AN ACT relating to the recruitment and retention of medical professionals and
declaring an emergency.

WHEREAS, Kentucky has a statewide hospital workforce vacancy rate of 17.1
percent; and

WHEREAS, many faith-based medical organizations would rather stop practicing
medicine than be forced to violate their conscience; and

WHEREAS, it is common for doctors, medical students, and other health care
professionals to face discrimination for declining to participate in activities or provide
medical procedures to which they have moral or religious objections; and

WHEREAS, forcing doctors, nurses, and other health care professionals to violate
their conscience could exacerbate and lead to additional increases in shortages, depriving
Kentucky patients of critical care; and

WHEREAS, neighboring states have provided comprehensive protections for rights
of conscience in the practice of medicine since as early as 1977; and

WHEREAS, Kentucky law does not currently provide a legal remedy for health
care professionals who are forced to violate their conscience; and

WHEREAS, Kentucky patients benefit from conscience-informed medical care;
and

WHEREAS, Section 5 of the Constitution of Kentucky requires that "No human
authority shall, in any case whatever, control or interfere with the rights of conscience.";
and

WHEREAS, conscience-driven health care professionals care for patients even
when they cannot according to their conscience provide particular medical procedures;
and

WHEREAS, the federal Emergency Medical Treatment and Active Labor Act
requires treatment for emergency medical conditions, and only nonemergency medical
services can be declined for reasons of conscience;
NOW, THEREFORE,

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 344 IS CREATED TO READ AS FOLLOWS:

Nothing in Sections 1 to 6 of this Act shall be construed to override the requirement to:

(1) Provide emergency medical treatment to all patients as set forth in 42 U.S.C. sec. 1395dd or any other federal law governing emergency medical treatment; or

(2) Conduct examinations and collect evidence set forth in federal law governing sexual assault crimes.

SECTION 2. A NEW SECTION OF KRS CHAPTER 344 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 6 of this Act:

(1) "Conscience" means the sincerely held religious, moral, or ethical principles held by a medical practitioner, a health care institution, or a health care payer. For purposes of Sections 1 to 6 of this Act, a health care institution or health care payer's conscience shall be determined by reference to its existing or proposed governing documents, including religious, moral, or ethical guidelines, mission statement, constitution, bylaws, articles of incorporation, policies, regulations, or other relevant documents;

(2) "Disclosure" means a formal or informal communication or transmission, but does not include a communication or transmission concerning policy decisions that lawfully exercise discretionary authority, unless the medical practitioner providing the communication or transmission reasonably believes that the communication or transmission evinces:

(a) A violation of any law, rule, or regulation;

(b) A violation of any standard of care or other ethical guidelines for the provision of any medical service; or
(c) Gross mismanagement, a gross waste of funds, an abuse of authority,
practices or methods of treatment that may put patient health at risk, or a
substantial and specific danger to public health or safety;

(3) "Discrimination" means any adverse action taken against, or any threat of
adverse action communicated to, a medical practitioner, health care institution,
or health care payer as a result of his, her, or its decision to decline to participate
in a medical service on the basis of conscience. "Discrimination" includes but is
not limited to:

(a) Termination of employment;
(b) Transfer or demotion from current position;
(c) Adverse administrative action;
(d) Reassignment to a different shift or job title;
(e) Refusal of staff privileges;
(f) Refusal of board certification;
(g) Loss of career specialty;
(h) Reduction of wages, benefits, or privileges;
(i) Refusal to award a grant, contract, or other program;
(j) Refusal to provide residency training opportunities;
(k) Denial, deprivation, or disqualification of licensure;
(l) Withholding or disqualifying from financial aid and other assistance;
(m) Reducing, excluding, terminating, materially altering the terms of
conditions of, or otherwise making unavailable or denying, any grant,
contract, subcontract, cooperative agreement, guarantee, loan, or other
similar program or benefit;
(n) Impediments to creating any health care institution or payer or expanding
or improving that health care institution or payer;
(o) Impediments to acquiring, associating with, or merging with any other
health care institution or payer;

(p) The threat with regard to any of the actions in paragraphs (a) to (o) of this subsection; or

(q) Any other penalty, disciplinary, or retaliatory action, whether executed or threatened;

(4) "Health care institution" means any public or private hospital, clinic, medical center, professional association, ambulatory surgical center, private physician's office, pharmacy, nursing home, medical school, nursing school, medical training facility, or any other entity or location in which medical services are performed on behalf of any person. "Health care institutions" includes but is not limited to organizations, corporations, partnerships, associations, agencies, networks, sole proprietorships, joint ventures, or any other entity that provides medical services;

(5) "Medical practitioner" means any person or individual who may be or is asked to participate in a medical service. "Medical practitioner" includes but is not limited to doctors, nurses, practitioners, physician's assistants, nurses, nurse's aides, allied health professionals, medical assistants, hospital employees, clinic employees, nursing home employees, pharmacists, pharmacy technicians and employees, medical school faculty and students, nursing faculty and students, psychology and counseling faculty and students, medical researchers, laboratory technicians, counselors, social workers, or any other person who facilitates or participates in the provision of health care to any person;

(6) "Medical service" means medical care provided to any patient at any time over the entire course of treatment or medical research, including but not limited to:

