

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

House Bill 5440

By Delegate Pinson

[Introduced February 11, 2026; referred to the
Committee on Health and Human Resources then the
Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new article,
 2 designated §16-1D-1, §16-1D-2, §16-1D-3, §16-1D-4, §16-1D-5, §16-1D-6, §16-1D-7,
 3 §16-1D-8, and §16-1D-9, relating to establishing the Medical Ethics Defense Act; providing
 4 short title; establishing legislative findings and purpose; defining terms; establishing
 5 recognition of rights of conscience of healthcare providers; establishing whistleblower
 6 protections; establishing free speech protections; providing civil remedies; providing for
 7 severability; and setting an effective date

Be it enacted by the Legislature of West Virginia:

ARTICLE 1D. MEDICAL DEFENSE ETHICS ACT.

§16-1D-1. Short title.

1 This article may be known and cited as the "Medical Ethics Defense Act."

§16-1D-2. Legislative findings and purpose.

1 (a) The Legislature finds that the right of conscience is a fundamental and unalienable
 2 right. It was central to the founding of the United States, has been deeply rooted in our Nation's
 3 history and tradition for centuries, and has been central to the practice of medicine—through the
 4 Hippocratic Oath—for millennia.

5 (b) Despite its preeminent importance, however, threats to the right of conscience of
 6 healthcare professionals, healthcare institutions, and healthcare payers have become
 7 increasingly common and severe in recent years. The swift pace of scientific advancement and the
 8 expansion of medical capabilities—along with the creation of new rights for patients to access
 9 certain procedures and the mistaken notion that healthcare professionals, healthcare institutions,
 10 and healthcare payers are mere public utilities—promise to make the current crisis worse, unless
 11 something is done to secure the right of conscience.

12 (c) With this purpose in mind, the Legislature declares that it is the public policy of West
 13 Virginia to protect the right of conscience for healthcare professionals, healthcare institutions, and
 14 healthcare payers.

15 (d) As the right of conscience is fundamental, no healthcare professional, healthcare
16 institution, or healthcare payer should be required to participate in or pay for any medical
17 procedure, treatment, or service, or prescribe or pay for any medication to which he, she, or it
18 objects on the basis of conscience, whether such conscience is informed by religious, moral, or
19 ethical beliefs or principles.

20 (e) It is the purpose of this [Act] to protect healthcare professionals, healthcare institutions,
21 and healthcare payers from discrimination, punishment, and retaliation as a result of any instance
22 of conscientious medical objection.

§16-1D-3.

Definitions.

1 (a) "Conscience" means the ethical, moral, or religious beliefs or principles held by a
2 healthcare provider. Conscience with respect to institutional entities or corporate bodies, as
3 opposed to individuals, is determined by reference to that entity or body's governing documents,
4 including, but not limited to, ethical, moral, or religious guidelines, directives, mission statements,
5 constitutions, articles of incorporation, bylaws, policies, or regulations.

6 (b) "Discrimination" and "discriminated against" mean any adverse action taken against, or
7 any threat of adverse action communicated to, any healthcare provider as a result of their
8 exercising their right protected in §16-1D-4(a) of this code. Discrimination includes, but is not
9 limited to, any penalty, disciplinary, or retaliatory action, whether executed or threatened.
10 Discrimination does not include the negotiation or purchase of, or the refusal to use or purchase,
11 insurance or medical procedures, treatments, or services by an individual or non-government
12 entity; nor does it include good faith efforts to accommodate conscientious objections of a
13 healthcare provider.

14 (c) "Healthcare provider" means a healthcare professional, healthcare institution, or
15 healthcare payer.

16 (d) "Healthcare professional" means any person who is authorized to participate in any
17 way in any medical procedure, treatment, or service. This includes, but is not limited to, doctors;

18 nurses; nurse aides; physician assistants; medical assistants; allied health professionals;
19 employees of a hospital, clinic, nursing home, or pharmacy; pharmacists and pharmacy
20 technicians; faculty and students of a medical school, nursing school, or school of psychology or
21 counseling; medical researchers; laboratory technicians; psychologists; psychiatrists; counselors;
22 mental health professionals; and social workers.

