

1 SENATE BILL 13

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO HEALTH; PROTECTING THE PRIVACY OF PROVIDERS,
12 RECIPIENTS AND OTHERS ENGAGING IN REPRODUCTIVE AND GENDER-
13 AFFIRMING HEALTH CARE; PROTECTING PROVIDERS, RECIPIENTS AND
14 OTHERS ENGAGING IN REPRODUCTIVE AND GENDER-AFFIRMING HEALTH
15 CARE FROM CERTAIN CIVIL OR CRIMINAL LIABILITY OR PROFESSIONAL
16 DISCIPLINARY ACTION; PROVIDING FOR ENFORCEMENT; IMPOSING
17 PENALTIES; PRESCRIBING RELIEF.
18

19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

20 SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
21 through 8 of this act may be cited as the "Reproductive and
22 Gender-Affirming Health Care Protection Act".

23 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
24 Reproductive and Gender-Affirming Health Care Protection Act:

25 A. "gender-affirming health care" means

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1 psychological, behavioral, surgical, pharmaceutical and medical
2 care, services and supplies provided to support an individual's
3 gender identity;

4 B. "protected health care activity" means:

5 (1) seeking, providing or receiving
6 reproductive or gender-affirming health care; or

7 (2) assisting an individual who is seeking,
8 receiving or providing reproductive or gender-affirming health
9 care, including providing:

- 10 (a) information;
- 11 (b) transportation;
- 12 (c) lodging; or
- 13 (d) material support;

14 C. "public body" means a state or local government,
15 an advisory board, a commission, an agency or an entity created
16 by the constitution of New Mexico or a branch of government
17 that receives public funding, including political subdivisions,
18 special tax districts, school districts and institutions of
19 higher education; and

20 D. "reproductive health care" means psychological,
21 behavioral, surgical, pharmaceutical and medical care, services
22 and supplies that relate to the human reproductive system,
23 including services related to:

- 24 (1) preventing a pregnancy;
- 25 (2) abortion;

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- 1 (3) managing a pregnancy loss;
- 2 (4) prenatal, birth, perinatal and postpartum
- 3 health;
- 4 (5) managing perimenopause and menopause;
- 5 (6) managing infertility;
- 6 (7) treating cancers of the reproductive
- 7 system; or
- 8 (8) preventing sexually transmitted
- 9 infections.

10 SECTION 3. [NEW MATERIAL] PUBLIC BODY--PROHIBITED RELEASE
11 OF INFORMATION RELATED TO A PROTECTED HEALTH CARE ACTIVITY.--

12 A. Except as required by an order of a court of
13 competent jurisdiction, a public body or an individual or
14 entity acting on behalf of or within the scope of the authority
15 of a public body shall not release information or use resources
16 available to it, by virtue of its position, in furtherance of
17 an interstate investigation or proceeding that seeks to impose
18 civil or criminal liability or professional disciplinary action
19 upon an individual or entity for engaging in a protected health
20 care activity.

21 B. A public body or an individual or entity acting
22 on behalf of or within the scope of the authority of a public
23 body that receives a request for information related to an
24 individual or entity's protected health care activity shall
25 notify the individual or entity that is the subject of the

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1 information request and may move to modify or quash the
2 subpoena to prevent the release of protected health care
3 information absent affirmative written consent to the release.

4 C. The provisions of Subsection A of this section
5 shall not apply if the individual or entity that is the subject
6 of the investigation or proceeding provides affirmative written
7 consent to the public body or an individual or entity acting on
8 behalf of or within the scope of the authority of a public body
9 to release the requested information.

10 D. This section shall not apply to an investigation
11 or proceeding in which the conduct subject to potential
12 liability would be subject to liability under the laws of this
13 state so long as the investigation or proceeding does not
14 violate the public policy of this state or an individual's or
15 entity's rights pursuant to the Reproductive and Gender-
16 Affirming Health Care Protection Act.

17 SECTION 4. [NEW MATERIAL] FOREIGN SUBPOENAS AND
18 SUMMONSES.--

19 A. A party shall not submit to a clerk of the court
20 of this state a foreign subpoena or summons for discovery or a
21 witness to provide testimony related to an interstate
22 investigation or proceeding that seeks to impose civil or
23 criminal liability or professional disciplinary action related
24 to a protected health care activity unless the requesting party
25 submits an attestation, signed under the penalty of perjury,

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1 that the foreign subpoena or summons relates to an out-of-state
2 action for which the same claim exists under the laws of this
3 state or for a claim similar to a claim that exists under the
4 laws of this state that is not in conflict with the public
5 policy of this state or the rights of an individual or entity
6 pursuant to the Reproductive and Gender-Affirming Health Care
7 Protection Act, and is founded in tort, contract or statute
8 and:

9 (1) was brought by a plaintiff who sought or
10 engaged in a protected health care activity; an individual's
11 authorized legal representative for damages suffered by the
12 individual arising out of a protected health care activity; or
13 the damages derived from an individual's loss of consortium; or

14 (2) was brought by or sought to be enforced by
15 a party with a contractual relationship with the individual
16 whose documents or information are the subject of the subpoena
17 or summons.

