

CHAPTER 763

LEGALLY PROTECTED HEALTH CARE ACTIVITY

§9001. Legislative findings and declaration of policy

The Legislature finds and declares that: [PL 2023, c. 648, Pt. A, §1 (NEW).]

1. Legal right to gender-affirming health care services and reproductive health care services.

Access to gender-affirming health care services and reproductive health care services in this State, as authorized under the laws of this State, is a legal right;

[PL 2023, c. 648, Pt. A, §1 (NEW).]

2. Interference with legally protected health care activity against public policy. Whether or not under the color of law, interference with legally protected health care activity and interference with aiding and assisting legally protected health care activity is against the public policy of this State; and [PL 2023, c. 648, Pt. A, §1 (NEW).]

3. Public acts in other states. Any public act of another state that prohibits, criminalizes, sanctions, authorizes a person to bring a civil action against or otherwise interferes with a person in this State who engages in legally protected health care activity or who aids and assists legally protected health care activity:

A. Interferes with the exercise and enjoyment of the rights secured by this State; and [PL 2023, c. 648, Pt. A, §1 (NEW).]

B. Is against the public policy of this State. [PL 2023, c. 648, Pt. A, §1 (NEW).]
[PL 2023, c. 648, Pt. A, §1 (NEW).]

SECTION HISTORY

PL 2023, c. 648, Pt. A, §1 (NEW).

§9002. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 2023, c. 648, Pt. A, §1 (NEW).]

1. Aid and assist legally protected health care activity. "Aid and assist legally protected health care activity" and "aiding and assisting legally protected health care activity" mean:

A. Any act or omission of a person aiding or effectuating or attempting to aid or effectuate any other person in legally protected health care activity; or [PL 2023, c. 648, Pt. A, §1 (NEW).]

B. The provision or administration of, or attempted provision or administration of, insurance coverage for gender-affirming health care services or reproductive health care services to a beneficiary or a dependent of a beneficiary by any insurer, payor or employer. [PL 2023, c. 648, Pt. A, §1 (NEW).]

"Aiding and assisting legally protected health care activity" does not include any conduct that deviates from the applicable standard of care or that could form the basis of a civil, criminal or administrative action under the laws of this State had the course of conduct that forms the basis for liability occurred entirely within this State.

[PL 2023, c. 648, Pt. A, §1 (NEW).]

2. Aggrieved person. "Aggrieved person" means:

A. A person against whom hostile litigation is filed or prosecuted or the legal representative of a person against whom hostile litigation is filed or prosecuted; [PL 2023, c. 648, Pt. A, §1 (NEW).]

B. The employer of a person against whom hostile litigation is filed or prosecuted if the legally protected health care activity or aiding and assisting legally protected health care activity of the person that forms the basis of the hostile litigation was performed within the scope of the person's employment; or [PL 2023, c. 648, Pt. A, §1 (NEW).]

C. A person in this State upon whom a subpoena seeking information concerning legally protected health care activity or aiding and assisting legally protected health care activity is served by any federal or state court in connection with hostile litigation. [PL 2023, c. 648, Pt. A, §1 (NEW).]
[PL 2023, c. 648, Pt. A, §1 (NEW).]

3. Foreign judgment. "Foreign judgment" means any judgment, decree or order of a court of another state.
[PL 2023, c. 648, Pt. A, §1 (NEW).]

4. Gender-affirming health care services. "Gender-affirming health care services" means all supplies, care and services of a medical, behavioral health, mental health, surgical, psychiatric, therapeutic, diagnostic, preventive, rehabilitative or supportive nature, including medication, relating to the treatment of gender dysphoria and gender incongruence in accordance with the accepted standard of care as defined by major medical professional organizations and agencies with expertise in the field of gender-affirming health care, including the Standards of Care for the Health of Transgender and Gender Diverse People, Version 8, or subsequent version, published by the World Professional Association for Transgender Health. "Gender-affirming health care services" does not include conversion therapy as defined in Title 32, section 59-C, subsection 1.
[PL 2023, c. 648, Pt. A, §1 (NEW).]

5. Health care practitioner. "Health care practitioner" has the same meaning as in Title 24, section 2502, subsection 1-A, except that "health care practitioner" does not include a veterinarian. "Health care practitioner" also includes persons licensed under:

A. Title 32, chapter 18; [PL 2023, c. 648, Pt. A, §1 (NEW).]

B. Title 32, chapter 32; [PL 2023, c. 648, Pt. A, §1 (NEW).]

C. Title 32, chapter 83; [PL 2023, c. 648, Pt. A, §1 (NEW).]

D. Title 32, chapter 117; and [PL 2023, c. 648, Pt. A, §1 (NEW).]

E. Title 32, chapter 119. [PL 2023, c. 648, Pt. A, §1 (NEW).]

[PL 2023, c. 648, Pt. A, §1 (NEW).]

