

# STATE OF NEW YORK

7687--A

2023-2024 Regular Sessions

## IN ASSEMBLY

June 5, 2023

Introduced by M. of A. BRONSON, SIMON -- read once and referred to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the family court act, the domestic relations law, the criminal procedure law, the executive law, the civil practice law and rules, the education law and the insurance law, in relation to gender-affirming care; to repeal section 570.19 of the criminal procedure law relating to the extradition of gender-affirming care providers, seekers, parents, guardians, and helpers; to repeal subdivision 3-b of section 140.10 of the criminal procedure law relating to the arrest of any person for performing or aiding in the performance of gender-affirming care within this state; to repeal section 837-x of the executive law relating to cooperation with certain out-of-state investigations; and to repeal subdivision (h) of section 3119 of the civil practice law and rules relating to subpoenas related to gender-affirming care

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

- 1 Section 1. Subdivision 1 of section 659 of the family court act, as  
2 added by chapter 101 of the laws of 2024, is amended to read as follows:  
3 1. A law that authorizes a child to be removed from their parent or  
4 guardian based on the parent or guardian allowing their child to receive  
5 gender-affirming care is against the public policy of this state and  
6 shall not be enforced or applied in a case pending in a court in this  
7 state.  
8 § 2. Section 76 of the domestic relations law is amended by adding a  
9 new subdivision 4 to read as follows:  
10 4. The presence of a child in this state for the purpose of obtaining  
11 gender-affirming care, as defined by section sixty-five hundred thirty-

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

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1 one-b of the education law, is sufficient to meet the requirements of  
2 paragraph (b) of subdivision one of this section.

3 § 3. Subdivision 1 of section 76-c of the domestic relations law, as  
4 added by chapter 386 of the laws of 2001, is amended to read as follows:

5 1. A court of this state has temporary emergency jurisdiction if the  
6 child is present in this state and:

7 (a) the child has been abandoned [ex];

8 (b) it is necessary in an emergency to protect the child, a sibling or  
9 parent of the child; or

10 (c) the child is present in this state because the child has been  
11 unable to obtain gender-affirming care, as defined by section sixty-five  
12 hundred thirty-one-b of the education law.

13 § 4. Subdivisions 3 and 4 of section 76-f of the domestic relations  
14 law are renumbered subdivisions 4 and 5, and a new subdivision 3 is  
15 added to read as follows:

16 3. In a case where the provision of gender-affirming care to the child  
17 is at issue, a court of this state shall not determine that it is an  
18 inconvenient forum and must find that it is a more appropriate forum  
19 where the law or policy of the other state that may take jurisdiction  
20 limits the ability of a parent to obtain gender-affirming care for their  
21 child. For the purposes of this section, "gender-affirming care" has  
22 the same meaning as defined by section sixty-five hundred thirty-one-b  
23 of the education law.

24 § 5. Subdivision 4 of section 76-g of the domestic relations law, as  
25 added by chapter 386 of the laws of 2001, is amended to read as follows:

26 4. In making a determination under this section, a court shall not  
27 consider as a factor weighing against the petitioner any taking of the  
28 child, or retention of the child after a visit or other temporary relin-  
29 quishment of physical custody, from the person who has legal custody, if  
30 there is evidence that the taking or retention of the child was to  
31 protect the petitioner from domestic violence or the child or sibling  
32 from mistreatment or abuse, or for the purposes of obtaining gender-af-  
33 firming care, as defined by section sixty-five hundred thirty-one-b of  
34 the education law, for the child and the law or policy of the other  
35 state limits the ability of a parent to obtain gender-affirming care for  
36 their child.

37 § 6. Section 77-1 of the domestic relations law, as added by chapter  
38 386 of the laws of 2001, is amended to read as follows:

39 § 77-1. 1. Recognition and enforcement. A court of this state shall  
40 accord full faith and credit to an order issued by another state and  
41 consistent with this article which enforces a child custody determi-  
42 nation by a court of another state unless the order has been vacated,  
43 stayed, or modified by a court having jurisdiction to do so under title  
44 two of this article, unless recognition and enforcement would violate  
45 subdivision one-c of section two hundred forty of this chapter or  
46 section one thousand eighty-five of the family court act.

