

SENATE BILL 859

E2, J2, J5

3lr2576
CF HB 808

By: **Senator Smith**

Introduced and read first time: February 6, 2023

Assigned to: Judicial Proceedings and Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Reproductive Health Protection Act**

3 FOR the purpose of prohibiting a judge from requiring a person to give testimony or produce
4 evidence in another state under certain circumstances and subject to certain
5 exceptions; requiring that a request for the issuance of a foreign subpoena include a
6 certain sworn statement; prohibiting an ex parte order to intercept certain
7 communication for the purpose of investigating or recovering evidence related to
8 legally protected health care; prohibiting certain judgment creditors from filing a
9 copy of certain foreign judgments; prohibiting the Governor from surrendering a
10 person to the executive authority of another state for an alleged violation of the laws
11 of the requesting state relating to legally protected health care if the violation would
12 not be a crime in the State; prohibiting, subject to certain exceptions, a State agency
13 or a political subdivision of the State, an agent or employee of the State or a political
14 subdivision of the State, and certain private parties from assisting in an interstate
15 investigation related to legally protected health care if the activity being investigated
16 would not be subject to liability or sanction in the State; prohibiting health
17 occupations boards from disciplining a health care practitioner or applicant because
18 of certain actions relating to legally protected health care subject to certain
19 exceptions; exempting certain high deductible insurance plans from covering certain
20 abortion services; prohibiting insurers from taking certain adverse actions against
21 certain health care practitioners; and generally relating to legally protected health
22 care.

23 BY repealing and reenacting, with amendments,
24 Article – Courts and Judicial Proceedings
25 Section 9–302(a) and (b), 9–402(a), 10–408(c), and 11–802(a)
26 Annotated Code of Maryland
27 (2020 Replacement Volume and 2022 Supplement)

28 BY repealing and reenacting, with amendments,
29 Article – Criminal Procedure

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 9–106
2 Annotated Code of Maryland
3 (2018 Replacement Volume and 2022 Supplement)

4 BY adding to
5 Article – Health Occupations
6 Section 1–227
7 Annotated Code of Maryland
8 (2021 Replacement Volume and 2022 Supplement)

9 BY repealing and reenacting, with amendments,
10 Article – Insurance
11 Section 15–857
12 Annotated Code of Maryland
13 (2017 Replacement Volume and 2022 Supplement)

14 BY adding to
15 Article – Insurance
16 Section 19–117
17 Annotated Code of Maryland
18 (2017 Replacement Volume and 2022 Supplement)

19 BY adding to
20 Article – State Personnel and Pensions
21 Section 2–312
22 Annotated Code of Maryland
23 (2015 Replacement Volume and 2022 Supplement)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
25 That the Laws of Maryland read as follows:

26 **Article – Courts and Judicial Proceedings**

27 9–302.

28 (a) If a judge of a court of record in any state which by its laws has made provision
29 for commanding persons within that state to attend and testify in the State certifies under
30 the seal of the court that there is a criminal prosecution pending in the court, or that a
31 grand jury investigation has commenced or is about to commence, that a person being
32 within the State is a material witness in the prosecution, or grand jury investigation, and
33 that [his] **THE** presence **OF THAT PERSON** will be required for a specified number of days,
34 upon presentation of the certificate to any judge of a court of record, in the county in which
35 the person is, the judge shall fix a time and place for a hearing, and shall make an order
36 directing the witness to appear at a time and place certain for the hearing.

37 (b) **(1) (I) [If] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
38 **SUBSECTION, IF at [the] A hearing UNDER THIS SUBSECTION the judge determines that**

1 the witness is material and necessary, that it will not cause undue hardship to the witness
2 to be compelled to attend and testify in the prosecution or a grand jury investigation in the
3 other state, and that the laws of the state in which the prosecution is pending, or grand
4 jury investigation has commenced or is about to commence, and of any other state through
5 which the witness may be required to pass by ordinary course of travel, will give to [him]
6 **THE WITNESS** protection from arrest and the service of civil and criminal process, [he] **THE**
7 **JUDGE** shall issue a summons, with a copy of the certificate attached, directing the witness
8 to attend and testify in the court where the prosecution is pending, or where a grand jury
9 investigation has commenced or is about to commence at a time and place specified in the
10 summons.

11 (II) In [the] A hearing UNDER THIS SUBSECTION, the certificate
12 shall be prima facie evidence of all the facts stated therein.

13 (2) (I) IN THIS PARAGRAPH, “LEGALLY PROTECTED HEALTH
14 CARE” HAS THE MEANING STATED IN § 2-312 OF THE STATE PERSONNEL AND
15 PENSIONS ARTICLE.