18 B. An individual or entity served with a subpoena
19 that the individual or entity knows or should know to be issued
20 in violation of this section shall alert the issuing court and
21 may move to quash the subpoena.

22 C. If a court of competent jurisdiction finds that
23 a party omitted the required attestation or that a false
24 attestation was intentionally submitted in violation of this
25 section, on timely motion by any party who objects to the

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1 subpoena or summons, the court shall quash the subpoena or
2 summons.

3 D. A party that intentionally omits or submits a
4 false attestation pursuant to this section shall be subject to
5 the jurisdiction of the courts of this state in a suit for
6 damages, penalties or both arising out of the omission or false
7 attestation or any attempt to circumvent the requirements of
8 this section. A court shall assess a statutory penalty of ten
9 thousand dollars (\$10,000) per violation.

10 E. The supreme court shall enact rules necessary
11 for the implementation of this section.

12 F. The provisions of this section shall not apply
13 for purposes of complying with federal law.

14 SECTION 5. [NEW MATERIAL] ABUSIVE LITIGATION--
15 INTERFERENCE WITH A PROTECTED HEALTH CARE ACTIVITY--CIVIL
16 ACTIONS.--

17 A. For purposes of this section, "abusive
18 litigation" means legal action initiated to deter, prevent,
19 sanction or penalize an individual or entity for engaging in a
20 protected health care activity by:

21 (1) initiating a legal action in another state
22 where civil or criminal liability is based, in whole or in
23 part, on engaging in a protected health care activity in this
24 state, including any action in which liability is based on
25 vicarious, joint or several liability or conspiracy; or

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1 (2) attempting to enforce an order or judgment
2 issued in connection with such legal action.

3 B. If an individual or entity initiates abusive
4 litigation, an aggrieved individual or entity may:

5 (1) move to modify or quash a subpoena issued
6 in connection with the abusive litigation on the grounds that
7 the subpoena is unreasonable, oppressive or inconsistent with
8 the public policy of this state; or

9 (2) bring a civil action for appropriate
10 relief within three years after the cause of action accrues.

11 C. If the court finds for the petitioner in an
12 action pursuant to Paragraph (2) of Subsection B of this
13 section, recovery shall be in the amount of actual damages,
14 including the amount of a judgment issued in connection with
15 the abusive litigation, or the court may assess a civil penalty
16 of five thousand dollars (\$5,000), whichever is greater.

17 D. A court may exercise jurisdiction over a
18 respondent in an action pursuant to Paragraph (2) of Subsection
19 B of this section if:

20 (1) personal jurisdiction is found;

21 (2) the respondent has commenced an action in
22 a court in this state and during the pendency of that action, a
23 summons and complaint is served on the respondent or the
24 attorney appearing on the respondent's behalf; or

25 (3) permitted by law.

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1 E. This section shall not apply to a lawsuit or
2 judgment entered in another state that is based on conduct for
3 which a cause of action exists under the laws of New Mexico, if
4 the course of conduct that forms that basis for liability
5 occurred entirely in this state, including contract, tort,
6 common law or statutory claims.

7 **SECTION 6. [NEW MATERIAL] HEIGHTENED PROTECTION FOR**
8 **ELECTRONICALLY TRANSMITTED INFORMATION RELATED TO A PROTECTED**
9 **HEALTH CARE ACTIVITY.--**

10 A. For purposes of this section, "third party"
11 means an individual or entity who transmits information related
12 to an individual or entity's protected health care activity, in
13 the normal course of business, in an electronic format.

14 B. Information related to a protected health care
15 activity in the possession of a third party shall not be
16 disclosed unless:

17 (1) consent to disclose is provided by the
18 individual or entity engaged in the protected health care
19 activity;

20 (2) disclosure is necessary for the treatment
21 of a medical emergency;

22 (3) disclosure is required pursuant to the
23 Abuse and Neglect Act;

24 (4) disclosure is required to an executive
25 state agency pursuant to the reporting laws of this state; or

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1 (5) disclosure is authorized by an order of a
2 court of competent jurisdiction; provided that the information
3 is not related to an interstate investigation or proceeding
4 that seeks to impose civil or criminal liability or
5 professional disciplinary action upon an individual or entity
6 for engaging in a protected health care activity.