6. Hostile litigation. "Hostile litigation" means any litigation or other legal action, including civil, criminal or administrative action, to deter, prevent, sanction or punish any health care practitioner or person assisting a health care practitioner who provides legally protected health care activity or aids and assists legally protected health care activity by:

A. Filing or prosecuting any litigation or other legal action in any other state where liability, in whole or in part, directly or indirectly, is based on legally protected health care activity or aiding and assisting 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; or [PL 2023, c. 648, Pt. A, §1 (NEW).]

B. Attempting to enforce any order or judgment issued in connection with any litigation or other legal action under paragraph A by any party to the action or by any person acting on behalf of any party to the action. [PL 2023, c. 648, Pt. A, §1 (NEW).]

For purposes of this chapter, litigation or other legal action is based on legally protected health care activity or aiding and assisting legally protected health care activity 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

action occurs or is initiated in this State, whether or not the act or omission is alleged or included in any pleading or other filing in the lawsuit.

[PL 2023, c. 648, Pt. A, §1 (NEW).]

7. Law enforcement agency. "Law enforcement agency" means any court, department or agency of this State, a political subdivision of this State or a college or a university in this State charged with the enforcement of laws or the custody of detained persons. "Law enforcement agency" includes the Department of the Attorney General and district attorneys' offices.

[PL 2023, c. 648, Pt. A, §1 (NEW).]

8. Legally protected health care activity. "Legally protected health care activity" means:

A. The exercise and enjoyment or attempted exercise and enjoyment by any person of the right secured by this State to gender-affirming health care services or reproductive health care services; and [PL 2023, c. 648, Pt. A, §1 (NEW).]

B. The provision or attempted provision of gender-affirming health care services or reproductive health care services that are authorized under the laws of this State and that are provided in accordance with the applicable standard of care by a health care practitioner licensed under the laws of this State and physically present in this State, regardless of whether the patient is located in this State or whether the health care practitioner is licensed in the state where the patient is located at the time the services are rendered. [PL 2023, c. 648, Pt. A, §1 (NEW).]

"Legally protected health care activity" does not include any conduct that could form the basis of a civil, criminal or administrative action under the laws of this State had the course of conduct that forms the basis for liability occurred entirely within this State.

[PL 2023, c. 648, Pt. A, §1 (NEW).]

9. Reproductive health care services. "Reproductive health care services" means all supplies, care and services of a medical, behavioral health, mental health, surgical, psychiatric, therapeutic, diagnostic, preventive, rehabilitative or supportive nature, including medication, relating to pregnancy, contraception, assisted reproduction, pregnancy loss management or the termination of a pregnancy in accordance with the applicable standard of care as defined by major medical professional organizations and agencies with expertise in the field of reproductive health care.

[PL 2023, c. 648, Pt. A, §1 (NEW).]

10. State. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

[PL 2023, c. 648, Pt. A, §1 (NEW).]

SECTION HISTORY

PL 2023, c. 648, Pt. A, §1 (NEW).

§9003. Tortious interference with legally protected health care activity

1. Civil action. An aggrieved person may bring a civil action for damages, punitive damages, equitable relief, injunctive relief or any other appropriate relief against another person that, whether or not acting under color of law, files or prosecutes hostile litigation. For purposes of this subsection, "damages" may include the amount of any judgment issued in connection with the hostile litigation as well as all other expenses, costs and reasonable attorney's fees incurred in connection with the hostile litigation.

[PL 2023, c. 648, Pt. A, §1 (NEW).]

2. Attorney's fees and costs. An aggrieved person that prevails in an action brought under this section is entitled to an award of attorney's fees and costs.

[PL 2023, c. 648, Pt. A, §1 (NEW).]

3. Exception. An aggrieved person may not bring an action under this section if the hostile litigation is based on conduct for which a civil, criminal or administrative action would exist under the laws of this State if the conduct or course of conduct that forms the basis for liability in the hostile litigation had occurred entirely within this State.

[PL 2023, c. 648, Pt. A, §1 (NEW).]

SECTION HISTORY

PL 2023, c. 648, Pt. A, §1 (NEW).

