

H.89

An act relating to civil and criminal procedures concerning legally protected health care activity

It is hereby enacted by the General Assembly of the State of Vermont:

* * * Definitions * * *

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

§ 150. LEGALLY PROTECTED HEALTH CARE ACTIVITY

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

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

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

(B) any act or omission undertaken to aid or encourage, or attempt to aid or encourage, any person in the exercise and enjoyment, or attempted exercise and enjoyment, of rights to reproductive health care services or

gender-affirming health care services secured by this State or to provide insurance coverage for such services.

(2) Except as provided in subdivision (3) of this subsection (b), the protections applicable to “legally protected health care activity” shall not apply to a lawsuit, judgment, or civil, criminal, or administrative action that is based on conduct for which an action would exist under the laws of this State if the course of conduct that forms the basis for liability had occurred entirely in this State.

(3) Notwithstanding subdivision (2) of this subsection (b), the provision of a health care service 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 shall be legally protected if the service is permitted under the laws of this State, regardless of the patient’s location or whether the provider is licensed in the state where the patient is located at the time the service is rendered.

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

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

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

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

* * *

(h) This section shall not apply to:

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

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

* * *

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

Sec. 3. 12 V.S.A. chapter 221 is added to read:

CHAPTER 221. LEGALLY PROTECTED HEALTH CARE ACTIVITY

§ 7301. DEFINITION

As used in this chapter:

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

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

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

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

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

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

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

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

§ 7302. TORTIOUS INTERFERENCE WITH LEGALLY PROTECTED
HEALTH CARE ACTIVITY

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

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

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

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

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

(1) personal jurisdiction is found;

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

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

(f) Abusive litigation does not include a lawsuit or judgment entered in another state that is based on conduct for which a cause of action would exist under the laws of this State if the course of conduct that forms the basis for liability had occurred entirely in this State, including any contract, tort, common law, or statutory claims.

(g) An attorney shall not be liable under this section, if acting on behalf of another and within the scope of the attorney's license. A lawyer acting pro se,

or a public prosecutor having the personal discretion to decide whether to bring abusive litigation, shall not be immune under this subsection.

§ 7303. FOREIGN JUDGMENTS

(a) In any action filed to enforce a foreign judgment issued in connection with abusive litigation concerning legally protected health care activity, the court shall not give any force or effect to any judgment issued without jurisdiction or due process or to any judgment that is penal in nature.

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

§ 7304. TESTIMONY AND DOCUMENTS

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

(b) Any aggrieved person, provider, payer, or other entity, including any defendant in abusive litigation, may move to modify or quash any subpoena issued in connection with such abusive litigation on any grounds provided by

court rule, statute, or on the grounds that the subpoena is inconsistent with the public policy of this State.

§ 7305. CHOICE OF LAW

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

§ 7306. NONCOOPERATION

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

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

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

(b) This section shall not apply to:

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

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

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

* * * Freedom of Access to Clinics * * *

Sec. 4. 13 V.S.A. § 1033 is added to read:

§ 1033. INTERFERENCE WITH ACCESS TO HEALTH CARE FACILITY

(a) The General Assembly finds that:

(1) all persons must be able to access health care facilities for the purpose of obtaining or providing legally protected health care activity;

(2) the exercise of a person's right to protest or counsel against certain medical procedures must be balanced against another person's right to obtain or provide legally protected health care activity in an unobstructed manner;

(3) preventing the willful obstruction of a person's access to legally protected health care activity at a health care facility is a matter of public concern; and

(4) it is necessary and appropriate to prohibit individuals from knowingly obstructing another person's entry to or exit from a health care facility that provides legally protected health care activity.

(b) As used in this section:

(1) "Health care facility" means a hospital, ambulatory surgical center, health center, clinic, health care provider's office, or other facility that provides reproductive health care services or gender-affirming health care services, and includes the building or structure in which the facility is located.

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

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

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

(c) No person shall:

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

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

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

(e) Nothing in this section shall be construed to prohibit any constitutionally protected activity.

