

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
SENATE BILL 13

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

AN ACT

RELATING TO HEALTH; PROTECTING THE PRIVACY OF PROVIDERS,  
RECIPIENTS AND OTHERS ENGAGING IN REPRODUCTIVE AND GENDER-  
AFFIRMING HEALTH CARE; PROTECTING PROVIDERS, RECIPIENTS AND  
OTHERS ENGAGING IN REPRODUCTIVE AND GENDER-AFFIRMING HEALTH  
CARE FROM CERTAIN CIVIL OR CRIMINAL LIABILITY OR PROFESSIONAL  
DISCIPLINARY ACTION; PROVIDING FOR ENFORCEMENT; IMPOSING  
PENALTIES; PRESCRIBING RELIEF.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1  
through 8 of this act may be cited as the "Reproductive and  
Gender-Affirming Health Care Protection Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
Reproductive and Gender-Affirming Health Care Protection Act:

A. "gender-affirming health care" means

1 psychological, behavioral, surgical, pharmaceutical and medical  
2 care, services and supplies provided to support an individual's  
3 gender identity;

4 B. "protected health care activity" means:

5 (1) seeking, providing or receiving  
6 reproductive or gender-affirming health care; or

7 (2) assisting an individual who is seeking,  
8 receiving or providing reproductive or gender-affirming health  
9 care, including providing:

10 (a) information;

11 (b) transportation;

12 (c) lodging; or

13 (d) material support;

14 C. "public body" means a state or local government,  
15 an advisory board, a commission, an agency or an entity created  
16 by the constitution of New Mexico or a branch of government  
17 that receives public funding, including political subdivisions,  
18 special tax districts, school districts and institutions of  
19 higher education; and

20 D. "reproductive health care" means psychological,  
21 behavioral, surgical, pharmaceutical and medical care, services  
22 and supplies that relate to the human reproductive system,  
23 including services related to:

24 (1) preventing a pregnancy;

25 (2) abortion;

- 1 (3) managing a pregnancy loss;
- 2 (4) prenatal, birth, perinatal and postpartum
- 3 health;
- 4 (5) managing perimenopause and menopause;
- 5 (6) managing infertility;
- 6 (7) treating cancers of the reproductive
- 7 system; or
- 8 (8) preventing sexually transmitted
- 9 infections.

10 SECTION 3. [NEW MATERIAL] PUBLIC BODY--PROHIBITED RELEASE  
11 OF INFORMATION RELATED TO A PROTECTED HEALTH CARE ACTIVITY.--

12 A. A public body or an individual or entity acting  
13 on behalf of or within the scope of the authority of a public  
14 body shall not release information or use resources available  
15 to it in furtherance of a foreign investigation or proceeding  
16 that seeks to impose civil or criminal liability or  
17 professional disciplinary action upon an individual or entity  
18 for engaging in a protected health care activity.

19 B. A public body or an individual or entity acting  
20 on behalf of or within the scope of the authority of a public  
21 body that receives a request for information related to a  
22 protected health care activity shall notify the individual or  
23 entity that is the subject of the information request and shall  
24 move to modify or quash the subpoena to prevent the release of  
25 protected health care activity information. Any request for

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1 information related to a protected health care activity shall  
2 be made in writing.

3 C. The provisions of this section shall not apply  
4 if the individual or entity that is the subject of the  
5 investigation or proceeding provides affirmative written  
6 consent to release the requested information.

7 D. This section shall not apply to an investigation  
8 or proceeding in which the conduct subject to potential  
9 liability would be subject to liability under the laws of this  
10 state.

11 SECTION 4. [NEW MATERIAL] FOREIGN SUBPOENAS AND  
12 SUMMONSES.--

13 A. A party shall not submit a foreign subpoena or  
14 summons for discovery or a witness to provide testimony related  
15 to an interstate investigation or proceeding that seeks to  
16 impose civil or criminal liability or professional disciplinary  
17 action related to a protected health care activity unless the  
18 requesting party submits an attestation, signed under the  
19 penalty of perjury, that the foreign subpoena or summons  
20 relates to an out-of-state action for which the same claim  
21 exists under the laws of this state.

22 B. An individual or entity served with a subpoena  
23 that is in violation of this section shall notify the issuing  
24 court and the moving party of the defect and shall not comply  
25 with the subpoena until the defect is cured by order of the

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1 issuing court.

2 C. A party that omits or submits a false  
3 attestation pursuant to this section shall be subject to the  
4 jurisdiction of the courts of this state in a suit for damages,  
5 penalties or both arising out of the omission or false  
6 attestation. A court shall assess a statutory penalty of ten  
7 thousand dollars (\$10,000) per violation if the court finds the  
8 omission or false attestation was made intentionally,  
9 knowingly, willingly or recklessly.

10 SECTION 5. [NEW MATERIAL] ABUSIVE LITIGATION--  
11 INTERFERENCE WITH A PROTECTED HEALTH CARE ACTIVITY--CIVIL  
12 ACTIONS.--

13 A. For purposes of this section, "abusive  
14 litigation" means legal action initiated to deter, prevent,  
15 sanction or penalize an individual or entity for engaging in a  
16 protected health care activity by initiating a legal action in  
17 another state where civil or criminal liability is based on  
18 engaging in a protected health care activity in this state or  
19 attempting to enforce an order or judgment issued in connection  
20 with such legal action.

21 B. An individual or entity claiming to be aggrieved  
22 by abusive litigation may file an action in district court and  
23 seek relief pursuant to Section 8 of the Reproductive and  
24 Gender-Affirming Health Care Protection Act, as well as the  
25 amount of a judgment issued in connection with the abusive

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1 litigation.

