

[First Reprint]

SENATE, No. 2633

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED MAY 16, 2022

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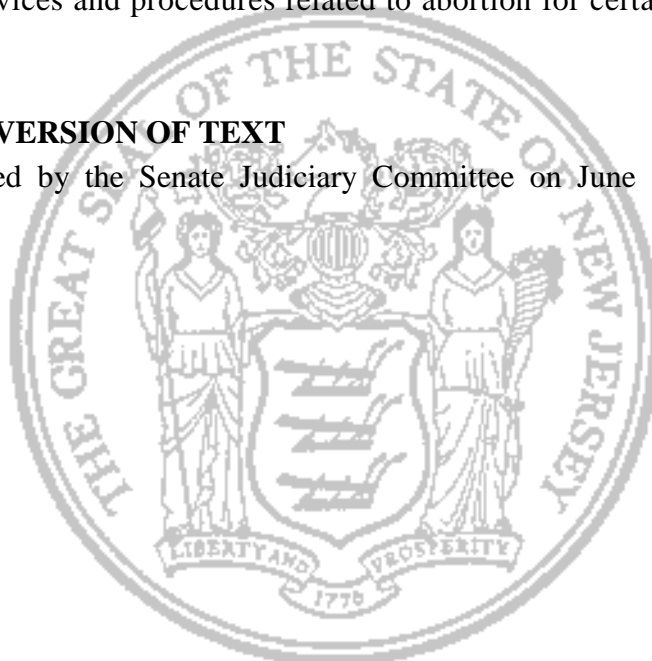
Senator Ruiz

SYNOPSIS

Concerns protections with respect to nondisclosure of certain patient information relating to reproductive health care services, and protecting access to services and procedures related to abortion for certain out-of-State persons.

CURRENT VERSION OF TEXT

As reported by the Senate Judiciary Committee on June 27, 2022, with amendments.



(Sponsorship Updated As Of: 6/29/2022)

1 AN ACT concerning reproductive health ¹care¹ services ¹[and]¹
2 supplementing Title 2A of the New Jersey Statutes ¹, and
3 amending P.L.1978, c.73¹.
4

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

7
8
9 ¹[1. a. As used in this act:

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

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

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

24 Recoverable damages shall include:

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

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

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

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

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

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SJU committee amendments adopted June 27, 2022.

1 (3) an action where no part of the acts that formed the basis for
2 liability occurred in this State.】¹

3
4 ¹【2.】 1. (New section) As used in sections 1 and 2 of P.L. ,
5 c. (C.) (pending before the Legislature as this bill):

6 “Person” includes an individual, partnership, association, limited
7 liability company, or corporation.

8 “Reproductive health care services” means all medical, surgical,
9 counseling, or referral services relating to the human reproductive
10 system including, but not limited to, services relating to pregnancy,
11 contraception, or termination of a pregnancy.¹

12 a. Except as ¹【otherwise】¹ provided ¹【by law】 in sections 3
13 through 7 of P.L.1968, c.185 (C.2A:84A-22.3 through 2A:84A-
14 22.7), section 1 of P.L.1970, c.313 (C.2A:84A-22.8), section 29 of
15 P.L.1968, c.401 (C.45:8B-29), and subsection b. of this section¹, in
16 any civil action or proceeding preliminary thereto or in any
17 ¹probate,¹ legislative or administrative proceeding, a covered entity,
18 as set forth in the medical privacy and security rules pursuant to
19 Parts 160 and 164 of ¹Subchapter C of Subtitle A of¹ Title 45 of the
20 Code of Federal Regulations, established pursuant to the "Health
21 Insurance Portability and Accountability Act of 1996," Pub.L.104-
22 191, shall not disclose ¹, unless the patient or that patient's
23 conservator, guardian, or other authorized legal representative
24 explicitly consents in writing to the disclosure¹:

25 (1) any communication made to the covered entity, or any
26 information obtained by the covered entity from ^{1,1} a patient or the
27 conservator, guardian, or other authorized legal representative of a
28 patient relating to reproductive health care services ¹【, as defined in
29 section 1 of this act,】¹ that are permitted under the laws of this
30 State; or

31 (2) any information obtained by personal examination of a
32 patient relating to reproductive health care services ¹【, as defined in
33 section 1 of this act,】¹ that are permitted under the laws of this
34 State ¹【, unless the patient or that patient's conservator, guardian, or
35 other authorized legal representative explicitly consents in writing
36 to the disclosure】¹.

37 A covered entity shall inform the patient or the patient's
38 conservator, guardian, or other authorized legal representative of
39 the patient's right to withhold such written consent ¹at or before the
40 time reproductive health care services are rendered or at such time
41 as the patient discloses any information relating to reproductive
42 health care services that have been previously rendered¹.

