STATE OF NEW YORK

10094

IN ASSEMBLY

April 29, 2022

Introduced by M. of A. BURDICK -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil rights law, in relation to establishing a cause of action for unlawful interference with protected rights

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "freedom from interference with reproductive and endocrine health advocacy and travel exercise act", or the "FIRE HATE act".

§ 2. The legislature finds that the rights of the residents of the state of New York are imperiled by actions which would attempt to or purport to prevent or limit travel to New York for the exercise of rights protected by the New York state constitution and the laws of the state of New York, or which would put those who travel to New York at risk of civil actions and criminal actions brought in courts outside the state of New York seeking to punish or impose civil liability on individuals for traveling to New York to exercise individual and human rights protected within the state of New York. The legislature finds that imposing such liability creates distinct harm within the state of New York.

§ 3. The civil rights law is amended by adding a new section 70-b to read as follows:

§ 70-b. Unlawful interference with protected rights. 1. A claim of unlawful interference with protected rights is established under this section. Such claim shall arise when a person demonstrates that he or she exercised or attempted to exercise a right protected under the constitution of the state of New York and/or laws of the state of New York, to obtain medical care, whether involving reproductive or endocrine function, and such action results in litigation or criminal charges in the courts of any state, and such rights resulted in action, whether criminal or civil, brought against that person in any court in the United States or its territories.

2. A person shall have a claim for unlawful interference with protected rights against any person or organization who commences an

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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action in any court, regardless of where situated, in which the allegations against the person, whether civil or criminal, involve travel to the state of New York, including, but not limited to, planned travel to the state of New York, for the purposes of exercising any right protected under the laws of the state of New York and/or the constitution of the state of New York, including rights specified in subdivision six of this section.

3. In a claim for unlawful interference with protected rights under this section:

(a) costs and attorneys' fees shall be recovered upon a demonstration of unlawful interference, including an adjudication pursuant to subdivision (g) of rule thirty-two hundred eleven or subdivision (h) of rule thirty-two hundred twelve of the civil practice law and rules;

(b) other compensatory damages may only be recovered upon an additional demonstration that the action involving public petition and participation was commenced or continued for the purpose of harassing, intimidating, punishing or otherwise maliciously inhibiting the free exercise of rights protected in New York;

(c) in any action or proceeding brought pursuant to this section, the court shall allow a prevailing plaintiff reasonable attorneys' fees and expert fees as a part of the costs which may be recovered; and

(d) punitive damages in the amount of treble the amount of any liability imposed by the court of any other state shall be recovered upon an additional demonstration that the action involving exercise of rights protected in New York was commenced or continued for the sole purpose of harassing, intimidating, punishing or otherwise maliciously inhibiting the free exercise of rights protected in New York.

4. Any action or proceeding brought pursuant to this section shall be commenced no later than six years after the date on which the violation of this section is committed.

5. Nothing in this section shall affect or preclude the right of any party to any recovery otherwise authorized by common law, or by statute, law or rule.

6. Rights specifically protected under this section shall include:

(a) the right to obtain reproductive health care, including, but not limited to, the legal termination of a pregnancy; and

(b) the right to obtain medical care, including, but not limited to, hormone therapy and/or other therapy related to gender.

7. Notwithstanding any other provision of law, the following are not a defense to an action brought under this section:

(a) ignorance or mistake of law;

(b) a defendant's belief that the requirements of this section are unconstitutional or were unconstitutional;

(c) a defendant's reliance on any court decision that has been overruled on appeal or by a subsequent court, even if that court decision had not been overruled when the defendant engaged in conduct that violates this section;

(d) a defendant's reliance on any state or federal court decision that is not binding on the court in which the action has been brought;

(e) non-mutual issue preclusion or non-mutual claim preclusion;

(f) the consent of any other individual to the action in the courts of another state; or

(g) any claim that the enforcement of this section or the imposition of civil liability against the defendant will violate the constitutional rights of third parties.

8. An action under this section shall be brought in the Supreme Court of the state of New York.

9. Notwithstanding any other provision of law, neither sovereign immunity nor qualified immunity shall be a defense to actions brought under this section.

§ 3. This act shall take effect immediately.