2 C. This section shall not apply to a lawsuit or  
3 judgment entered in another state that is based on conduct for  
4 which a cause of action exists under the laws of New Mexico.

5 SECTION 6. [NEW MATERIAL] HEIGHTENED PROTECTION FOR  
6 ELECTRONICALLY TRANSMITTED INFORMATION RELATED TO A PROTECTED  
7 HEALTH CARE ACTIVITY.--

8 A. For purposes of this section, "third party"  
9 means an individual or entity who transmits information related  
10 to a protected health care activity, in the normal course of  
11 business, in an electronic format. "Third party" does not mean  
12 a covered entity or business associate as defined by the  
13 federal Health Insurance Portability and Accountability Act of  
14 1996 and related regulations.

15 B. It shall be a violation of the Reproductive and  
16 Gender-Affirming Health Care Protection Act to request from a  
17 third party, or for a third party to transmit, information  
18 related to an individual's or entity's protected health care  
19 activity with the intent to:

20 (1) harass, humiliate or intimidate that  
21 individual or entity;

22 (2) incite another to harass, humiliate or  
23 intimidate that individual or entity;

24 (3) cause that individual to reasonably fear  
25 for that individual's own or family members' safety;

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1 (4) cause that individual to suffer unwanted  
2 physical contact or injury;

3 (5) cause that individual to suffer  
4 substantial emotional distress; or

5 (6) deter, prevent, sanction or penalize an  
6 individual or entity for engaging in a protected health care  
7 activity.

8 C. This section shall not apply to a lawsuit or  
9 judgment entered in another state that is based on conduct for  
10 which a cause of action exists under the laws of New Mexico.

11 SECTION 7. [NEW MATERIAL] ENFORCEMENT--PENALTIES.--

12 A. The attorney general or a district attorney is  
13 authorized to enforce the provisions of the Reproductive and  
14 Gender-Affirming Health Care Protection Act.

15 B. In an action brought under Subsection A of this  
16 section, the court may award appropriate relief, including  
17 temporary, preliminary or permanent injunctive relief. The  
18 court may also assess a civil penalty for a violation of the  
19 Reproductive and Gender-Affirming Health Care Protection Act in  
20 the amount of ten thousand dollars (\$10,000) or actual damages  
21 resulting from each violation, whichever is greater.

22 SECTION 8. [NEW MATERIAL] PRIVATE RIGHT OF ACTION.--

23 A. An individual or entity claiming to be aggrieved  
24 by a violation of the Reproductive and Gender-Affirming Health  
25 Care Protection Act may file an action in district court for

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1 appropriate relief, including temporary, preliminary or  
2 permanent injunctive relief, compensatory damages or punitive  
3 damages, or for the sum of ten thousand dollars (\$10,000) per  
4 violation, whichever is greater. Claims may be brought against  
5 a public body or third party that intentionally, knowingly,  
6 willingly or recklessly released information related to a  
7 protected health care activity.

8 B. In an action brought pursuant to Subsection A of  
9 this section, the district court shall award a prevailing  
10 plaintiff reasonable attorney fees and costs.

11 SECTION 9. Section 31-4-6 NMSA 1978 (being Laws 1937,  
12 Chapter 65, Section 6) is amended to read:

13 "31-4-6. EXTRADITION OF PERSONS NOT PRESENT IN DEMANDING  
14 STATE AT TIME OF COMMISSION OF CRIME.--The governor of this  
15 state:

16 A. may also surrender, on demand of the executive  
17 authority of any other state, any person in this state charged  
18 in such other state in the manner provided in Section [3]  
19 31-4-3 NMSA 1978 with committing an act in this state, or in a  
20 third state, intentionally resulting in a crime in the state  
21 whose executive authority is making the demand [~~and~~]. The  
22 provisions of [~~this~~] the Uniform Criminal Extradition Act not  
23 otherwise inconsistent shall apply to such cases, even though  
24 the accused was not in that state at the time of the commission  
25 of the crime and has not fled therefrom; and

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1           B. shall not arrest or deliver a person if the  
 2 charge is based on engaging in a protected health care  
 3 activity, pursuant to the provisions of the Reproductive and  
 4 Gender-Affirming Health Care Protection Act, including a charge  
 5 based on vicarious, joint or several liability or conspiracy,  
 6 unless the executive authority of the demanding state alleges  
 7 in writing that the accused was physically present in the  
 8 demanding state at the time of the commission of the alleged  
 9 offense and that thereafter, the accused fled from the  
 10 demanding state."

11           SECTION 10. A new section of the Uniform Licensing Act is  
 12 enacted to read:

13           "[NEW MATERIAL] PROHIBITING CERTAIN ACTIONS BY BOARDS  
 14 AGAINST LICENSEES OR LICENSE APPLICANTS.--A board shall not  
 15 take an action pursuant to the Uniform Licensing Act against a  
 16 license holder or license applicant based solely on a  
 17 licensee's or license applicant's:

18           A. provision of, authorization of, recommendation  
 19 of, assistance in, referral for or other participation in a  
 20 protected health care activity, as defined in the Reproductive  
 21 and Gender-Affirming Health Care Protection Act, in accordance  
 22 with the laws of New Mexico, including the medical standards of  
 23 care, whether the protected health care activity is provided to  
 24 a resident of this state or to a resident of another state; or

25           B. actual or alleged violation of another state's

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1 laws prohibiting the provision of, authorization of,  
2 recommendation of, assistance in, referral for or other  
3 participation in a protected health care activity, as defined  
4 in the Reproductive and Gender-Affirming Health Care Protection  
5 Act, if the protected health care activity provided would have  
6 been in accordance with the laws of New Mexico, including the  
7 medical standards of care."

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