

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred House Bill No. 89
3 entitled “An act relating to civil and criminal procedures concerning legally
4 protected health care activity” respectfully reports that it has considered the
5 same and recommends that the bill be amended by striking out all after the
6 enacting clause and inserting in lieu thereof the following:

7 * * * Definitions * * *

8 Sec. 1. 1 V.S.A. § 150 is added to read:

9 § 150. LEGALLY PROTECTED HEALTH CARE ACTIVITY

10 (a) “Gender-affirming health care services” means all supplies, care, and
11 services of a medical, behavioral health, mental health, surgical, psychiatric,
12 therapeutic, diagnostic, preventative, rehabilitative, or supportive nature
13 relating to the treatment of gender dysphoria, including insurance coverage for
14 any of the foregoing. Gender-affirming health care services does not include
15 conversion therapy as defined by 18 V.S.A. § 8351.

16 (b)(1) “Legally protected health care activity” means:

17 (A) the exercise and enjoyment, or attempted exercise and
18 enjoyment, by any person of rights to reproductive health care services or
19 gender-affirming health care services secured by this State or the provision of
20 insurance coverage for such services; or

1 (B) any act or omission undertaken to aid or encourage, or attempt to
2 aid or encourage, any person in the exercise and enjoyment, or attempted
3 exercise and enjoyment, of rights to reproductive health care services or
4 gender-affirming health care services secured by this State or to provide
5 insurance coverage for such services, provided that the provision of such a
6 health care service by a person duly licensed under the laws of this State and
7 physically present in this State and the provision of insurance coverage for
8 such services shall be legally protected if the service is permitted under the
9 laws of this State, regardless of the patient’s location.

10 (2) “Legally protected health care activity” does not include any service
11 rendered below an applicable Vermont professional standard of care or that
12 would violate antidiscrimination laws of this State. For purposes of this
13 subdivision, the fact that a licensed Vermont provider is not licensed in another
14 state where the patient is located shall not constitute “service rendered below
15 an applicable Vermont professional standard of care.”

16 (c) “Reproductive health care services” means all supplies, care, and
17 services of a medical, behavioral health, mental health, surgical, psychiatric,
18 therapeutic, diagnostic, preventative, rehabilitative, or supportive nature
19 relating to pregnancy, contraception, sterilization, assisted reproduction,
20 pregnancy loss management, or the termination of a pregnancy, including
21 insurance coverage for any of the foregoing.

1 * * * Legally Protected Health Care Exemption from SLAPP Suits * * *

2 Sec. 2. 12 V.S.A. § 1041 is amended to read:

3 § 1041. EXERCISE OF RIGHTS TO FREE SPEECH AND TO PETITION
4 GOVERNMENT FOR REDRESS OF GRIEVANCES; SPECIAL
5 MOTION TO STRIKE

6 * * *

7 (h) This section shall not apply to:

8 (1) any enforcement action or criminal proceeding brought by the State
9 of Vermont or any political subdivision thereof; or

10 (2) a case involving tortious interference with legally protected health
11 care as provided in section 7302 of this title.

12 * * *

13 * * * Privilege from Civil Arrest in Cases Involving Abusive Litigation
14 Concerning Legally Protected Health Care Activity * * *

15 Sec. 3. 12 V.S.A. § 3577 is amended to read:

16 § 3577. PRIVILEGE FROM ARREST

17 * * *

18 (c)(1) Prohibition. A person shall not be subject to civil arrest while
19 traveling to, entering, remaining at, or returning from a court proceeding.

20 * * *

1 (4) Definition. As used in this subsection, “civil arrest” means an arrest
2 for purposes of obtaining a person’s presence or attendance at a civil
3 proceeding, including an immigration proceeding.

4 (d) No person shall be subject to civil arrest related to abusive litigation as
5 defined in chapter 221 of this title.

