INTRODUCED BY
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AN ACT
RELATING TO HEALTH; PROTECTING THE PRIVACY OF PROVIDERS,
RECIPIENTS AND OTHERS ENGAGING IN REPRODUCTIVE AND GENDER-
AFFIRMING HEALTH CARE; PROTECTING PROVIDERS, RECIPIENTS AND
OTHERS ENGAGING IN REPRODUCTIVE AND GENDER-AFFIRMING HEALTH
CARE FROM CERTAIN CIVIL OR CRIMINAL LIABILITY OR PROFESSIONAL
DISCIPLINARY ACTION; PROVIDING FOR ENFORCEMENT; IMPOSING
PENALTIES; PRESCRIBING RELIEF.

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

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

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

A. "gender-affirming health care" means
psychological, behavioral, surgical, pharmaceutical and medical care, services and supplies provided to support an individual's gender identity;

B. "protected health care activity" means:

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

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

(a) information;

(b) transportation;

(c) lodging; or

(d) material support;

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

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

(1) preventing a pregnancy;

(2) abortion;
(3) managing a pregnancy loss;

(4) prenatal, birth, perinatal and postpartum health;

(5) managing perimenopause and menopause;

(6) managing infertility;

(7) treating cancers of the reproductive system; or

(8) preventing sexually transmitted infections.

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

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

B. A public body or an individual or entity acting on behalf of or within the scope of the authority of a public body that receives a request for information related to an individual or entity's protected health care activity shall notify the individual or entity that is the subject of the .223790.3
information request and may move to modify or quash the
subpoena to prevent the release of protected health care
information absent affirmative written consent to the release.

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

D. This section shall not apply to an investigation
or proceeding in which the conduct subject to potential
liability would be subject to liability under the laws of this
state so long as the investigation or proceeding does not
violate the public policy of this state or an individual's or
entity's rights pursuant to the Reproductive and Gender-

Affirming Health Care Protection Act.

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

A. A party shall not submit to a clerk of the court
of this state a foreign subpoena or summons for discovery or a
witness to provide testimony related to an interstate
investigation or proceeding that seeks to impose civil or
criminal liability or professional disciplinary action related
to a protected health care activity unless the requesting party
submits an attestation, signed under the penalty of perjury,
that the foreign subpoena or summons relates to an out-of-state action for which the same claim exists under the laws of this state or for a claim similar to a claim that exists under the laws of this state that is not in conflict with the public policy of this state or the rights of an individual or entity pursuant to the Reproductive and Gender-Affirming Health Care Protection Act, and is founded in tort, contract or statute and:

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

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

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

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

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

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

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

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

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

(1) initiating a legal action in another state where civil or criminal liability is based, in whole or in part, on engaging in a protected health care activity in this state, including any action in which liability is based on vicarious, joint or several liability or conspiracy; or
(2) attempting to enforce an order or judgment
issued in connection with such legal action.

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

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

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

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

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

(1) personal jurisdiction is found;

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

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

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

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

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

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

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

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

(4) disclosure is required to an executive state agency pursuant to the reporting laws of this state; or
(5) disclosure is authorized by an order of a court of competent jurisdiction; provided that the information is not related to an interstate investigation or proceeding that seeks to impose civil or criminal liability or professional disciplinary action upon an individual or entity for engaging in a protected health care activity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. shall not arrest or deliver a person if the charge is based on engaging in a protected health care activity, pursuant to the provisions of the Reproductive and Gender-Affirming Health Care Protection Act, including a charge
based on vicarious, joint or several liability or conspiracy, unless the executive authority of the demanding state alleges in writing that the accused was physically present in the demanding state at the time of the commission of the alleged offense and that thereafter, the accused fled from the demanding state."

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

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

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

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