

SENATE, No. 2633

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED MAY 16, 2022

Sponsored by:

Senator NIA H. GILL

District 34 (Essex and Passaic)

Senator GORDON M. JOHNSON

District 37 (Bergen)

SYNOPSIS

Authorizes certain countersuits concerning liability for providing reproductive health care services permitted under State law; clarifies access to these services in New Jersey by out-of-State persons.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/27/2022)

1 AN ACT concerning reproductive health services and supplementing
2 Title 2A of the New Jersey Statutes.

3

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

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7
8 1. a. As used in this act:

9 “Reproductive health care services” includes all medical,
10 surgical, counseling, or referral services relating to the human
11 reproductive system including, but not limited to, services relating
12 to pregnancy, contraception, or termination of a pregnancy.

13 “Person” includes an individual, partnership, association, limited
14 liability company, or corporation.

15 b. When a judgment has been entered against a person in any
16 state where liability, in whole or in part, is based on the alleged
17 provision, receipt, assistance in receipt or provision, material
18 support for, or any theory of vicarious, joint, several or conspiracy
19 liability derived therefrom, for reproductive health care services
20 that are permitted under the laws of this State, the person may
21 recover damages from any party that brought the action leading to
22 that judgment or has sought to enforce that judgment.

23 Recoverable damages shall include:

24 (1) Damages created by the action that led to that judgment
25 including, but not limited to, money damages in the amount of the
26 judgment in that other state and costs, expenses and reasonable
27 attorney's fees spent in defending the action that resulted in the
28 entry of a judgment in another state; and

29 (2) costs, expenses, and reasonable attorney's fees incurred in
30 bringing an action under this section as may be allowed by the
31 court.

32 c. The provisions of this section shall not apply to a judgment
33 entered in another state that is based on:

34 (1) an action founded in tort, contract or statute, and for which a
35 similar claim would exist under the laws of this State, brought by
36 the patient who received the reproductive health care services upon
37 which the original lawsuit was based or the patient's authorized
38 legal representative, for damages suffered by the patient or damages
39 derived from an individual's loss of consortium of the patient;

40 (2) an action founded in contract, and for which a similar claim
41 would exist under the laws of this State, brought or sought to be
42 enforced by a party with a contractual relationship with the person
43 that is the subject of the judgment entered in another state; or

44 (3) an action where no part of the acts that formed the basis for
45 liability occurred in this State.

46

47 2. a. Except as otherwise provided by law, in any civil action or
48 proceeding preliminary thereto or in any legislative or
49 administrative proceeding, a covered entity, as set forth in the

1 medical privacy and security rules pursuant to Parts 160 and 164 of
2 Title 45 of the Code of Federal Regulations, established pursuant to
3 the "Health Insurance Portability and Accountability Act of 1996,"
4 Pub.L.104-191, shall not disclose:

5 (1) any communication made to the covered entity, or any
6 information obtained by the covered entity from a patient or the
7 conservator, guardian, or other authorized legal representative of a
8 patient relating to reproductive health care services, as defined in
9 section 1 of this act, that are permitted under the laws of this State;
10 or

11 (2) any information obtained by personal examination of a
12 patient relating to reproductive health care services, as defined in
13 section 1 of this act, that are permitted under the laws of this State,
14 unless the patient or that patient's conservator, guardian, or other
15 authorized legal representative explicitly consents in writing to the
16 disclosure. A covered entity shall inform the patient or the patient's
17 conservator, guardian, or other authorized legal representative of
18 the patient's right to withhold such written consent.

19 b. Written consent of the patient or the patient's conservator,
20 guardian, or other authorized legal representative shall not be
21 required for the disclosure of any communication or information:

22 (1) pursuant to the laws of this State or the Rules of Court;

23 (2) by a covered entity against whom a claim has been made, or
24 there is a reasonable belief will be made, in an action or proceeding,
25 to the covered entity's attorney or professional liability insurer or
26 insurer's agent for use in the defense of the action or proceeding;

27 (3) to the Department of Health for records of a patient of a
28 covered entity in connection with an investigation of a complaint, if
29 the records are related to the complaint; or

30 (4) if child abuse, abuse of an elderly individual, abuse of an
31 individual who is incapacitated, or abuse of an individual with a
32 physical or mental disability is known or in good faith suspected.

33 c. Nothing in this section shall be construed to impede the
34 lawful

35 sharing of medical records as permitted by State or federal law or
36 the

37 Rules of Court, except in the case of a subpoena commanding the
38 production, copying, or inspection of medical records relating to
39 reproductive health care services, as defined in section 1 of this act.

40

41 3. a. Notwithstanding the provisions of any other law, a court
42 shall not issue a subpoena requested by any court of the United
43 States or of any other state or government if the subpoena relates to
44 reproductive health care services, as defined in section 1 of this act,
45 that are permitted under the laws of this State, unless the subpoena
46 relates to:

47 (1) an out-of-State action founded in tort, contract, or statute, for
48 which a similar claim would exist under the laws of this State,
49 brought by a patient or the patient's authorized legal representative,

1 for damages suffered by the patient or damages derived from an
2 individual's loss of consortium of the patient; or

3 (2) an out-of-State action founded in contract, and for which a
4 similar claim would exist under the laws of this State, brought or
5 sought to be enforced by a party with a contractual relationship with
6 the person that is the subject of the subpoena requested by another
7 state.

8 b. A court shall not issue a summons in a case where
9 prosecution is pending, or where a grand jury investigation has
10 commenced or is about to commence, for a criminal violation of a
11 law of another state involving the provision or receipt of or
12 assistance with reproductive health care services, as defined in
13 section 1 of this act, that are legal in this State, unless the acts
14 forming the basis of the prosecution or investigation also would
15 constitute an offense in this State.