47 2. (a) A law that authorizes a state agency to remove a child from  
48 their parent or guardian based on the parent or guardian allowing their  
49 child to receive gender-affirming care is against the public policy of  
50 this state and shall not be enforced or applied in a case pending in a  
51 court in this state.

52 (b) For the purpose of this subdivision, "gender-affirming care" shall  
53 have the same meaning as provided by section sixty-five hundred thirty-  
54 one-b of the education law.

1 § 7. Subdivision 1 of section 570.17 of the criminal procedure law,  
2 as added by chapter 138 of the laws of 2023, is amended to read as  
3 follows:

4 1. For purposes of this section, the following terms shall have the  
5 following meanings:

6 (a) "Reproductive health services" shall mean and include all  
7 services, care, or products of a medical, surgical, psychiatric, thera-  
8 peutic, diagnostic, mental health, behavioral health, preventative,  
9 rehabilitative, supportive, consultative, referral, prescribing, or  
10 dispensing nature relating to the human reproductive system provided in  
11 accordance with the constitution and the laws of this state, whether  
12 provided in person or by means of telehealth or telehealth services,  
13 which includes, but is not limited to, all services, care and products  
14 relating to pregnancy, assisted reproduction, contraception, miscarriage  
15 management or the termination of a pregnancy, and self-managed termi-  
16 nations.

17 (b) "Gender-affirming care" shall mean any type of care provided to an  
18 individual to affirm their gender identity or gender expression;  
19 provided that surgical interventions on minors with variations in their  
20 sex characteristics that are not sought and initiated by the individual  
21 patient are not gender-affirming care.

22 (c) "Legally protected health activity" shall mean and include the  
23 following acts and omissions by providers and facilitators of reproduc-  
24 tive health services and gender-affirming care, to the extent they are  
25 not in violation of the constitution or the laws of this state, provided  
26 that such provider is physically present in the state:

27 (i) the exercise or attempted exercise by any person of rights to  
28 reproductive health services and gender-affirming care as secured by the  
29 constitution or laws of this state or the provision of insurance cover-  
30 age for such services or care; and

31 (ii) any act or omission undertaken to aid or encourage, or attempt to  
32 aid or encourage, any person in the exercise or attempted exercise of  
33 rights to reproductive health services and gender-affirming care as  
34 secured by the constitution or laws of this state, or to provide insur-  
35 ance coverage for such services or care; provided, however, that the  
36 provision of such reproductive health services or gender-affirming care  
37 by a person duly licensed under the laws of this state and physically  
38 present in this state and the provision of insurance coverage for such  
39 services or care shall be a legally protected health activity if the  
40 service or care is permitted under the laws of this state, regardless of  
41 the patient's location.

42 § 8. Section 570.19 of the criminal procedure law is REPEALED.

43 § 9. Subdivision 3-b of section 140.10 of the criminal procedure law  
44 is REPEALED.

45 § 10. Subdivision 1 and paragraph (b) of subdivision 2 of section  
46 837-x of the executive law, subdivision 1 as added by chapter 138 of the  
47 laws of 2023 and paragraph (b) of subdivision 2 as amended by chapter 89  
48 of the laws of 2024, are amended to read as follows:

49 1. For purposes of this section, the following terms shall have the  
50 following meanings:

51 (a) "Reproductive health services" shall have the same meaning as  
52 paragraph (a) of subdivision one of section 570.17 of the criminal  
53 procedure law; [~~and~~]

54 (b) "Gender-affirming care" shall have the same meaning as paragraph  
55 (b) of subdivision one of section 570.17 of the criminal procedure law;  
56 and

1 (c) "Legally protected health activity" shall have the same meaning as  
2 paragraph [~~(b)~~] (c) of subdivision one of section 570.17 of the criminal  
3 procedure law.