6 * * * Abusive Litigation Concerning Legally Protected Health
7 Care Activity * * *

8 Sec. 4. 12 V.S.A. chapter 221 is added to read:

9 CHAPTER 221. LEGALLY PROTECTED HEALTH CARE ACTIVITY

10 § 7301. DEFINITION

11 As used in this chapter:

12 (1)(A) “Abusive litigation” means litigation or other legal action to
13 deter, prevent, sanction, or punish any person engaging in legally protected
14 health care activity by:

15 (i) filing or prosecuting any action in any other state where
16 liability, in whole or part, directly or indirectly, is based on legally protected
17 health care activity that occurred in this State, including any action in which
18 liability is based on any theory of vicarious, joint, or several liability derived
19 therefrom; or

1 (ii) attempting to enforce any order or judgment issued in
2 connection with any such action by any party to the action, or any person
3 acting on behalf of a party to the action

4 (B) A lawsuit shall be considered to be based on conduct that
5 occurred in this State if any part of any act or omission involved in the course
6 of conduct that forms the basis for liability in the lawsuit occurs or is initiated
7 in this State, whether or not such act or omission is alleged or included in any
8 pleading or other filing in the lawsuit.

9 (C) This subdivision shall not apply to an attorney representing a
10 party within the scope of the attorney’s license.

11 (2) “Gender-affirming health care services” has the same meaning as
12 provided in 1 V.S.A. § 150.

13 (3) “Legally protected health care activity” has the same meaning as in 1
14 V.S.A. § 150.

15 (4) “Public agency” has the same meaning as in 1 V.S.A. § 317(a).

16 (5) “Reproductive health care services” has the same meaning as
17 provided in 1 V.S.A. § 150.

18 § 7302. TORTIOUS INTERFERENCE WITH LEGALLY PROTECTED

19 HEALTH CARE ACTIVITY

20 (a) Access to reproductive health care services and gender-affirming health
21 care services is a legal right in this State. Interference with legally protected

1 health care activity, whether or not under the color of law, is against the public
2 policy of this State.

3 (b) Any public act or record of a foreign jurisdiction that prohibits,
4 criminalizes, sanctions, or authorizes a person to bring a civil action against or
5 otherwise interferes with a person, provider, payer, or other entity in this State
6 that seeks, receives, causes, aids in access to, aids or abets, or provides, or
7 attempts or intends to seek, receive, cause, aid in access to, aid or abet, or
8 provide, legally protected health care services shall be an interference with the
9 exercise and enjoyment of the rights secured by this State and shall be a
10 violation of the public policy of this State.

11 (c) If a person, whether or not acting under color of law, engages or
12 attempts to engage in abusive litigation that infringes on or interferes with, or
13 attempts to infringe on or interfere with, legally protected health care activity,
14 any aggrieved person, provider, payer, or other entity, including any defendant
15 in such abusive litigation, may initiate a civil action for injunctive, monetary,
16 or other appropriate relief within six years after the cause of action accrues.

17 (d) If the court finds for the petitioner in an action authorized by this
18 section, recovery may include damages for the amount of any judgment issued
19 in connection with any abusive litigation, and any and all other expenses, costs,
20 or reasonable attorney's fees incurred in connection with the abusive litigation.

1 (e) A court may exercise jurisdiction over a person in an action authorized
2 by this section if:

3 (1) personal jurisdiction is found;

4 (2) the person has commenced any action in any court in this State and,
5 during the pendency of that action or any appeal therefrom, a summons and
6 complaint is served on the person or the attorney appearing on the person’s
7 behalf in that action or as otherwise permitted by law; or

8 (3) the exercise of jurisdiction is permitted under the Constitution of the
9 United States.

10 (f) This section shall not apply to a lawsuit or judgment entered in another
11 state that is based on conduct for which a cause of action exists under the laws
12 of this State if the course of conduct that forms the basis for liability had
13 occurred entirely in this State, including any contract, tort, common law, or
14 statutory claims.

15 § 7303. FOREIGN JUDGMENTS

16 (a) In any action filed to enforce a foreign judgment issued in connection
17 with abusive litigation concerning legally protected health care activity, the
18 court shall not give any force or effect to any judgment issued without
19 jurisdiction, or if a person has not been provided with notice and an
20 opportunity to be heard, or to any judgment that is penal in nature.

21

1 (b) Foreign judgments issued in connection with abusive litigation
2 concerning legally protected health care activity shall be brought by filing a
3 new and independent action on the judgment within five years after the
4 rendition of the judgment, and not after.

5 § 7304. TESTIMONY AND DOCUMENTS

6 (a) Notwithstanding any other provision in this title or court rule to the
7 contrary, except as required by federal law, a court shall not order a person
8 who is domiciled or found within this State to give testimony or a statement or
9 produce documents or other things with any proceeding in a tribunal outside
10 this State concerning abusive litigation involving legally protected health care
11 activity.

