

# STATE OF NEW YORK

1709--B

2023-2024 Regular Sessions

## IN ASSEMBLY

January 20, 2023

Introduced by M. of A. REYES, PAULIN, OTIS, DINOWITZ, BURGOS, RAGA, SHRESTHA, FORREST, DICKENS, O'DONNELL, LEVENBERG, SIMON, ARDILA, GONZALEZ-ROJAS, KELLES, McDONALD, CUNNINGHAM, CARROLL, SEAWRIGHT, FAHY, SHIMSKY, GLICK, GIBBS, L. ROSENTHAL, BURDICK, CRUZ, DE LOS SANTOS, BORES, HEVESI, McMAHON, EPSTEIN, WALLACE, LAVINE, THIELE, SILLITTI, AUBRY, WEPRIN, CLARK, SEPTIMO, SIMONE, JACOBSON -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law, the executive law, the civil practice law and rules, the insurance law and the education law, in relation to legally protected health activity providers

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

Section 1. Section 570.17 of the criminal procedure law, as amended by chapter 101 of the laws of 2023, is amended to read as follows:

§ 570.17 Extradition [~~of abortion providers~~] for legally protected health activity.

[~~No~~] 1. For purposes of this section, the following terms shall have the following meanings:

(a) "Reproductive health services" shall mean and include all services, care, or products of a medical, surgical, psychiatric, therapeutic, diagnostic, mental health, behavioral health, preventative, rehabilitative, supportive, consultative, referral, prescribing, or dispensing nature relating to the human reproductive system provided in accordance with the constitution and the laws of this state, whether provided in person or by means of telehealth or telehealth services, which includes, but is not limited to, all services, care and products relating to pregnancy, assisted reproduction, contraception, miscarriage

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

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1 management or the termination of a pregnancy, and self-managed termi-  
2 nations.

3 (b) "Legally protected health activity" shall mean and include the  
4 following acts and omissions by providers and facilitators of reproduc-  
5 tive health services, to the extent they are not in violation of the  
6 constitution or the laws of this state, provided that such provider is  
7 physically present in the state:

8 (i) the exercise or attempted exercise by any person of rights to  
9 reproductive health services as secured by the constitution or laws of  
10 this state or the provision of insurance coverage for such services or  
11 care; and

12 (ii) any act or omission undertaken to aid or encourage, or attempt to  
13 aid or encourage, any person in the exercise or attempted exercise of  
14 rights to reproductive health services as secured by the constitution or  
15 laws of this state, or to provide insurance coverage for such services  
16 or care; provided, however, that the provision of such reproductive  
17 health services by a person duly licensed under the laws of this state  
18 and physically present in this state and the provision of insurance  
19 coverage for such services or care shall be a legally protected health  
20 activity if the service or care is permitted under the laws of this  
21 state, regardless of the patient's location.

22 2. Except as required by federal law, no demand for the extradition of  
23 a person subject to criminal liability that is in whole or in part based  
24 on the alleged provision or receipt of, assistance in provision or  
25 receipt of, material support for, or any theory of vicarious, joint,  
26 several or conspiracy liability for [~~reproductive health care services~~  
27 ~~lawfully~~] any legally protected health activity performed in New York  
28 shall be recognized by the governor unless the executive authority of  
29 the demanding state shall allege in writing that the accused was phys-  
30 ically present in the demanding state at the time of the commission of  
31 the alleged crime, and that thereafter he, she or they fled from that  
32 state.

33 § 2. Subdivision 3-a of section 140.10 of the criminal procedure law,  
34 as amended by chapter 101 of the laws of 2023, is amended to read as  
35 follows:

36 3-a. A police officer may not arrest any person for [~~performing or~~  
37 ~~aiding in the performance of an abortion~~] any legally protected health  
38 activity within this state [~~that is performed in accordance with the~~  
39 ~~applicable law of this state, for seeking to end, or ending, or aiding~~  
40 ~~another in ending their pregnancy within this state, or for procuring or~~  
41 ~~aiding in the procurement of an abortion within this state~~] as defined  
42 in section 570.17 of this chapter.