23 (e) "Healthcare institution" means any organization, corporation, partnership, association,
24 agency, network, sole proprietorship, joint venture, or other entity that provides medical
25 procedures, treatments, or services.

26 (f) "Healthcare payer" means any employer, health plan, health maintenance organization,
27 insurance company, management services organization, or any other entity that pays for any
28 medical procedure, treatment, or service provided to any patient or client, including to contract for,
29 arrange for payment of, reimburse, or remunerate, whether payment is made in whole or in part.

30 (g) "Medical procedure, treatment, or service" means medical research or healthcare
31 provided to any patient or client at any time over the course of treatment. This includes, but is not
32 limited to, testing; diagnosis; record-making; referral; prescribing, dispensing, or administering any
33 drug, medication, or device; therapy or counseling; and preparation or arrangement for a surgical
34 procedure.

35 (h) "Participate" in a medical procedure, treatment, or service means to provide, perform,
36 assist with, facilitate, refer for, counsel for, advise with regard to, admit for the purposes of
37 providing, or take part in any way in providing any medical procedure, treatment, or service.

§16-1D-4. Rights of Conscience of Healthcare Providers.

1 (a) Right of Conscience. A healthcare provider shall not be required to participate in or pay
2 for a medical procedure, treatment, or service that violates their conscience.

3 (1) Limited to Specific Medical Procedures, Treatments, or Services. The right protected
4 herein is limited to a particular medical procedure, treatment, or service. The right does not waive
5 or modify any duty a healthcare provider may have to provide or pay for medical procedures,

6 treatments, or services that do not violate their conscience.

7 (2) Limitations When Contractually Obligated to Pay. The right does not allow a healthcare
8 payer to decline payment for a medical procedure, treatment, or service it is contractually
9 obligated to pay for under the terms of its contract with an insured party.

10 (b) Discrimination. No healthcare provider shall be discriminated against in any manner as
11 a result of exercising the right protected in subsection (a) of this section.

12 (c) Immunity from Liability for Right of Conscience. No healthcare provider shall be civilly,
13 criminally, or administratively liable for exercising the right protected in subsection (a) of this
14 section.

15 (1) Immunity from Liability for Employer. No healthcare institution shall be civilly, criminally,
16 or administratively liable for the exercise of the right protected in subsection (a) of this section by a
17 healthcare professional employed, contracted, or granted admitting privileges by the healthcare
18 institution.

19 (d) Exception.

20 (1) Religious Institutions. Nothing in this Act shall be interpreted to undermine the right of a
21 religious healthcare provider to make employment, staffing, contracting, administrative, and
22 admitting privilege decisions consistent with its religious beliefs if it holds itself out to the public as
23 religious and has internal operating policies or procedures that implement its religious purpose or
24 mission.

25 (2) Emergency Medical Treatments. Nothing herein shall be construed to conflict with the
26 requirements of the Emergency Medical Treatment and Labor Act, 42 U.S.C. § 1395dd.

§16-1D-5. Whistleblower Protections.

1 (a) Whistleblower Protection for Violations of Act. No healthcare provider shall be
2 discriminated against because the healthcare provider:

3 (1) Provided, caused to be provided, or is about to provide or cause to be provided
4 information relating to any act or omission the healthcare provider reasonably believes to be a

5 violation of any provision of this Act to his or her employer, the Attorney General, any state agency
6 charged with protecting health care rights of conscience, the U.S. Department of Health and
7 Human Services, Office of Civil Rights, or any other federal agency charged with protecting
8 healthcare rights of conscience; or

9 (2) Testified, assisted, or participated, or is about to testify, assist, or participate, in a
10 proceeding concerning such violation.

11 (b) Whistleblower Protection for Other Violations. Unless the disclosure is specifically
12 prohibited by law, no healthcare provider shall be discriminated against because the healthcare
13 provider discloses information, including by a formal or informal communication, transmission, or
14 discussion, that the healthcare provider reasonably believes evinces:

15 (1) Any violation of any law, rule, or regulation;

16 (2) Any violation of any ethical guidelines for the provision of any medical procedure,
17 treatment, or service; or

18 (3) Gross mismanagement, a gross waste of funds, an abuse of authority, practices or
19 methods of treatment that may put patient health at risk, or a substantial and specific danger to
20 public health or safety.

