perform, refer for, pay for, or otherwise
2 participate in abortion;

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

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

6 “(b) RULE OF CONSTRUCTION.—Nothing in this sec-
7 tion shall be construed—

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

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

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

24 “(4) to affect, or be affected by, section 1867
25 of the Social Security Act (42 U.S.C. 1395dd, com-

1 monly referred to as the ‘Emergency Medical Treat-
2 ment and Active Labor Act’); or

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

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

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

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

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

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

22 “(2) HEALTH CARE PROVIDER.—The term
23 ‘health care provider’ means—

24 “(A) an individual physician, nurse, or
25 other health care professional;

1 “(B) a hospital, health system, or other
2 health care facility or organization (including a
3 party to a proposed merger or other collabo-
4 rative arrangement relating to health services,
5 and an entity resulting therefrom);

6 “(C) a provider-sponsored organization, an
7 accountable care organization, or a health
8 maintenance organization;

9 “(D) a social services provider that pro-
10 vides or authorizes referrals for health care
11 services;

12 “(E) a program of training in the health
13 professions or an applicant to or participant in
14 such a program;

15 “(F) an issuer of health insurance cov-
16 erage; or

17 “(G) a group health plan or student health
18 plan, or a sponsor or administrator thereof.

19 “(3) STATE OR LOCAL GOVERNMENT THAT RE-
20 CEIVES FEDERAL FINANCIAL ASSISTANCE.—The
21 term ‘State or local government that receives Fed-
22 eral financial assistance’ includes every agency and
23 other governmental unit and subdivision of a State
24 or local government, if such State or local govern-
25 ment, or any agency or governmental unit or sub-

1 division thereof, receives Federal financial assist-
2 ance.

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

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

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

8 “(1) QUALIFIED PARTY.—The term ‘qualified
9 party’ means—

10 “(A) the Attorney General of the United
11 States; or

12 “(B) any person or entity adversely af-
13 fected by the designated violation.

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

17 “(A) section 245 or 245A of this Act; or

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

21 “(c) ADMINISTRATIVE REMEDIES NOT REQUIRED.—

22 An action under this section may be commenced, and relief
23 may be granted, without regard to whether the party com-
24 mencing the action has sought or exhausted available ad-
25 ministrative remedies.

1 “(d) DEFENDANTS IN ACTIONS UNDER THIS SEC-
2 TION MAY INCLUDE GOVERNMENTAL ENTITIES AS WELL
3 AS OTHERS.—

4 “(1) IN GENERAL.—An action under this sec-
5 tion may be maintained against, among others, a
6 party that is a Federal or State governmental entity.
7 Relief in an action under this section may include
8 money damages even if the defendant is such a gov-
9 ernmental entity.

10 “(2) DEFINITION.—For the purposes of this
11 subsection, the term ‘State governmental entity’
12 means a State, a local government within a State,
13 and any agency or other governmental unit or sub-
14 division of a State or of such a local government.

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

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

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