43 § 3. Section 837-w of the executive law, as amended by chapter 101 of  
44 the laws of 2023, is renumbered section 837-x and amended to read as  
45 follows:

46 § 837-x. Cooperation with certain out-of-state investigations. 1. For  
47 purposes of this section, the following terms shall have the following  
48 meanings:

49 (a) "Reproductive health services" shall have the same meaning as  
50 paragraph (a) of subdivision one of section 570.17 of the criminal  
51 procedure law; and

52 (b) "Legally protected health activity" shall have the same meaning as  
53 paragraph (b) of subdivision one of section 570.17 of the criminal  
54 procedure law.

55 2. No state or local [~~law enforcement agency~~] government employee or  
56 entity or other person acting on behalf of state or local government

shall cooperate with or provide information to any individual or out-of-state agency or department [~~related to the performance or aiding in the performance of an abortion within this state that is performed in accordance with the applicable law of this state, ending, seeking to end, or aiding another in ending their pregnancy within this state, or procuring or aiding in the procurement of an abortion within~~] regarding any legally protected health activity in this state, or otherwise expend or use time, moneys, facilities, property, equipment, personnel or other resources in furtherance of any investigation or proceeding that seeks to impose civil or criminal liability or professional sanctions upon a person or entity for any legally protected health activity occurring in this state. Nothing in this section shall prohibit the investigation of any [~~criminal activity in this state which may involve the performance of an abortion~~] reproductive health services rendered in violation of the laws of this state, provided that no information relating to any medical procedure performed on a specific individual may be shared with an out-of-state agency or any other individual. Nothing in this section shall prohibit compliance with a valid, court-issued subpoena or warrant which does not relate to a law seeking to impose civil or criminal liability or professional sanctions for a legally protected health activity, or in response to the written request of a person who is the subject of such an investigation or proceeding, to the extent necessary, in each case, to fulfill such request.

§ 4. Subdivision (g) of section 3119 of the civil practice law and rules, as added by chapter 219 of the laws of 2022, is amended to read as follows:

(g) (1) Out-of-state [~~abortion~~] proceedings regarding legally protected health activities. Notwithstanding any other provisions of this section or any other law, no court or county clerk shall issue a subpoena under this section in connection with an out-of-state proceeding relating to any [~~abortion services or procedures~~] legally protected health activity which [~~were legally performed~~] occurred in this state, unless such out-of-state proceeding [~~(1)~~] (i) sounds in tort or contract[, ~~or is based on statute~~], [~~(2)~~] (ii) is actionable, in an equivalent or similar manner, under the laws of this state, and [~~(3)~~] (iii) was brought by the patient who received reproductive [~~healthcare~~] health services as defined in paragraph (a) of subdivision one of section 570.17 of the criminal procedure law, or the patient's legal representative, so long as the patient gives express consent.

(2) For purposes of this subdivision, the terms "legally protected health activity" and "reproductive health services" shall have the same meanings as defined in subdivision one of section 570.17 of the criminal procedure law.

§ 5. Subdivision (e) of section 3102 of the civil practice law and rules, as amended by chapter 219 of the laws of 2022, is amended to read as follows:

(e) Action pending in another jurisdiction. Except as provided in section three thousand one hundred nineteen of this article, when under any mandate, writ or commission issued out of any court of record in any other state, territory, district or foreign jurisdiction, or whenever upon notice or agreement, it is required to take the testimony of a witness in the state, he or she may be compelled to appear and testify in the same manner and by the same process as may be employed for the purpose of taking testimony in actions pending in the state. The supreme court or a county court shall make any appropriate order in aid of taking such a deposition; provided that no order may be issued under

1 this section in connection with an out-of-state proceeding relating to  
2 any [~~abortion services or procedures~~] legally protected health activity,  
3 as defined in paragraph (b) of subdivision one of section 570.17 of the  
4 criminal procedure law which [~~were legally performed~~] occurred in this  
5 state, unless such out-of-state proceeding (1) sounds in tort or  
6 contract[, ~~or is based on statute~~], (2) is actionable, in an equivalent  
7 or similar manner, under the laws of this state, and (3) was brought by  
8 the patient who received reproductive [~~healthcare~~] health services, or  
9 the patient's legal representative.