12 (b) Any aggrieved person, provider, payer, or other entity, including any
13 defendant in abusive litigation, may move to modify or quash any subpoena
14 issued in connection with such abusive litigation on the grounds that the
15 subpoena is inconsistent with the public policy of this State or contrary to court
16 rule.

17 § 7305. CHOICE OF LAW

18 Notwithstanding any general or special law or common law conflict of law
19 rule to the contrary, the laws of this State shall govern in any case or
20 controversy heard in this State related to legally protected health care activity,
21 except as may be required by federal law.

1 § 7306. NONCOOPERATION

2 (a) No public agency or employee, appointee, officer or official, or any
3 other person acting on behalf of a public agency may knowingly provide any
4 information or expend or use time, money, facilities, property, equipment,
5 personnel, or other resources in furtherance of any interstate investigation or
6 proceeding seeking to impose civil or criminal liability upon a person or entity
7 for:

8 (1) the provision, seeking or receipt of, or inquiring about legally
9 protected health care activity that is legal in this State; or

10 (2) assisting any person or entity providing, seeking, receiving, or
11 responding to an inquiry about legally protected health care activity that is
12 legal in this State.

13 (b) This section shall not apply to:

14 (1) any investigation or proceeding where the conduct subject to
15 potential liability under the investigation or proceeding would be subject to
16 liability under the laws of this State if committed in this State; or

17 (2) any action taken by the judicial branch in judicial proceedings;

18 (3) a public agency or employee, appointee, officer or official who, in
19 the course of normal business, is responding to a warrant or extradition
20 demand, on the good faith belief that the warrant or demand is valid in this
21 State.

1 (2) “Health care provider” has the same meaning as provided in 18
2 V.S.A. § 9402.

3 (3) “Legally protected health care activity” has the same meaning as
4 provided in 1 V.S.A. § 150.

5 (4) “Physical obstruction” means rendering impassable ingress to or
6 egress from a facility that provides legally protected health care activity or
7 rendering passage to or from such a facility unreasonably difficult or
8 hazardous.

9 (c) No person shall:

10 (1) by force or threat of force or by physical obstruction knowingly
11 injure, intimidate, harass, or interfere with, or attempt to injure, intimidate,
12 harass, or interfere with, another person because such other person was or is
13 obtaining or providing legally protected health care activity; or

14 (2) knowingly damage the property of a health care facility, or attempt
15 to do so, because such facility provides legally protected health care activity.

16 (d) A person who violates this section shall be assessed a civil penalty of
17 not more than \$300.00.

18 (e) Nothing in this section shall be construed to:

19 (1) prohibit any expressive conduct, including peaceful picketing or
20 other peaceful demonstration, protected from legal prohibition by the First
21 Amendment to the U.S. Constitution; or

1 executive authority of the demanding state alleges in writing that the accused
2 was physically present in the demanding state at the time of the commission of
3 the alleged offense and that thereafter the accused fled from the demanding
4 state.

5 * * * Prohibition of Issuance of a Summons Concerning a Person Charged
6 with Engaging in Legally Protected Health Care Activity * * *

7 Sec. 8. 13 V.S.A. § 6650 is added to read:

8 § 6650. LEGALLY PROTECTED HEALTH CARE ACTIVITY

9 EXCEPTION

10 (a) Access to reproductive health care services and gender-affirming health
11 care services is a legal right in this State. Interference with legally protected
12 health care activity, whether or not under the color of law, is against the public
13 policy of this State.

14 (b) Notwithstanding any other provision in this chapter to the contrary,
15 except as required by federal law, a court shall not issue a summons where a
16 prosecution is pending in another state concerning legally protected health care
17 activity as defined in 1 V.S.A. § 150 or where a grand jury investigation
18 concerning legally protected health care activity has commenced or is about to
19 commence for a criminal violation of a law of such other state unless the acts
20 forming the basis of the prosecution or investigation would also constitute an
21 offense if occurring entirely in this State.

1 (1) enable state and local agencies to respond to requests for public
2 records without disclosing the location of ~~a victim of domestic violence, sexual~~
3 ~~assault, or stalking~~ persons identified in subsection (a) of this section;

4 (2) promote interagency cooperation with the Secretary of State in
5 providing address confidentiality for ~~victims of domestic violence, sexual~~
6 ~~assault, and stalking~~ persons identified in subsection (a) of this section; and

7 (3) enable State and local agencies and ~~local agencies~~ school districts to
8 accept a Program participant’s use of an address, and local agencies to accept
9 an address, designated by the Secretary of State as a substitute mailing address.