16
17 4. A public entity of this State or employee, appointee, officer
18 or official or any other person acting on behalf of a public entity
19 shall not provide any information or expend or use time, money,
20 facilities, property, equipment, personnel or other resources in
21 furtherance of any interstate investigation or proceeding seeking to
22 impose civil or criminal liability upon a person or entity for:

23 (1) the provision, seeking or receipt of or inquiring about
24 reproductive health care services, as defined in section 1 of this act,
25 that are legal in this State; or

26 (2) assisting any person or entity providing, seeking, receiving or
27 responding to an inquiry about reproductive health care services, as
28 defined in section 1 of this act, that are legal in this State.

29 This section shall not apply to any investigation or proceeding
30 where the conduct subject to potential liability under the
31 investigation or proceeding would be subject to liability under the
32 laws of this State if committed in this State.

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34 5. This act shall take effect immediately.

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STATEMENT

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39 This bill authorizes countersuits following a judgment based on
40 liability for the provision of reproductive health care services that
41 are permitted under New Jersey law. The bill also clarifies access to
42 reproductive health care services in New Jersey by persons from
43 other states. The bill provides that "reproductive health services"
44 includes all medical, surgical, counseling, or referral services
45 relating to the human reproductive system, including services
46 relating to pregnancy, contraception, or termination of a pregnancy.

47 COUNTERSUITS

48 Under the bill, when a judgment has been entered against a
49 person in any state where liability, in whole or in part, is based on

1 the alleged provision, receipt, assistance in receipt or provision,
2 material support for, or any theory of vicarious, joint, several or
3 conspiracy liability derived therefrom, for reproductive health care
4 services that are permitted under the laws of this State, the person
5 may recover damages from any party that brought the action leading
6 to that judgment or has sought to enforce that judgment.

7 Recoverable damages would include money damages in the
8 amount of the judgment in that other state and costs, expenses, and
9 reasonable attorney's fees spent in defending the action. In addition,
10 costs, expenses, and reasonable attorney's fees incurred in bringing
11 an action under the bill may also be recovered as allowed by the
12 court.

13 The bill would not apply to a judgment entered in another state
14 that is based on:

15 (1) an action founded in tort, contract, or statute, and for which a
16 similar claim would exist under the laws of this State, brought by
17 the patient who received the reproductive health care services upon
18 which the original lawsuit was based or the patient's authorized
19 legal representative, for damages suffered by the patient or damages
20 derived from an individual's loss of consortium of the patient;

21 (2) an action founded in contract, and for which a similar claim
22 would exist under the laws of this State, brought or sought to be
23 enforced by a party with a contractual relationship with the person
24 that is the subject of the judgment entered in another state; or

25 (3) an action where no part of the acts that formed the basis for
26 liability occurred in this State.

27 CONFIDENTIAL HEALTH COMMUNICATIONS

28 The bill also provides that a communication to a health care
29 provider, information obtained by the health care provider by a
30 patient or the patient's legal representative, or information obtained
31 from an examination of a patient relating to reproductive health
32 care services is not to be disclosed unless the patient or that
33 patient's authorized legal representative explicitly consents to the
34 disclosure in writing. A provider would be required to inform the
35 patient or the patient's representative of the patient's right to
36 withhold written consent.

37 Written consent would not be required for the disclosure if it is:
38 pursuant to State law or the Rules of Court; by a health care
39 provider to the provider's attorney or liability insurer for use in
40 defense of such action or proceeding; to the Department of Health
41 in connection with an investigation of child abuse, or abuse of a
42 person who is elderly, incapacitated, or has a physical or mental
43 disability. The bill also specifies that it is not to be construed to
44 impede the lawful sharing of medical records as permitted by State
45 or federal law or the
46 Rules of Court, except in the case of a subpoena commanding the
47 production, copying or inspection of medical records relating to
48 reproductive health care services.

1 CERTAIN SUBPOENAS BARRED

2 The bill bars a court from issuing a subpoena requested by any
3 court of the United States or of any other state or government if the
4 subpoena relates to reproductive health care services that are
5 permitted under the laws of this State, unless the subpoena relates to
6 an out-of-State action founded in tort, contract, or statute, for which
7 a similar claim would exist under the laws of this State, brought by
8 a patient or the patient's authorized legal representative, for
9 damages suffered by the patient or damages derived from an
10 individual's loss of consortium of the patient; or an out-of-State
11 action founded in contract, and for which a similar claim would
12 exist under the laws of this State, brought or sought to be enforced
13 by a party with a contractual relationship with the person that is the
14 subject of the subpoena.

15 The bill also bars a court from issuing a summons in a case
16 where prosecution is pending, or where a grand jury investigation
17 has commenced or is about to commence, for a criminal violation of
18 a law of another state involving the provision or receipt of or
19 assistance with reproductive health care services unless the acts
20 forming the basis of the prosecution or investigation also would
21 constitute an offense in this State.

22 NON-COOPERATION BY PUBLIC ENTITY

23 Under the bill, a public entity of this State or employee,
24 appointee, officer or official or any other person acting on behalf of
25 a public entity may not provide any information or expend or use
26 time, money, facilities, property, equipment, personnel or other
27 resources in furtherance of any interstate investigation or
28 proceeding seeking to impose civil or criminal liability upon a
29 person or entity for the provision, seeking or receipt of or inquiring
30 about reproductive health care services that are legal in this State,
31 assisting any person or entity providing, seeking, receiving or
32 responding to an inquiry about reproductive health care services.
33 This provision of the bill would not apply to any investigation or
34 proceeding where the conduct subject to potential liability under the
35 investigation or proceeding would be subject to liability under the
36 laws of this State if committed in this State.