21 (4) Limitation. Subsection (b) of this section shall not apply when the disclosure concerns
22 the lawful exercise of discretionary decision-making authority unless the healthcare provider
23 reasonably believes that the disclosure evinces a violation or misconduct listed in subsection (b)
24 (1) to (3) of this section.

§16-1D-6. Free speech protections.

1 (a) Free Speech Protected from State Violation. A state subdivision, including but not
2 limited to the Department of Health and the Board of Medicine, or any other department or board
3 regulating the practice of a medical procedure, treatment, or service in the state may not
4 reprimand or sanction a healthcare provider, nor deny or revoke or threaten to deny or revoke a
5 license, certification, or registration of, or otherwise discriminate against, a healthcare provider for

6 engaging in speech, expression, or association that is protected from government interference by
7 the First Amendment to the U.S. Constitution, unless the state subdivision, department, or board
8 demonstrates by clear and convincing evidence that the healthcare provider's, speech,
9 expression, or association was the direct cause of physical harm to a person with whom the
10 healthcare provider had a practitioner-patient relationship within the three years immediately
11 preceding the incident of physical harm.

12 (b) No State Support of Specialty Board Free Speech Violations. A state subdivision shall
13 not contract with, nor shall it recognize, approve, or require an individual to obtain certifications or
14 credentials issued or approved by, a specialty board or other recognizing agency that revokes the
15 certification of, or refuses to issue certification to, an individual because the individual has
16 engaged in speech, expression, or association that is protected from government interference by
17 the First Amendment to the U.S. Constitution, provided such individual was not providing medical
18 advice or treatment to a specific patient.

19 (c) Notice of Speech-based Complaints. A state subdivision, including but not limited to the
20 Department of Health and the Board of Medicine, or any other department or board regulating the
21 practice of a medical procedure, treatment, or service in the state, and any specialty board or other
22 recognizing agency approved or recognized by any state subdivision, must provide a healthcare
23 provider with any complaints it has received which are based on speech, expression, or
24 association that is protected from government interference by the First Amendment to the U.S.
25 Constitution and may result in the revocation of the healthcare provider's license, certification, or
26 registration, within 21 days after receipt of the complaint. The state subdivision, specialty board, or
27 recognizing agency must pay the healthcare provider an administrative penalty of \$500 for each
28 day the complaint is not provided to the healthcare provider after the specified 21 days.

§16-1D-7. Civil remedies.

1 (a) Civil Action for Violation of Right of Conscience. Any party aggrieved by any violation of
2 this Act may commence a civil action and shall be entitled—upon the finding of a violation—to

3 injunctive and declaratory relief, and to recover damages sustained, along with the costs of the
4 action and reasonable attorney's fees. Such damages shall be cumulative and in no way limited by
5 any other remedies which may be available under any other federal, state, or municipal law.

6 (b) Any additional burden or expense on another healthcare provider arising from the
7 exercise of the right of conscience protected in this Act shall not be a defense to any violation of
8 this Act.

9 (c) No civil action may be brought against an individual who declines to use or purchase a
10 medical procedure, treatment, or service from a specific healthcare provider for exercising the
11 rights granted in §16-1D-4(a) of this code.

§16-1D-8. Severability.

1 Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to
2 any person or circumstance, shall be construed so as to give it the maximum effect permitted by
3 law, unless such holding shall be one of utter invalidity or unenforceability, in which event such
4 provision shall be deemed severable herefrom and shall not affect the remainder hereof or the
5 application of such provision to other persons not similarly situated or to other, dissimilar
6 circumstances.

§16-1D-9. Effective date.

1 This Act takes effect on July 1, 2026.

NOTE: The purpose of this bill is to establish the Medical Ethics Defense Act.

Strike-throughs indicate language that would be stricken from a heading or the present law
and underscoring indicates new language that would be added.