10 § 6. The civil practice law and rules is amended by adding a new  
11 section 4550 to read as follows:

12 § 4550. Admissibility of evidence related to legally protected health  
13 activity. Evidence relating to the involvement of a party engaging in  
14 one or more legally protected health activity, as defined in paragraph  
15 (b) of subdivision one of section 570.17 of the criminal procedure law,  
16 relating to providing reproductive health services to persons not phys-  
17 ically present in this state shall not be offered against such party as  
18 evidence that such party has engaged in any wrongdoing, whether civil,  
19 criminal, professional, or otherwise by virtue of such recipients of  
20 such services not being physically present in this state. Nothing in  
21 this section shall prevent a party from offering such evidence in a  
22 proceeding that (i) sounds in tort or contract, (ii) is actionable, in  
23 an equivalent or similar manner, under the laws of this state, and (iii)  
24 was brought by the patient who received reproductive health services, or  
25 the patient's legal representative.

26 § 7. Subsection (a) of section 3436-a of the insurance law, as amended  
27 by section 4 of part LL of chapter 57 of the laws of 2023, is amended to  
28 read as follows:

29 (a) Every insurer that issues or renews medical malpractice insurance  
30 covering a health care provider licensed to practice in this state shall  
31 be prohibited from taking any adverse action against a health care  
32 provider solely on the basis that the health care provider [~~performs an~~  
33 ~~abortion or provides reproductive health care~~] engages in legally  
34 protected health activity, as defined in paragraph (b) of subdivision  
35 one of section 570.17 of the criminal procedure law, that is legal in  
36 this state [~~on~~] with someone who is from out of the state. The super-  
37 intendent is expressly authorized to interpret "legally protected health  
38 activity" as if such definition was stated within this section. Such  
39 policy shall include health care providers who [~~legally~~] prescribe  
40 abortion medication to out-of-state patients by means of telehealth.

41 § 8. Subdivision 2 of section 6531-b of the education law, as added by  
42 chapter 220 of the laws of 2022, is amended to read as follows:

43 2. The performance, recommendation, or provision of any reproductive  
44 health services as defined in subdivision one of this section, or any  
45 legally protected health activity as defined in paragraph (b) of subdi-  
46 vision one of section 570.17 of the criminal procedure law, by a health  
47 care practitioner acting within their scope of practice, for a patient  
48 who resides in a state wherein the performance, recommendation, or  
49 provision of such reproductive health services is illegal, shall not, by  
50 itself, constitute professional misconduct under this title, or title  
51 two-A of article two of the public health law, or any other law, rule or  
52 regulation governing the licensure, certification, or authorization of  
53 such practitioner, nor shall any license, certification or authorization  
54 of a health care practitioner be revoked, suspended, or annulled or  
55 otherwise subject to any other penalty or discipline provided in the  
56 public health law or this title solely on the basis that such health

1 care practitioner performed, recommended, or provided any such reproduc-  
2 tive health services for a patient who resides in a state wherein the  
3 performance, recommendation, or provision of such reproductive health  
4 services is illegal.

5 § 9. Severability. If any provision of this act, or any application of  
6 any provision of this act, is held to be invalid, that shall not affect  
7 the validity or effectiveness of any other provision of this act, any  
8 other application of any provision of this act, or any other provision  
9 of any law or code amended by this act.

10 § 10. Choice of laws. This act shall be exclusively governed by and  
11 construed pursuant to the laws of the state of New York, without giving  
12 effect to any choice of law principles thereunder.

13 § 11. Conflict of laws. To the extent that any laws in the state of  
14 New York conflict with this act, this act shall govern.

15 § 12. This act shall take effect immediately.