7 C. This section shall not apply to a lawsuit or
8 judgment entered in another state that is based on conduct for
9 which a cause of action exists under the laws of New Mexico, if
10 the course of conduct that forms that basis for liability
11 occurred entirely in this state, including contract, tort,
12 common law or statutory claims.

13 SECTION 7. [NEW MATERIAL] ENFORCEMENT--PENALTIES.--

14 A. The attorney general or a district attorney may
15 institute a civil action in district court if the attorney
16 general or district attorney has reasonable cause to believe
17 that a violation has occurred or to prevent a violation of the
18 Reproductive and Gender-Affirming Health Care Protection Act
19 from occurring.

20 B. In an action brought under Subsection A of this
21 section, the court may award appropriate relief, including
22 temporary, preliminary or permanent injunctive relief,
23 compensatory damages, punitive damages, costs of suit or
24 reasonable attorney fees. The damages provided in this
25 subsection are not exclusive and shall be in addition to other

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1 types of relief available under other law.

2 C. The court may assess a civil penalty for a
3 violation of the Reproductive and Gender-Affirming Health Care
4 Protection Act in the amount of five thousand dollars (\$5,000)
5 or actual damages resulting from each violation, whichever is
6 greater.

7 SECTION 8. [NEW MATERIAL] PRIVATE RIGHT OF ACTION--PUBLIC
8 BODY.--

9 A. An individual or entity claiming to be aggrieved
10 by a violation of the Reproductive and Gender-Affirming Health
11 Care Protection Act may:

12 (1) maintain an action in district court for
13 appropriate relief, including injunctive relief, compensatory
14 damages or punitive damages; or

15 (2) may bring a civil action in a court of
16 competent jurisdiction against a public body that has
17 negligently released information related to a protected health
18 care activity for actual damages, reasonable attorney fees,
19 injunctive relief and other remedies as appropriate.

20 B. The damages provided in this section are in
21 addition to other types of relief available under other law.

22 C. In an action brought pursuant to Subsection A of
23 this section, the court shall award a prevailing plaintiff
24 reasonable attorney fees and costs to be paid by the public
25 body.

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1 D. In an action brought pursuant to Subsection A
2 of this section, the court may assess a civil penalty for a
3 violation of the Reproductive and Gender-Affirming Health Care
4 Protection Act in the amount of five thousand dollars (\$5,000)
5 or actual damages resulting from each violation, whichever is
6 greater.

7 **SECTION 9.** Section 31-4-6 NMSA 1978 (being Laws 1937,
8 Chapter 65, Section 6) is amended to read:

9 "31-4-6. EXTRADITION OF PERSONS NOT PRESENT IN DEMANDING
10 STATE AT TIME OF COMMISSION OF CRIME.--The governor of this
11 state:

12 A. may also surrender, on demand of the executive
13 authority of any other state, any person in this state charged
14 in such other state in the manner provided in Section [3]
15 31-4-3 NMSA 1978 with committing an act in this state, or in a
16 third state, intentionally resulting in a crime in the state
17 whose executive authority is making the demand [~~and~~]. The
18 provisions of [~~this~~] the Uniform Criminal Extradition Act not
19 otherwise inconsistent shall apply to such cases, even though
20 the accused was not in that state at the time of the commission
21 of the crime and has not fled therefrom; and

22 B. shall not arrest or deliver a person if the
23 charge is based on engaging in a protected health care
24 activity, pursuant to the provisions of the Reproductive and
25 Gender-Affirming Health Care Protection Act, including a charge

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1 based on vicarious, joint or several liability or conspiracy,
2 unless the executive authority of the demanding state alleges
3 in writing that the accused was physically present in the
4 demanding state at the time of the commission of the alleged
5 offense and that thereafter, the accused fled from the
6 demanding state."

7 SECTION 10. A new section of the Uniform Licensing Act is
8 enacted to read:

9 "[NEW MATERIAL] PROHIBITING CERTAIN ACTIONS BY BOARDS
10 AGAINST LICENSEES OR LICENSE APPLICANTS.--A board shall not
11 take an action pursuant to Section 61-1-3 NMSA 1978 against a
12 license holder or license applicant based solely on a
13 licensee's or license applicant's:

14 A. provision of, authorization of, recommendation
15 of, assistance in, referral for or other participation in
16 services in accordance with the laws of New Mexico, including
17 the accepted standards of care, whether the services are
18 provided to a resident of this state or to a resident of
19 another state; or

20 B. actual or alleged violation of another state's
21 laws prohibiting the provision of, authorization of,
22 recommendation of, assistance in, referral for or other
23 participation in services if the services provided would have
24 been in accordance with the laws of New Mexico, including the
25 accepted standards of care."

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