§9004. Foreign judgments issued in connection with hostile litigation

1. Jurisdiction and due process required. A court of this State may not give any force or effect to any foreign judgment in connection with hostile litigation if the court that issued the foreign judgment did not:

A. Have personal jurisdiction over the defendant; [PL 2023, c. 648, Pt. A, §1 (NEW).]

B. Have jurisdiction over the subject matter; or [PL 2023, c. 648, Pt. A, §1 (NEW).]

C. Provide due process of law. [PL 2023, c. 648, Pt. A, §1 (NEW).]

[PL 2023, c. 648, Pt. A, §1 (NEW).]

2. Limitations period. Notwithstanding any provision of law to the contrary, an action on a foreign judgment in connection with hostile litigation must be commenced by filing a new and independent action on the judgment within 5 years of the foreign judgment.

[PL 2023, c. 648, Pt. A, §1 (NEW).]

SECTION HISTORY

PL 2023, c. 648, Pt. A, §1 (NEW).

§9005. Testimony and documents in connection with hostile litigation

1. Court order. Notwithstanding any provision of state law or court rule to the contrary and except as required by federal law, a court of this State may not order a person who is domiciled or found within this State to give testimony or a statement or produce documents or other information in any proceeding involving hostile litigation.

[PL 2023, c. 648, Pt. A, §1 (NEW).]

2. Subpoena. An aggrieved person may move to modify or quash any subpoena issued in connection with hostile litigation on any grounds provided by law or court rule or on the ground that the subpoena is inconsistent with the public policy of this State as provided in section 9001.

[PL 2023, c. 648, Pt. A, §1 (NEW).]

3. Summons. Except as required by federal law, a court in this State may not issue a summons or warrant in a case involving criminal prosecution or a pending grand jury investigation under the criminal laws of another state for engaging in legally protected health care activity or aiding and assisting legally protected health care activity unless the conduct forming the basis of the prosecution or grand jury investigation would also constitute a criminal offense if the conduct occurred entirely within this State.

[PL 2023, c. 648, Pt. A, §1 (NEW).]

SECTION HISTORY

PL 2023, c. 648, Pt. A, §1 (NEW).

§9006. Prohibition on expenditure of public resources; noncooperation

1. Prohibition on expenditure of public resources. Notwithstanding any provision of state law to the contrary and except as required by federal law, a public agency, including a law enforcement agency, and an employee, appointee, officer or official or any other person acting on behalf of a public

agency may not 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, administrative or criminal liability upon a person or entity for:

A. Legally protected health care activity; or [PL 2023, c. 648, Pt. A, §1 (NEW).]

B. Aiding and assisting legally protected health care activity. [PL 2023, c. 648, Pt. A, §1 (NEW).]

[PL 2023, c. 648, Pt. A, §1 (NEW).]

2. Noncooperation. Notwithstanding any provision of state law to the contrary and except as required by federal law, an officer or employee of a law enforcement agency, while acting under color of law, may not knowingly provide information or assistance to a federal law enforcement agency, to any law enforcement agency in another state or political subdivision of another state or to any private citizen in relation to an investigation or inquiry into services constituting legally protected health care activity or aiding and assisting legally protected health care activity.

[PL 2023, c. 648, Pt. A, §1 (NEW).]

3. No arrest. Notwithstanding any provision of state law to the contrary and except as required by federal law, arrest of a person in this State is prohibited if the arrest is related to criminal liability that is based on legally protected health care activity or aiding and assisting legally protected health care activity.

[PL 2023, c. 648, Pt. A, §1 (NEW).]

4. Exceptions. This section does not apply to a public agency, including a law enforcement agency, or an employee, appointee, officer or official or any other person acting on behalf of a public agency:

A. When responding to a warrant or extradition demand on the good faith belief that the warrant or demand is valid in this State; or [PL 2023, c. 648, Pt. A, §1 (NEW).]

B. When exigent circumstances make compliance with this section impossible. For the purposes of this paragraph, "exigent circumstances" means circumstances in which there is insufficient time to comply with this section and there is a compelling need for action due to the presence of an imminent danger to public safety. [PL 2023, c. 648, Pt. A, §1 (NEW).]

[PL 2023, c. 648, Pt. A, §1 (NEW).]

SECTION HISTORY

PL 2023, c. 648, Pt. A, §1 (NEW).

§9007. Choice of law

Notwithstanding any general or special law or common law conflict of law rule to the contrary, the laws of this State govern in any case or controversy heard in this State involving legally protected health care activity or aiding and assisting legally protected health care activity. [PL 2023, c. 648, Pt. A, §1 (NEW).]

SECTION HISTORY

PL 2023, c. 648, Pt. A, §1 (NEW).

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