Sec. 5. 4 V.S.A. § 1102 is amended to read:

§ 1102. JUDICIAL BUREAU; JURISDICTION

(a) The Judicial Bureau is created within the Judicial Branch under the supervision of the Supreme Court.

(b) The Judicial Bureau shall have jurisdiction of the following matters:

* * *

(31) Violations of 13 V.S.A. § 1033 relating to interference with access to health care facility.

* * * Prohibition Against Extradition of Person Charged with Engaging

in Legally Protected Health Care Activity * * *

Sec. 6. 13 V.S.A. § 4970 is added to read:

§ 4970. LEGALLY PROTECTED HEALTH CARE ACTIVITY

EXCEPTION

Notwithstanding any other provision in this chapter to the contrary, except as required by federal law, the Governor shall not surrender a person charged

in another state as a result of engaging in legally protected health care activity as defined in 1 V.S.A. § 150 unless the executive authority of the demanding state alleges in writing that the accused was physically present in the demanding state at the time of the commission of the alleged offense and that thereafter the accused fled from the demanding state.

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

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

§ 6650. LEGALLY PROTECTED HEALTH CARE ACTIVITY

EXCEPTION

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

(b) Notwithstanding any other provision in this chapter to the contrary, except as required by federal law, a court shall not issue a summons where a prosecution is pending in another state concerning legally protected health care activity as defined in 1 V.S.A. § 150 or where a grand jury investigation concerning legally protected health care activity has commenced or is about to commence for a criminal violation of a law of such other state unless the acts

forming the basis of the prosecution or investigation would also constitute an offense if occurring entirely in this State.

* * * Address Confidentiality for Persons Engaging in
Legally Protected Health Care Activity * * *

Sec. 8. 15 V.S.A. chapter 21, subchapter 3 is amended to read:

Subchapter 3. Address Confidentiality for Victims of Domestic Violence,
Sexual Assault, or Stalking

§ 1150. FINDINGS AND INTENT

(a) The General Assembly finds that:

(1) persons attempting to escape from actual or threatened domestic violence, sexual assault, and stalking, and human trafficking frequently establish new addresses in order to prevent their assailants or probable assailants from finding them; and

(2) persons who provide reproductive health care services or gender-affirming health care services, persons who assist others in obtaining reproductive health care services or gender-affirming health care services, and persons who exercise their legal right to obtain reproductive health care services or gender-affirming health care services in this State may be harassed, intimidated, or threatened because of their legally protected health care activity.

(b) It is the purpose of this subchapter to:

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

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

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

§ 1151. DEFINITIONS

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

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

(2) "Agency" means any subdivision of the State of Vermont, a municipality, or a subdivision of a municipality.

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

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

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

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

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

(A) the investigation of child abuse and neglect;

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

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

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

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

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

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

(D) the execution and enforcement of court orders;

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

(F) screening for criminal justice employment;

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

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

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

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

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

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

~~(40)~~(12) “Sexual assault” means an act of assault as defined in 13 V.S.A. § 3252(a) or (b) (sexual assault) or 3253(a) (aggravated sexual assault), and includes a threat of such acts, regardless of whether these acts or threats have been reported to law enforcement officers.

~~(44)~~(13) “Stalking” means conduct as defined in 13 V.S.A. § 1061 (stalking) or 1063 (aggravated stalking), and includes a threat of such acts, regardless of whether these acts or threats have been reported to law enforcement officers.

~~(42)~~(14) “Substitute address” means the Secretary’s designated address for the Address Confidentiality Program.

§ 1152. ADDRESS CONFIDENTIALITY PROGRAM; APPLICATION;
CERTIFICATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* * *

§ 1157. ASSISTANCE FOR PROGRAM APPLICANTS

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

* * *

§ 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. 9. EFFECTIVE DATES

- (a) This section and Secs. 1–7 shall take effect on passage.
- (b) Sec. 8 shall take effect on September 1, 2023.