

1 AN ACT relating to mental health counseling services and declaring an emergency.

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

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

5 *As used in Sections 1 to 3 of this Act:*

6 *(1) "Discriminate":*

7 *(a) Means to take any adverse action against, or communicate any threat of*  
8 *adverse action to, a mental health care professional or mental health care*  
9 *institution as a result of exercising the rights provided under Sections 1 to 3*  
10 *of this Act; and*

11 *(b) Includes but is not limited to any penalty, disciplinary or retaliatory action,*  
12 *or any reduction, withholding, exclusion, termination, or otherwise denying*  
13 *or making unavailable, any funding, contract, or agreement, whether*  
14 *executed or threatened;*

15 *(2) "Hiring or licensing authority" means any official, board, commission, or*  
16 *department of the Commonwealth of Kentucky, its agencies, or political*  
17 *subdivisions, responsible by law for the hiring of persons for public employment*  
18 *or the licensing of persons for occupations;*

19 *(3) "Mental health care institution " means any entity that provides mental health*  
20 *care services including but not limited to organizations, corporations,*  
21 *partnerships, associations, agencies, networks, sole proprietorships, and joint*  
22 *ventures;*

23 *(4) "Mental health care professional" means any person who is authorized by law to*  
24 *provide or participate in a mental health care service;*

25 *(5) "Mental health care service" means mental health care provided to any patient or*  
26 *client at any time over the entire course of treatment including but not limited to*  
27 *diagnosis, referral, or mental health therapy or counseling;*

1 (6) "Protected counseling service" means counseling, talk therapy, or other speech-  
2 based mental health service performed with the goal or purpose to relieve  
3 discomfort or distress caused by an individual's sex or romantic or sexual  
4 attraction, provided that the service involves no obscene materials or aversive  
5 treatments that inflict physical discomfort or pain, or require any lewd or  
6 lascivious conduct; and

7 (7) "Regulated health care entity" means any health care professional or health care  
8 institution that is certified, authorized, or licensed by the Commonwealth of  
9 Kentucky, or that receives any form of state funding or state insurance  
10 reimbursement.

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

13 (1) Notwithstanding any other law, administrative regulation, or order to the  
14 contrary, the Commonwealth, any of its agencies or political subdivisions,  
15 including any hiring or licensing authority, or any regulated health care entity  
16 shall not:

17 (a) Discriminate against any:

18 1. Mental health care professional or mental health care institution for  
19 providing protected counseling services;

20 2. Individual or organization that provides information, training,  
21 referrals, or other support for protected counseling services;

22 3. Parent or guardian of a child for consenting to the child receiving or  
23 helping the child receive protected counseling services; or

24 4. Ordained ministry or the denominational equivalent from providing  
25 protected counseling services as part of pastoral counseling under  
26 KRS Chapter 335; or

27 (b) Solely on the basis that the mental health care professional or mental health

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care institution provides protected counseling services:

- 1. Report or investigate a mental health care professional or mental health care institution to any hiring or licensing authority; or
- 2. Deny a mental health care professional or mental health care institution eligibility for state or federal funds.

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

Any person injured by a violation of Sections 1 to 3 of this Act shall have a civil cause of action in Circuit Court to:

- (1) Enjoin further violations;
- (2) Recover actual damages sustained;
- (3) Recover the costs of the action including reasonable attorney's fees; and
- (4) Obtain any other appropriate relief, which may include reinstatement of a mental health care professional to his or her previous position, reinstatement of board certification, or relicensure of a mental health care institution.

➔Section 4. 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 5. This Act may be cited as the Mental Health Counseling Protection Act.

➔Section 6. Whereas Kentucky has a paramount interest in improving the landscape of its mental health care services by protecting patient and client autonomy, 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.