4 (b) Nothing in this section shall prohibit the investigation of any  
5 reproductive health services or gender-affirming care rendered in  
6 violation of the laws of this state, provided that no information relat-  
7 ing to any medical procedure performed on a specific individual may be  
8 shared with an out-of-state agency or any other individual. Nothing in  
9 this section shall prohibit compliance with a valid, court-issued  
10 subpoena or warrant which does not relate to a law seeking to impose  
11 civil or criminal liability or professional sanctions for a legally  
12 protected health activity, or in response to the written request of a  
13 person who is the subject of such an investigation or proceeding, to the  
14 extent necessary, in each case, to fulfill such request.

15 § 11. Section 837-x of the executive law, as amended by chapter 101 of  
16 the laws of 2024, is REPEALED.

17 § 12. Subdivision (h) of section 3119 of the civil practice law and  
18 rules is REPEALED.

19 § 13. Subdivision (g) of section 3119 of the civil practice law and  
20 rules, as amended by chapter 138 of the laws of 2023, paragraph 1 as  
21 amended by chapter 89 of the laws of 2024, is amended to read as  
22 follows:

23 (g) (1) Out-of-state proceedings regarding legally protected health  
24 activities. Notwithstanding any other provisions of this section or any  
25 other law, no court or county clerk shall issue a subpoena under this  
26 section in connection with an out-of-state proceeding relating to any  
27 legally protected health activity which occurred in this state, unless  
28 such out-of-state proceeding (i) sounds in tort or contract, (ii) is  
29 actionable, in an equivalent or similar manner, under the laws of this  
30 state, and (iii) was brought by the patient who received reproductive  
31 health services as defined in paragraph (a) of subdivision one of  
32 section 570.17 of the criminal procedure law or gender-affirming care as  
33 defined in paragraph (b) of subdivision one of section 570.17 of the  
34 criminal procedure law, or the patient's legal representative, so long  
35 as the patient gives express consent unless express consent is not  
36 feasible due to patient injury or death.

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

41 § 14. Subdivision (e) of section 3102 of the civil practice law and  
42 rules, as separately amended by chapter 138 of the laws of 2023 and  
43 chapter 101 of the laws of 2024, is amended to read as follows:

44 (e) Action pending in another jurisdiction. Except as provided in  
45 section three thousand one hundred nineteen of this article, when under  
46 any mandate, writ or commission issued out of any court of record in any  
47 other state, territory, district or foreign jurisdiction, or whenever  
48 upon notice or agreement, it is required to take the testimony of a  
49 witness in the state, [~~he or she~~] such witness may be compelled to  
50 appear and testify in the same manner and by the same process as may be  
51 employed for the purpose of taking testimony in actions pending in the  
52 state. The supreme court or a county court shall make any appropriate  
53 order in aid of taking such a deposition; provided that no order may be  
54 issued under this section in connection with an out-of-state proceeding  
55 relating to any legally protected health activity, as defined in para-  
56 graph [~~(b)~~] (c) of subdivision one of section 570.17 of the criminal

1 procedure law [~~or gender-affirming care, as defined in paragraph (c) of~~  
 2 ~~subdivision one of section sixty-five hundred thirty-one b of the~~  
 3 ~~education law,~~] which occurred in this state, unless such out-of-state  
 4 proceeding (1) sounds in tort or contract, (2) is actionable, in an  
 5 equivalent or similar manner, under the laws of this state, and (3) was  
 6 brought by the patient who received reproductive health services or  
 7 gender-affirming care, or the patient's legal representative.

8 § 15. Section 4550 of the civil practice law and rules, as added by  
 9 chapter 138 of the laws of 2023, is amended to read as follows:

10 § 4550. Admissibility of evidence related to legally protected health  
 11 activity. Evidence relating to the involvement of a party engaging in  
 12 one or more legally protected health activity, as defined in paragraph  
 13 [~~(b)~~] (c) of subdivision one of section 570.17 of the criminal procedure  
 14 law, relating to providing reproductive health services or gender-af-  
 15 firming care to persons not physically present in this state shall not  
 16 be offered against such party as evidence that such party has engaged in  
 17 any wrongdoing, whether civil, criminal, professional, or otherwise by  
 18 virtue of such recipients of such services not being physically present  
 19 in this state. Nothing in this section shall prevent a party from offer-  
 20 ing such evidence in a proceeding that (i) sounds in tort or contract,  
 21 (ii) is actionable, in an equivalent or similar manner, under the laws  
 22 of this state, and (iii) was brought by the patient who received repro-  
 23 ductive health services or gender-affirming care, or the patient's legal  
 24 representative.

25 § 16. Subdivision 1 of section 6510 of the education law is amended by  
 26 adding a new paragraph b-1 to read as follows:

27 b-1. Misconduct. The department shall not charge a licensee, acting  
 28 within their scope of practice, with misconduct as defined in section  
 29 sixty-five hundred nine of this subarticle, or cause a complaint made by  
 30 any person to the department to be investigated beyond a preliminary  
 31 review, solely on the basis that such licensee performed, recommended,  
 32 or provided any reproductive health services or gender-affirming care as  
 33 defined in section sixty-five hundred nine-f of this subarticle for a  
 34 patient who resides in a state wherein the performance, recommendation  
 35 or provision of such reproductive health services or gender-affirming  
 36 care is illegal. The preliminary review shall determine if such report  
 37 reasonably appears to reflect conduct warranting further investigation  
 38 pursuant to this paragraph.

39 § 17. Subdivision 2 of section 6531-b of the education law, as sepa-  
 40 rately amended by chapters 138 and 143 of the laws of 2023, is amended  
 41 to read as follows:

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

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

5 § 18. The education law is amended by adding a new section 6509-f to  
6 read as follows:

7 § 6509-f. Limited exemption from professional misconduct; reproduc-  
8 tive health services and gender-affirming care. 1. As used in this  
9 section, the following terms shall have the following meanings:

10 (a) "Reproductive health services" shall include all services, care,  
11 or products of a medical, surgical, psychiatric, therapeutic, mental  
12 health, behavioral health, diagnostic, preventative, rehabilitative,  
13 supportive, counseling, referral, prescribing, or dispensing nature  
14 relating to the human reproductive system provided in accordance with  
15 the laws of this state, including, but not limited to, all services,  
16 care and products relating to pregnancy, assisted reproduction, contra-  
17 ception, miscarriage management or the termination of a pregnancy,  
18 including self-managed terminations.

19 (b) "Gender-affirming care" shall mean any type of care provided to an  
20 individual to affirm their gender identity or gender expression,  
21 provided that surgical interventions on minors with variations in their  
22 sex characteristics that are not sought and initiated by the individual  
23 patient are not gender-affirming care.

24 (c) "Health care practitioner" means a person who is licensed, certi-  
25 fied, or authorized under this title and acting within their lawful  
26 scope of practice and includes, but is not limited to persons subject to  
27 articles one hundred thirty-one, one hundred thirty-one-B, one hundred  
28 thirty-six, one hundred thirty-seven, one hundred thirty-seven-A, one  
29 hundred thirty-nine, one hundred forty, one hundred fifty-three, one  
30 hundred fifty-four, one hundred fifty-six, one hundred fifty-nine or one  
31 hundred sixty-three of this title or any other person designated as a  
32 health care practitioner by law, rule, or regulation.

33 2. The performance, recommendation, or provision of any reproductive  
34 health services or gender-affirming care as defined in subdivision one  
35 of this section, or any legally protected health activity as defined in  
36 paragraph (c) of subdivision one of section 570.17 of the criminal  
37 procedure law, by a health care practitioner acting within their scope  
38 of practice, for a patient who resides in a state wherein the perform-  
39 ance, recommendation, or provision of such reproductive health services  
40 or gender-affirming care is illegal, shall not, by itself, constitute  
41 professional misconduct under this title, or any other law, rule or  
42 regulation governing the licensure, certification, or authorization of  
43 such practitioner, nor shall any license, certification or authorization  
44 of a health care practitioner be revoked, suspended, or annulled or  
45 otherwise subject to any other penalty or discipline provided in the  
46 public health law or this title solely on the basis that such health  
47 care practitioner performed, recommended, or provided any such reproduc-  
48 tive health services or gender-affirming care for a patient who resides  
49 in a state wherein the performance, recommendation, or provision of such  
50 reproductive health services or gender-affirming care is illegal.

51 3. Nothing in this section shall be construed to expand the scope of  
52 practice of any individual licensed, certified or authorized under this  
53 title, nor does this section give any such individual the authority to  
54 act outside their scope of practice, as defined in this title.

55 § 19. Subsection (a) of section 3436-a of the insurance law, as sepa-  
56 rately amended by chapter 138 of the laws of 2023 and chapter 101 of the

1 laws of 2024, is amended and two new subsections (e) and (f) are added  
2 to read as follows:

3 (a) Every insurer that issues or renews medical malpractice insurance  
4 or professional liability insurance covering a health care provider  
5 licensed to practice in this state shall be prohibited from taking any  
6 adverse action against a health care provider solely on the basis that  
7 the health care provider engages in legally protected health activity,  
8 as defined in paragraph ~~[(b)]~~ (c) of subdivision one of section 570.17  
9 of the criminal procedure law, ~~[or gender-affirming care, as defined in~~  
10 ~~paragraph (c) of subdivision one of section sixty-five hundred thirty-~~  
11 ~~one b of the education law, that is legal in this state]~~ with someone  
12 who is from out of the state. The superintendent is expressly authorized  
13 to interpret "legally protected health activity" as if such definition  
14 was stated within this section. Such policy shall include health care  
15 providers who prescribe abortion medication to out-of-state patients by  
16 means of telehealth.

17 (e) As used in this section, "professional liability insurance" shall  
18 mean insurance against legal liability of the insured, and against loss,  
19 damage, or expense incident to a claim of such liability arising out of  
20 the death or injury of any person due to medical, psychiatric, mental  
21 health, or other malpractice by any licensed physician assistant, phys-  
22 ical therapist, physical therapist assistant, pharmacist, registered  
23 pharmacy technician, nurse, psychologist, psychiatrist, social worker,  
24 occupational therapist, speech-language pathologist, or mental health  
25 practitioner.

26 (f) As used in this section, "health care provider" shall mean a  
27 person who is licensed, certified, or authorized under title VIII of the  
28 education law and acting within their lawful scope of practice and  
29 includes, but is not limited to persons subject to article one hundred  
30 thirty-one, one hundred thirty-one-B, one hundred thirty-six, one  
31 hundred thirty-seven, one hundred thirty-seven-A, one hundred thirty-  
32 nine, one hundred forty, one hundred fifty-three, one hundred fifty-  
33 four, one hundred fifty-six, one hundred fifty-nine or one hundred  
34 sixty-three of title eight of the education law or any other person  
35 designated as a health care provider by law, rule, or regulation.

36 § 20. Severability. If any clause, sentence, paragraph, subdivision,  
37 section or part of this act shall be adjudged by any court of competent  
38 jurisdiction to be invalid, such judgment shall not affect, impair, or  
39 invalidate the remainder thereof, but shall be confined in its operation  
40 to the clause, sentence, paragraph, subdivision, section or part thereof  
41 directly involved in the controversy in which such judgment shall have  
42 been rendered. It is hereby declared to be the intent of the legislature  
43 that this act would have been enacted even if such invalid provisions  
44 had not been included herein.

45 § 21. This act shall take effect immediately.