10 § 1151. DEFINITIONS

11 Unless the context clearly requires otherwise, the definitions in this section
12 apply throughout the subchapter.

13 (1) “Actual address” means the physical location where the applicant
14 resides and may include a school address or work address of an individual, as
15 specified on the individual’s application to be a Program participant under this
16 chapter.

17 (2) “Agency” means any subdivision of the State of Vermont, a
18 municipality, or a subdivision of a municipality.

19 (3) “Domestic violence” means an act of abuse as defined in subdivision
20 1101(1) of this title and includes a threat of such acts committed against an

1 individual in a domestic situation, regardless of whether these acts or threats
2 have been reported to law enforcement officers.

3 (4) “Gender-affirming health care services” has the same meaning as
4 provided in 1 V.S.A. § 150.

5 (5) “Human trafficking” means conduct prohibited by 13 V.S.A. § 2652
6 or 2653, and includes a threat of such, regardless of whether the conduct or
7 threat of conduct has been reported to law enforcement officers.

8 ~~(5)~~(6) “Law enforcement agency” means the Department of Public
9 Safety, a municipal police department, a sheriff’s department, the Attorney
10 General’s Office, a State’s Attorney’s Office, or certified law enforcement
11 officers of the Department of Motor Vehicles, Agency of Natural Resources, or
12 Department of Liquor and Lottery. “Law enforcement agency” ~~shall~~ also
13 ~~mean~~ means the Department for Children and Families when engaged in:

14 (A) the investigation of child abuse and neglect;

15 (B) the delivery of services to families and children with whom the
16 Department is working pursuant to the provisions of 33 V.S.A. chapters 51, 52,
17 and 53; or

18 (C) the performance of the Department’s responsibilities pursuant to
19 an interstate compact to which the State is a party.

20 ~~(6)~~(7) “Law enforcement purpose” means all matters relating to:

1 (A) the prevention, investigation, prosecution, or adjudication of
2 criminal offenses, civil matters, or juvenile matters;

3 (B) the investigation, prosecution, adjudication, detention,
4 supervision, or correction of persons suspected, charged, or convicted of
5 criminal offenses or juvenile delinquencies;

6 (C) the protection of the general health, welfare, and safety of the
7 public or the State of Vermont;

8 (D) the execution and enforcement of court orders;

9 (E) service of criminal or civil process or court orders;

10 (F) screening for criminal justice employment;

11 (G) other actions taken in performance of official duties, as set forth
12 by statutes, rules, policies, judicial case law, and the U.S. and Vermont
13 Constitutions; and

14 (H) criminal identification activities, including the collection,
15 storage, and dissemination of criminal history records, as defined in 20 V.S.A.
16 § 2056a(a)(1), sex offender registry information, and DNA material and
17 information.

18 ~~(7)~~(8) “Program participant” means a person certified as a Program
19 participant under this chapter.

20 ~~(8)~~(9) “Public record” means a public record as defined in 1 V.S.A.
21 § 317.

1 (10) “Reproductive health care services” has the same meaning as
2 provided in 1 V.S.A. § 150.

3 ~~(9)~~(11) “Secretary” means the Vermont Secretary of State.

4 ~~(10)~~(12) “Sexual assault” means an act of assault as defined in 13
5 V.S.A. § 3252(a) or (b) (sexual assault) or 3253(a) (aggravated sexual assault),
6 and includes a threat of such acts, regardless of whether these acts or threats
7 have been reported to law enforcement officers.

8 ~~(11)~~(13) “Stalking” means conduct as defined in 13 V.S.A. § 1061
9 (stalking) or 1063 (aggravated stalking), and includes a threat of such acts,
10 regardless of whether these acts or threats have been reported to law
11 enforcement officers.

12 ~~(12)~~(14) “Substitute address” means the Secretary’s designated address
13 for the Address Confidentiality Program.