(a) Testing;

(b) Diagnosis;

(c) Referral;
(d) Dispensing or administering any drug, medication, or device;

(e) Psychological therapy or counseling;

(f) Recordkeeping procedures;

(g) Notes related to treatments;

(h) Research;

(i) Prognosis;

(j) Therapy;

(k) Creating medical records; or

(l) Any other medical care or necessary medical services performed or provided by any medical practitioner;

(7) "Participate in a medical service" means to provide, perform, assist with, facilitate, refer for, counsel for, consult with regard to, admit for the purposes of providing, or take part in any way in providing, any medical service or any form of such a service; and

(8) "Regulated healthcare entity" means any medical practitioner, health care institution, or health care payer that is certified, authorized, or licensed by the Commonwealth of Kentucky, or that receives any form of state funding or state insurance reimbursement.

 SECTION 3. A NEW SECTION OF KRS CHAPTER 344 IS CREATED TO READ AS FOLLOWS:

(1) A medical practitioner or health care institution shall have the right to not participate in or pay for any medical service which violates his, her, or its conscience. A health care payer shall not decline to pay for a medical procedure or service it is contractually obligated to pay for under the terms of its contract with an insured party.

(2) A medical practitioner or health care institution shall not be liable civilly, criminally, or administratively for exercising his, her, or its right of conscience
with respect to a medical service.

(3) A medical practitioner or health care institution shall not be subject to discrimination in any manner by the Commonwealth, any of its political subdivisions, or any regulated health care entity as a result of his, her, or its decision to decline to participate in a medical service on the basis of conscience.

(4) The exercise of the right of conscience is limited to conscience-based objections to a particular medical procedure or service. This section shall not be construed to waive or modify any duty a health care practitioner or health care institution may have to provide other medical procedures or services that do not violate the practitioner’s or institution’s conscience.

SECTION 4. A NEW SECTION OF KRS CHAPTER 344 IS CREATED TO READ AS FOLLOWS:

(1) A medical practitioner shall not be discriminated against because he or she:

(a) Provided, caused to be provided, or is about to provide to his or her employer, the Attorney General, any agency of the Commonwealth charged with protecting health care rights of conscience, the United States Department of Health and Human Services, Office for Civil Rights, or any other federal agency charged with protecting health care rights of conscience with information relating to any violation, act, or omission the medical practitioner reasonably believes to be a violation of any provision of Sections 1 to 6 of this Act;

(b) Testified or is about to testify in a proceeding concerning a violation; or

(c) Assisted, participated, or is about to assist or participate in related proceedings.

(2) Unless the disclosure is prohibited by law, a medical practitioner shall not be discriminated against because he or she disclosed information that he or she reasonably believes evinces:
(a) A violation of a relevant law, rule, or regulation;

(b) A violation of a standard of care or other ethical guideline for the provision of medical services; or

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

SECTION 5. A NEW SECTION OF KRS CHAPTER 344 IS CREATED TO READ AS FOLLOWS:

(1) The State Board of Medical Licensure shall not reprimand, sanction, deny, revoke or threaten to revoke a license, certification, or registration of a medical practitioner for engaging in speech or expressive activity that is protected by the First Amendment to the United States Constitution, unless the board demonstrates beyond a reasonable doubt that the medical practitioner’s speech was the direct cause of physical harm to a person with whom the practitioner had a practitioner-patient relationship within the three (3) years immediately preceding the incident of physical harm.

(2) The State Board of Medical Licensure shall provide a medical practitioner with any complaints it has received which may result in the revocation of the medical practitioner’s license, certification, or registration within twenty-one (21) days after receipt of the complaint. The board shall pay the medical practitioner an administrative penalty of five hundred dollars ($500) for each day the complaint is not provided to the medical practitioner after the specified twenty-one (21) day period.

SECTION 6. A NEW SECTION OF KRS CHAPTER 344 IS CREATED TO READ AS FOLLOWS:

(1) Any person injured by a violation of Sections 1 to 6 of this Act shall have a civil cause of action in the Circuit Court of competent jurisdiction to enjoin further
violations, to recover the actual damages sustained, and to recover the costs of the
lawsuit and to provide any other appropriate relief, which may include
reinstatement of a medical practitioner to his or her previous position,
reinstatement of board certification, and relicensure of a health care institution
or health care payer.

(2) If a violation is found to have occurred, the court's order or judgment shall
include a reasonable attorney's fee.

(3) Any additional burden or expense on another medical practitioner, health care
institution, or health care payer arising from the exercise of the right of
conscience shall not be a defense to any violation of Sections 1 to 6 of this Act.

Section 7. If any provision of this Act or the application thereof to any person
or circumstance is held invalid, the invalidity shall not affect other provisions or
applications of the Act that can be given effect without the invalid provision or
application, and to this end the provisions of this Act are severable.

Section 8. This Act may be cited as the Healthcare Heroes Recruitment and
Retention Act.

Section 9. Whereas it is crucial that the Commonwealth's regulatory policies
reflect the statutory intent of the General Assembly, an emergency is declared to exist,
and this Act takes effect upon its passage and approval by the Governor or upon its
otherwise becoming a law.