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:

Section 1. Subdivision 1 of section 659 of the family court act, as added by chapter 101 of the laws of 2024, is amended to read as follows:

1. A law that authorizes a child to be removed from their parent or guardian based on the parent or guardian allowing their child to receive gender-affirming care **is against the public policy of this state and** shall not be enforced or applied in a case pending in a court in this state.

§ 2. Section 76 of the domestic relations law is amended by adding a new subdivision 4 to read as follows:

4. The presence of a child in this state for the purpose of obtaining 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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one-b of the education law, is sufficient to meet the requirements of paragraph (b) of subdivision one of this section.

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

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

(a) the child has been abandoned [~~or~~];

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

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

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

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

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

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

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

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

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

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

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

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 management or the termination of a pregnancy, and self-managed terminations.

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

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

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

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

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

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

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

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

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

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

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

(b) Nothing in this section shall prohibit the investigation of any reproductive health services or gender-affirming care 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.

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

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

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

(g) (1) Out-of-state 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 legally protected health activity which occurred in this state, unless such out-of-state proceeding (i) sounds in tort or contract, (ii) is actionable, in an equivalent or similar manner, under the laws of this state, and (iii) was brought by the patient who received reproductive health services as defined in paragraph (a) of subdivision one of section 570.17 of the criminal procedure law or gender-affirming care as defined in paragraph (b) 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 unless express consent is not feasible due to patient injury or death.

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

§ 14. Subdivision (e) of section 3102 of the civil practice law and rules, as separately amended by chapter 138 of the laws of 2023 and chapter 101 of the laws of 2024, 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~~] such witness 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 this section in connection with an out-of-state proceeding relating to any legally protected health activity, as defined in paragraph [~~(b)~~] (c) of subdivision one of section 570.17 of the criminal

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

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

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

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

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

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

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

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

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

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

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

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

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

2. The performance, recommendation, or provision of any reproductive health services or gender-affirming care as defined in subdivision one of this section, or any legally protected health activity as defined in paragraph (c) of subdivision one of section 570.17 of the criminal procedure law, by a health care practitioner acting within their scope of practice, for a patient who resides in a state wherein the performance, recommendation, or provision of such reproductive health services or gender-affirming care is illegal, shall not, by itself, constitute professional misconduct under this title, or any other law, rule or regulation governing the licensure, certification, or authorization of such practitioner, nor shall any license, certification or authorization of a health care practitioner be revoked, suspended, or annulled or otherwise subject to any other penalty or discipline provided in the public health law or this title solely on the basis that such health care practitioner performed, recommended, or provided any such reproductive health services or gender-affirming care for a patient who resides in a state wherein the performance, recommendation, or provision of such reproductive health services or gender-affirming care is illegal.

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

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

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

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

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

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

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

§ 21. This act shall take effect immediately.