14 § 1152. ADDRESS CONFIDENTIALITY PROGRAM; APPLICATION;
15 CERTIFICATION

16 (a) An adult person, a parent, or a legal guardian acting on behalf of a
17 minor, or a legal guardian acting on behalf of an incapacitated person may
18 apply to the Secretary of State to have an address designated by the Secretary
19 serve as the person’s address or the address of the minor or incapacitated
20 person. The Secretary of State shall approve an application if it is filed in the
21 manner and on the form prescribed by the Secretary of State, and if it contains:

1 (1) a statement made under oath by the applicant that:

2 (A) the applicant, or the minor or incapacitated person on whose
3 behalf the application is made;

4 (i) is a victim of domestic violence, sexual assault, stalking, or
5 human trafficking; or

6 (ii) is a person providing, assisting another person in obtaining, or
7 obtaining for themselves reproductive health care services or gender-affirming
8 health care services in this State;

9 (B) the applicant fears for ~~his or her~~ the applicant's safety or ~~his or~~
10 ~~her~~ the applicant's children's safety, or the safety of the minor or incapacitated
11 person on whose behalf the application is made;

12 (C) the parent or legal guardian applying on behalf of a minor or
13 incapacitated person has legal authority to act on the person's behalf;

14 (D) if the applicant is under the supervision of the Department of
15 Corrections, the applicant has notified the Department of the actual address
16 and the applicant authorizes the release of the actual address to the
17 Department; and

18 (E) if the applicant is required to report the actual address for the Sex
19 Offender Registry under 13 V.S.A. chapter 167, subchapter 3, the applicant
20 authorizes the release of the actual address to the Registry;

1 (2) a designation of the Secretary as agent for purposes of service of
2 process and for the purpose of receipt of mail;

3 (3) the mailing address and e-mail address where the applicant can be
4 contacted by the Secretary and the telephone number or numbers where the
5 applicant can be called by the Secretary;

6 (4) the new address or addresses within Vermont that the applicant
7 requests not be disclosed for the reason that disclosure will increase the risk of
8 domestic violence, sexual assault, stalking, ~~or~~ human trafficking, harassment,
9 intimidation, or threats; and

10 (5) the signature of the applicant and the name of any individual or
11 representative of any office who assisted in the preparation of the application
12 and the date on which the applicant signed the application.

13 (b) Applications shall be filed directly with the Office of the Secretary or
14 through a certified applicant assistant.

15 (c) Upon receipt of a properly completed application, the Secretary shall
16 certify the applicant as a Program participant. Applicants shall be certified for
17 four years following the date of filing; unless the certification is withdrawn or
18 cancelled before that date. The Secretary shall by rule establish a renewal
19 procedure.

1 (d) A person who knowingly provides false or incorrect information to the
2 Secretary as required by this chapter may be prosecuted under 13 V.S.A.
3 § 2904.

4 (e) A Program participant shall notify the Secretary of State of a change of
5 actual address within seven days of following the change of address.

6 (f) The Civil or Family Division of Washington County Superior Court
7 shall have jurisdiction over petitions for protective orders filed by Program
8 participants pursuant to 12 V.S.A. §§ 5133 and 5134, to sections 1103 and
9 1104 of this title, and to 33 V.S.A. § 6935. A Program participant may file a
10 petition for a protective order in the county in which ~~he or she~~ the participant
11 resides or in Washington County to protect the confidentiality of ~~his or her~~ the
12 participant's address.

13 * * *

14 § 1157. ASSISTANCE FOR PROGRAM APPLICANTS

15 The Secretary of State shall make available a list of State and local agencies
16 and nonprofit agencies that provide counseling and shelter services to victims
17 of domestic violence, sexual assault, stalking, and human trafficking to assist
18 persons applying to be ~~program~~ Program participants pursuant to subdivision
19 1152(a)(1)(A)(i) of this title. Such information provided by the Office of the
20 Secretary or designees to applicants shall in no way be construed as legal
21 advice.

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§ 1160. ADOPTION OF RULES

(a) The Secretary of State shall adopt rules necessary to perform ~~his or her~~
the Secretary's duties under this subchapter relating to:

- (1) program application and certification;
- (2) certification cancellation;
- (3) agency use of designated addresses and exceptions;
- (4) voting by Program participants; and
- (5) recording of vital statistics for Program participants.

(b) All such rules shall conform with the findings and intent of the General
Assembly, as described in section 1150 of this title, and shall be designed with
an understanding of the needs and circumstances of ~~victims of domestic~~
~~violence, sexual assault, stalking, and human trafficking~~ Program participants.

* * * Effective Dates * * *

Sec. 10. EFFECTIVE DATES

- (a) This section and Secs. 1–8 shall take effect on passage.
- (b) Sec. 9 shall take effect on September 1, 2023.

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4 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE