

HOUSE BILL 7

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

INTRODUCED BY

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This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO HEALTH; PROTECTING ACCESS TO REPRODUCTIVE AND GENDER-AFFIRMING HEALTH CARE; PROVIDING FOR ENFORCEMENT; IMPOSING PENALTIES; PRESCRIBING RELIEF.

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

SECTION 1. A new section of Chapter 24 NMSA 1978 is enacted to read:

"[NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Reproductive and Gender-Affirming Health Care Freedom Act"."

.223121.2AIC March 9, 2023 (12:39am)

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SECTION 2. A new section of Chapter 24 NMSA 1978 is enacted to read:

"[NEW MATERIAL] DEFINITIONS.--As used in the Reproductive and Gender-Affirming Health Care Freedom Act:

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

B. "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 any branch of government that receives public funding, including political subdivisions, special tax districts, school districts and institutions of higher education; and

C. "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 fertility;

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(7) treating cancers of the reproductive system; or

(8) preventing or treating sexually transmitted infections."

SECTION 3. A new section of Chapter 24 NMSA 1978 is enacted to read:

"[NEW MATERIAL] PUBLIC BODY PROHIBITED ACTION.--

A. A public body or HJC→agent←HJC HJC→an entity or individual acting on behalf of or within the scope of the authority←HJC of a public body shall not discriminate against a person based on that person's use of or refusal to use reproductive health care HJC→or gender-affirming health care←HJC services.

B. A public body or HJC→agent←HJC HJC→an entity or individual acting on behalf of or within the scope of the authority←HJC of a public body shall not SJC→, directly or indirectly,←SJC deny, restrict or interfere with a person's ability to access or provide reproductive health care or gender-affirming health care within the medical standard of care.

C. A public body or HJC→agent←HJC HJC→an entity or individual acting on behalf of or within the scope of the authority←HJC of a public body shall not SJC→, directly or indirectly,←SJC deprive, through prosecution, punishment or other means, a person's HJC→right←HJC HJC→ability←HJC to act

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or refrain from acting during the SJC→persons's←SJC

SJC→person's←SJC pregnancy based on the potential, actual or perceived effect on the pregnancy.

D. A public body or HJC→agent←HJC HJC→an entity or individual acting on behalf of or within the scope of the authority←HJC of a public body shall not impose or continue in effect any law, ordinance, policy or regulation that violates or conflicts with the provisions of the Reproductive and Gender-Affirming Health Care Freedom Act. SJC→HJC→"←HJC←SJC SJC→SJC→"←SJC←SJC

~~SJC→HJC→E. Nothing in the Reproductive and Gender-Affirming Health Care Freedom Act shall be construed to require any health care provider or entity to provide care:~~

~~(1) that the health care provider or entity does not otherwise provide or have a duty to provide under state or federal law;~~

~~(2) when the provision of service is against the medical judgment of the treating health care provider while acting within the standard of care; or~~

~~(3) when an individual does not provide payment or a source of payment for the service when it is required in the ordinary course of business, unless the health care provider has a duty to provide services under state or federal law, regardless of the ability to pay."←HJC←SJC~~

SJC→ E. Nothing in the Reproductive and Gender-Affirming Health Care Freedom Act shall be construed to require a health care provider or entity to provide care:

(1) that the health care provider or entity does not otherwise provide or have a duty to provide under state or federal law;

(2) when the provision of service is against the medical judgment of the treating health care provider while acting within the standard of care; or

(3) when an individual does not provide payment or a source of payment for the service when it is required in the ordinary course of business, unless the health care provider has a duty to provide services under state or federal law, regardless of the ability to pay.

F. Nothing in the Reproductive and Gender-Affirming Health Care Freedom Act shall be construed to require a managed care organization or health insurance company to cover claims that are not otherwise required to be covered by the terms and conditions of an insurance contract, managed care contract or state or federal law."←SJC

SECTION 4. A new section of Chapter 24 NMSA 1978 is enacted to read:

"[NEW MATERIAL] ENFORCEMENT--PENALTIES.--

A. The attorney general or a district attorney may

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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 Freedom Act from occurring.

B. In any action brought under Subsection A of this section, the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief
SJC→,←SJC SJC→.←SJC SJC→~~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.~~←SJC

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

SJC→HJC→~~D. Claims pursuant to the Reproductive and Gender-Affirming Health Care Freedom Act may be brought against public bodies and entities acting in the course and scope of authority of a public body. Claims arising from the acts or omissions of individual employees and agents of the public body or entities may be brought against the public body or entity, but not against the individuals.~~"←HJC←SJC

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SJC→C. Claims pursuant to the Reproductive and Gender-Affirming Health Care Freedom Act may be brought against public bodies and entities acting in the course and scope of authority of a public body, but not against an individual."←SJC

SECTION 5. A new section of Chapter 24 NMSA 1978 is enacted to read:

"[NEW MATERIAL] PRIVATE RIGHT OF ACTION.--

A. A person claiming to be aggrieved by a violation of the Reproductive and Gender-Affirming Health Care Freedom Act may maintain an action in district court for appropriate relief, including temporary, preliminary or permanent injunctive relief, compensatory damages or punitive damages

SJC→. ~~The damages provided in this section are in addition to other types of relief available under other law~~←SJC SJC→, or the sum of five thousand dollars (\$5,000) for each violation of the Reproductive and Gender-Affirming Health Care Freedom Act, whichever is greater←SJC .

B. In any 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 defendant.

SJC→C. ~~In any 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 Freedom Act in the amount of five thousand dollars (\$5,000) or~~

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~~actual damages resulting from each violation, whichever is greater. HJC→"←HJC~~

~~HJC→D. Claims pursuant to the Reproductive and Gender-Affirming Health Care Freedom Act may be brought against public bodies and entities acting in the course and scope of authority of a public body. Claims arising from the acts or omissions of individual employees and agents of the public body or entities may be brought against the public body or entity, but not against the individuals."←HJC~~

~~SECTION 6. SEVERABILITY.--If any part or application of the Reproductive and Gender-Affirming Health Care Freedom Act is held invalid, the remainder or its application to other situations or persons shall not be affected.←SJC~~

SJC→C. Claims pursuant to the Reproductive and Gender-Affirming Health Care Freedom Act may be brought against public bodies and entities acting in the course and scope of authority of a public body, but not against an individual."←SJC