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

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

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

5 (3) to the ¹**【Department】 Commissioner¹ of Health ¹, Human**
6 **Services, or Banking and Insurance, or any professional licensing**
7 **board operating under the authority of the Division of Consumer**
8 **Affairs in the Department of Law and Public Safety¹** for records of
9 a patient of a covered entity in connection with an investigation of a
10 complaint, if the records are related to the complaint; or

11 (4) if child abuse, abuse of an elderly individual, abuse of an
12 individual who is incapacitated, or abuse of an individual with a
13 physical or mental disability is known or in good faith suspected.
14 ¹For the purposes of this paragraph, the provision of or material
15 support for reproductive health care services that are permitted
16 under the laws of this State shall not constitute abuse.

17 Nothing in this subsection shall be construed to conflict with or
18 displace any requirements or conditions for disclosure set forth
19 under 45 C.F.R. ss.160.203 and 164.514.¹

20 c. Nothing in this section shall be construed to impede the
21 lawful sharing of medical records as permitted by State or federal
22 law or the Rules of Court ¹**【**, except in the case of a subpoena
23 commanding the production, copying, or inspection of medical
24 records relating to reproductive health care services, as defined in
25 section 1 of this act¹.
26

27 ¹**【3. a. Notwithstanding the provisions of any other law, a court**
28 **shall not issue a subpoena requested by any court of the United**
29 **States or of any other state or government if the subpoena relates to**
30 **reproductive health care services, as defined in section 1 of this act,**
31 **that are permitted under the laws of this State, unless the subpoena**
32 **relates to:**

33 (1) an out-of-State action founded in tort, contract, or statute, for
34 which a similar claim would exist under the laws of this State,
35 brought by a patient or the patient's authorized legal representative,
36 for damages suffered by the patient or damages derived from an
37 individual's loss of consortium of the patient; or

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

43 b. A court shall not issue a summons in a case where
44 prosecution is pending, or where a grand jury investigation has
45 commenced or is about to commence, for a criminal violation of a
46 law of another state involving the provision or receipt of or
47 assistance with reproductive health care services, as defined in

1 section 1 of this act, that are legal in this State, unless the acts
 2 forming the basis of the prosecution or investigation also would
 3 constitute an offense in this State.]¹

4
 5 ¹[4.] 2. (New section)¹ A public entity of this State or
 6 employee, appointee, officer or official or any other person acting
 7 on behalf of a public entity shall not provide any information or
 8 expend or use time, money, facilities, property, equipment,
 9 personnel or other resources in furtherance of any interstate
 10 investigation or proceeding seeking to impose civil or criminal
 11 liability upon a person or entity for:

12 (1) the provision, ¹receipt, or¹ seeking ¹[or receipt]¹ of ^{1,1} or
 13 inquiring ¹or responding to an inquiry¹ about ^{1,1} reproductive health
 14 care services, as defined in section 1 of ¹[this act] P.L. _____,
 15 c. (C. _____) (pending before the Legislature as this bill)¹, that are
 16 legal in this State; or

17 (2) assisting ¹, advising, aiding, abetting, facilitating, soliciting,
 18 or conspiring with¹ any person or entity providing, ¹receiving,¹
 19 seeking, ¹[receiving]¹ or ¹inquiring or¹ responding to an inquiry
 20 about ^{1,1} reproductive health care services, as defined in section 1
 21 of ¹[this act] P.L. _____, c. (C. _____) (pending before the Legislature
 22 as this bill)¹, that are legal in this State.

23 This section shall not apply to any investigation or proceeding
 24 ¹[where] when¹ the conduct subject to potential liability under the
 25 investigation or proceeding would be subject to liability under the
 26 laws of this State if committed in this State. ¹This section shall not
 27 apply if it is necessary for the agency or person to engage in
 28 conduct otherwise prohibited by this section in order to comply
 29 with a valid order issued by a court with jurisdiction over the
 30 agency or person, or to comply with applicable provisions of State
 31 or federal law.¹

32
 33 ¹3. Section 8 of P.L.1978, c.73 (C.45:1-21) is amended to read
 34 as follows:

35 8. A board may refuse to admit a person to an examination or
 36 may refuse to issue or may suspend or revoke any certificate,
 37 registration or license issued by the board upon proof that the
 38 applicant or holder of such certificate, registration or license:

39 a. Has obtained a certificate, registration, license or
 40 authorization to sit for an examination, as the case may be, through
 41 fraud, deception, or misrepresentation;

42 b. Has engaged in the use or employment of dishonesty, fraud,
 43 deception, misrepresentation, false promise or false pretense;

44 c. Has engaged in gross negligence, gross malpractice or gross
 45 incompetence which damaged or endangered the life, health,
 46 welfare, safety or property of any person;

