Title 10.
Chapter 7. (New)
Freedom of
Reproductive
Choice
§§1.2
C.10:7-1 and
10:7-2
§3
C.26:2S-39
§4
C.52:14-17.29hh
§5
C.52:14-17.46.6q

(CORRECTED COPY)
P.L. 2021, CHAPTER 375, approved January 13, 2022
Senate, No. 49

AN ACT concerning freedom of reproductive choice and
supplementing Title 10 of the Revised Statutes, P.L.1997, c.192
(C.26:2S-1 et seq.), and Title 52 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State
of New Jersey:

1. The Legislature finds and declares that:
a. In cases such as Right to Choose v. Byrne, 91 N.J. 287 (1982)
the New Jersey Supreme Court has recognized that the right to
reproductive choice is a fundamental right enshrined in the State
Constitution, that this right is independent of the United States
Constitution, and that Article I, paragraph 1 of the New Jersey
Constitution is independent of, and protects reproductive autonomy
to an extent that exceeds the protections established under, the United
States Constitution.
b. The New Jersey Supreme Court has found that the right to
reproductive choice includes the right to determine whether and when
to bear children. In particular, the citizens of New Jersey may:
access contraception, including emergency contraception; may not be
denied public benefits based on the choice to have additional
children; may choose to terminate a pregnancy; and may choose to
carry a pregnancy to term.
c. Self-determination in reproductive choice is key to helping
establish equality among the genders and to allowing all people of
childbearing age to participate equally in the economic and social life
of the United States and the State of New Jersey.
d. An unplanned pregnancy can disrupt educational and career
plans, forcing the pregnant person to drop out of school, abandon
pursuit of a college or advanced degree, accept lower-paying
employment or employment with limited opportunities for
advancement, or delay entrance into the workforce, which can have
the effect of limiting the person’s lifetime earnings and can prevent
the person from following a chosen career path.

e. The right to choose whether and when to have children allows
people to more effectively plan in a way that is compatible with the
person’s overall life goals. Although each person retains the right to
exercise the freedom of reproductive choice regardless of the health
and strength of the person’s interpersonal relationships, where and
how the person lives, or the person’s income level and overall
resources, the essence of the right to reproductive choice is that
people have the ability to make reproductive choices in a manner
commensurate with their own personal beliefs, life plan, and moral
code.

f. Governmental restrictions on reproductive choice, by their
very nature, impinge on the constitutional right to reproductive
autonomy, particularly when they fail to confer any benefits to
patients in the form of improved health or safety. Moreover,
restrictions of this nature often have a disparate impact that is
predominantly felt by persons who already experience barriers to
health care access, including young people, people of color, people
with disabilities, people with low income, people living in rural areas,
immigrants, and people who are transgender or non-binary.

g. The Legislature is committed to ensuring that no barriers to
reproductive freedom exist in the State. Individuals have the right to
make their own decisions concerning reproduction, including the
right to contraception, the right to terminate a pregnancy, and the
right to carry a pregnancy to term, without government interference
or fear of prosecution.

h. It is both reasonable and necessary for the State to enable,
facilitate, support, and safeguard the provision of high-quality,
comprehensive reproductive and sexual health care, including the full
range of evidence-based information, counseling, and health care
services, to all individuals in the State, and to enable, facilitate,
support, and safeguard the ability of such individuals to access
affordable and timely reproductive health care services and to engage
in autonomous reproductive decision-making, in consultation with
health care professionals of their choosing, without fear of
prosecution, discrimination, or unnecessary barriers to care. To
achieve those ends, it shall be the policy of this State to:

(1) explicitly guarantee, to every individual, the fundamental
right to reproductive autonomy, which includes the right to
contraception, the right to terminate a pregnancy, and the right to
carry a pregnancy to term;

(2) enable all qualified health care professionals to provide
pregnancy termination services in the State;

(3) advance comprehensive insurance coverage for reproductive
care, including primary reproductive health care services, services to
terminate a pregnancy, long-acting contraceptives, and long-term
supplies of hormonal contraceptives, that enables the citizens of New
Jersey to fully exercise their freedom of reproductive choice while
recognizing the rights of certain religious employers to request an
exemption from such coverage; and

(4) ensure that all laws, rules, regulations, ordinances,
resolutions, policies, standards, or parts thereof, that are currently in
force or enacted in the future, conform to the provisions and the
express or implied purposes of this act, and that any law, rule,
regulation, ordinance, resolution, policy, standard, or part thereof
that conflicts with the provisions of this act or its express or implied
purposes is subject to invalidation.

2. a. Every individual present in the State, including, but not
limited to, an individual who is under State control or supervision,
shall have the fundamental right to: choose or refuse contraception
or sterilization; and choose whether to carry a pregnancy, to give
birth, or to terminate a pregnancy. The New Jersey Constitution
recognizes the fundamental nature of the right to reproductive choice,
including the right to access contraception, to terminate a pregnancy,
and to carry a pregnancy to term, shall not be abridged by any law,
rule, regulation, ordinance, or order issued by any State, county, or
local governmental authority. Any law, rule, regulation, ordinance,
or order, in effect on or adopted after the effective date of this act,
that is determined to have the effect of limiting the constitutional
right to freedom of reproductive choice and that does not conform
with the provisions and the express or implied purposes of this act,
shall be deemed invalid and shall have no force or effect.

b. The provisions of this section shall be enforceable under the
“New Jersey Civil Rights Act,” P.L.2004, c.143 (C.10:6-1 et seq.) or
in any other manner provided by law.

3. a. Upon concluding a study and issuing a report to the
Governor and the Legislature demonstrating that such a regulation is
necessary, the Department of Banking and Insurance may, through
regulation adopted pursuant to the “Administrative Procedure Act”,
P.L.1968 c.410 (C.52:14B-1 et seq.), provide that health benefit plans
delivered, issued, executed, or renewed in this State, provide
coverage for abortion. If the department provides for coverage
pursuant to this section, then the department shall also require
carriers to grant, upon request of a religious employer, an exclusion
under the contract for the coverage required if the required coverage
conflicts with the religious employer’s bona fide religious beliefs and
practices. A religious employer that obtains such an exclusion shall
provide written notice thereof to covered persons and prospective
covered persons, and the carrier shall provide notice to the
Commissioner of Banking and Insurance in such form and manner as
may be determined by the commissioner. The provisions of this
paragraph shall not be construed as authorizing a carrier to exclude
coverage for care that is necessary to preserve the life or health of a
subscriber. An exclusion from an insurance coverage mandate
granted to a religious employer pursuant to this section shall not be
considered a violation of section 2 of P.L.  , c. (C. ) (pending
before the Legislature as this bill).

b. For the purposes of this section, “religious employer” means
an organization that is organized and operates as a nonprofit entity
and is referred to in section 6033(a)(3)(A)(i) or (iii) of the Internal

4. A contract-providing hospital or medical expense benefits
purchased by the State Health Benefits Commission may provide
coverage for abortion. A contract-providing hospital or medical
expense benefits purchased by the commission shall not exclude a
provider from its network or otherwise restrict services from the
provider solely on the basis that the provider is a religious employer,
as defined in section 3 of P.L. , c. (C. ) (pending before the
Legislature as this bill), that refuses to provide abortion services.

5. A contract-providing hospital or medical expense benefits
purchased by the School Employees’ Health Benefits Commission
may provide coverage for abortion. A contract-providing hospital or
medical expense benefits purchased by the commission shall not
exclude a provider from its network or otherwise restrict services
from the provider solely on the basis that the provider is a religious
employer, as defined in section 3 of P.L. , c. (C. ) (pending before the
Legislature as this bill), that refuses to provide abortion services.

6. This act shall take effect immediately.

STATEMENT

This bill establishes certain requirements related to the right to
reproductive choice in New Jersey.

Specifically, the bill codifies the constitutional right, which has
been recognized by the New Jersey Supreme Court, to freedom of
reproductive choice, including the right to access contraception, to
terminate a pregnancy, and to carry a pregnancy to term. Any law,
rule, regulation, ordinance, or order that has the effect of abridging
the constitutional right to freedom of reproductive choice, including
a law, rule, regulation, ordinance, or order in effect on, or adopted
after, the effective date of the bill, will be deemed invalid and will
have no force or effect. The bill specifically provides that every
individual present in the State, including, but not limited to, an
individual who is under State control or supervision, has the
fundamental right to choose or refuse contraception or sterilization; and to choose whether to carry a pregnancy, to give birth, or to terminate a pregnancy.

The bill additionally provides that, after concluding a study and issuing a report to the Governor and the Legislature demonstrating the need that such a regulation is necessary, the Department of Banking and Insurance may adopt regulations providing that health benefit plans delivered, issued, executed, or renewed in this State, require coverage for abortion. If the department adopts a regulation establishing this coverage requirement, the department will also be required to mandate that carriers grant, upon request of a religious employer, an exclusion under the contract for the required coverage if the coverage conflicts with the religious employer’s bona fide religious beliefs and practices. A religious employer that obtains such an exclusion will be required to provide written notice thereof to covered persons and prospective covered persons, and the carrier will additionally be required to provide notice to the Commissioner of Banking and Insurance in such form and manner as may be determined by the commissioner. Nothing in this requirement is to be construed as authorizing a carrier to exclude coverage for care that is necessary to preserve the life or health of a subscriber. An insurance exclusion authorized by the department will not constitute a violation of the provisions of the bill invalidating laws determined to have the effect of abridging or limiting the constitutional right to freedom of reproductive choice.

The bill provides that a contract providing hospital or medical expense benefits purchased by the State Health Benefits Commission or the School Employees’ Health Benefits Commission may provide coverage for abortion. A contract providing hospital or medical expense benefits purchased by either commission may not exclude a provider from its network or otherwise restrict services from the provider solely on the basis that the provider is a religious employer that refuses to provide abortion services.

Codifies constitutional right to freedom of reproductive choice.