- 1 d. Has engaged in repeated acts of negligence, malpractice or
2 incompetence;
- 3 e. Has engaged in professional or occupational misconduct as
4 may be determined by the board;
- 5 f. Has been convicted of, or engaged in acts constituting, any
6 crime or offense that has a direct or substantial relationship to the
7 activity regulated by the board or is of a nature such that
8 certification, registration or licensure of the person would be
9 inconsistent with the public's health, safety, or welfare, provided
10 that the board shall make this determination in a manner consistent
11 with section 2 of P.L.2021, c.81 (C.45:1-21.5). For the purposes of
12 this subsection a judgment of conviction or a plea of guilty, non
13 vult, nolo contendere or any other such disposition of alleged
14 criminal activity shall be deemed a conviction;
- 15 g. Has had his authority to engage in the activity regulated by
16 the board revoked or suspended by any other state, agency or
17 authority for reasons consistent with this section;
- 18 h. Has violated or failed to comply with the provisions of any
19 act or regulation administered by the board;
- 20 i. Is incapable, for medical or any other good cause, of
21 discharging the functions of a licensee in a manner consistent with
22 the public's health, safety and welfare;
- 23 j. Has repeatedly failed to submit completed applications, or
24 parts of, or documentation submitted in conjunction with, such
25 applications, required to be filed with the Department of
26 Environmental Protection;
- 27 k. Has violated any provision of P.L.1983, c.320 (C.17:33A-1
28 et seq.) or any insurance fraud prevention law or act of another
29 jurisdiction or has been adjudicated, in civil or administrative
30 proceedings, of a violation of P.L.1983, c.320 (C.17:33A-1 et seq.)
31 or has been subject to a final order, entered in civil or
32 administrative proceedings, that imposed civil penalties under that
33 act against the applicant or holder;
- 34 l. Is presently engaged in drug or alcohol use that is likely to
35 impair the ability to practice the profession or occupation with
36 reasonable skill and safety. For purposes of this subsection, the
37 term "presently" means at this time or any time within the previous
38 365 days;
- 39 m. Has prescribed or dispensed controlled dangerous substances
40 indiscriminately or without good cause, or where the applicant or
41 holder knew or should have known that the substances were to be
42 used for unauthorized consumption or distribution;
- 43 n. Has permitted an unlicensed person or entity to perform an
44 act for which a license or certificate of registration or certification
45 is required by the board, or aided and abetted an unlicensed person
46 or entity in performing such an act;
- 47 o. Advertised fraudulently in any manner.

1 The division is authorized, for purposes of facilitating
2 determinations concerning licensure eligibility, to require the
3 fingerprinting of each applicant in accordance with applicable State
4 and federal laws, rules and regulations. Each applicant shall submit
5 the applicant's name, address, and written consent to the director for
6 a criminal history record background check to be performed. The
7 division is authorized to receive criminal history record information
8 from the State Bureau of Identification in the Division of State
9 Police and the Federal Bureau of Investigation. Upon receipt of
10 such notification, the division shall forward the information to the
11 appropriate board which shall make a determination regarding the
12 issuance of licensure. The applicant shall bear the cost for the
13 criminal history record background check, including all costs of
14 administering and processing the check, unless otherwise provided
15 for by an individual enabling act. The Division of State Police shall
16 promptly notify the division in the event an applicant or licensee,
17 who was the subject of a criminal history record background check
18 pursuant to this section, is convicted of a crime or offense in this
19 State after the date the background check was performed.

20 Notwithstanding the provisions of any law, rule, or regulation to
21 the contrary, a board shall not refuse to admit a person to an
22 examination and shall not suspend, revoke, or refuse to renew any
23 certificate, registration, or license issued by the board based solely
24 on the applicant's or the certificate, registration, or license holder's
25 provision of, authorization of, participation in, referral for, or
26 assistance with any health care, medical service, or procedure
27 related to an abortion for a person who resides in a jurisdiction
28 where the provision, authorization, participation, referral, or
29 assistance is illegal, if the provision, authorization, participation,
30 referral, or assistance would not be a basis for refusing to admit a
31 person to an examination or for suspending, revoking, or refusing to
32 renew a certificate, registration, or license in this State.

33 For purposes of this act:

34 "Completed application" means the submission of all of the
35 information designated on the checklist, adopted pursuant to section
36 1 of P.L.1991, c.421 (C.13:1D-101), for the class or category of
37 permit for which application is made.

38 "Permit" has the same meaning as defined in section 1 of
39 P.L.1991, c.421 (C.13:1D-101).¹

40 (cf: P.L.2021, c.81, s.1)

41

42 ¹**[5.] 4.**¹ This act shall take effect immediately.