16 (II) A JUDGE MAY NOT ORDER A PERSON WITHIN THE STATE TO
17 GIVE TESTIMONY OR A STATEMENT, OR PRODUCE DOCUMENTS, ELECTRONICALLY
18 STORED INFORMATION, OR OTHER TANGIBLE THINGS UNDER THIS SUBSECTION, IN
19 A CASE WHERE PROSECUTION IS PENDING, OR WHERE A GRAND JURY
20 INVESTIGATION HAS COMMENCED OR IS ABOUT TO COMMENCE, FOR A VIOLATION
21 OF A CRIMINAL LAW OF ANOTHER STATE INVOLVING THE PROVISION OF, RECEIPT
22 OF, OR ASSISTANCE WITH LEGALLY PROTECTED HEALTH CARE IN THE STATE,
23 UNLESS THE ACTS FORMING THE BASIS OF THE PROSECUTION OR INVESTIGATION
24 WOULD CONSTITUTE A CRIME IN THIS STATE.

25 9-402.

26 (a) (1) IN THIS SUBSECTION, “LEGALLY PROTECTED HEALTH CARE” HAS
27 THE MEANING STATED IN § 2-312 OF THE STATE PERSONNEL AND PENSIONS
28 ARTICLE.

29 (2) (I) To request issuance of a subpoena under this section, a party
30 shall submit a foreign subpoena to a clerk of the circuit court for the county in which
31 discovery is sought to be conducted in this State.

32 (II) THE REQUEST UNDER SUBPARAGRAPH (I) OF THIS
33 PARAGRAPH SHALL INCLUDE A SWORN, WRITTEN STATEMENT SIGNED UNDER
34 PENALTY OF PERJURY BY THE PARTY SEEKING ENFORCEMENT, OR THE PARTY’S
35 COUNSEL, THAT NO PORTION OF THE SUBPOENA IS INTENDED OR ANTICIPATED TO
36 FURTHER ANY INVESTIGATION OR PROCEEDING RELATED TO LEGALLY PROTECTED
37 HEALTH CARE, UNLESS THE OUT-OF-STATE PROCEEDING IS:

- 1 **1. BASED IN TORT, CONTRACT, OR STATUTE;**
- 2 **2. A CLAIM FOR WHICH A SIMILAR OR EQUIVALENT**
3 **CLAIM WOULD EXIST IN THE STATE; AND**
- 4 **3. A. BROUGHT BY THE PATIENT WHO RECEIVED**
5 **LEGALLY PROTECTED HEALTH CARE, OR THE PATIENT’S LEGAL REPRESENTATIVE;**
6 **OR**
- 7 **B. BASED ON CONDUCT THAT WOULD BE PROHIBITED**
8 **UNDER THE LAWS OF THIS STATE.**

9 **[(2)] (3)** A request for the issuance of a subpoena under this subtitle does
10 not constitute an appearance in the courts of this State.

11 10–408.

12 (c) (1) **[Upon the] EXCEPT AS PROVIDED IN PARAGRAPH (5) OF THIS**
13 **SUBSECTION, ON** application, the judge may enter an ex parte order, as requested or as
14 modified, authorizing interception of wire, oral, or electronic communications within the
15 territorial jurisdiction permitted under paragraphs (2) and (3) of this subsection, if the
16 judge determines on the basis of the facts submitted by the applicant that:

17 (i) There is probable cause for belief that an individual is
18 committing, has committed, or is about to commit a particular offense enumerated in §
19 10–406 of this subtitle;

20 (ii) There is probable cause for belief that particular communications
21 concerning that offense will be obtained through the interception;

22 (iii) Normal investigative procedures have been tried and have failed
23 or reasonably appear to be unlikely to succeed if tried or to be too dangerous; and

24 (iv) There is probable cause for belief:

25 1. That the facilities from which, or the place where, the
26 wire, oral, or electronic communications are to be intercepted are being used, or are about
27 to be used, in connection with the commission of the offense, or are leased to, listed in the
28 name of, or commonly used by this person in accordance with subsection (a)(1) of this
29 section; or

30 2. That the actions of the individual whose communications
31 are to be intercepted could have the effect of thwarting an interception from a specified
32 facility in accordance with subsection (a)(2) of this section.

1 (2) Except as provided in paragraphs (3) and (4) of this subsection, an ex
2 parte order issued under paragraph (1) of this subsection may authorize the interception of
3 wire, oral, or electronic communications only within the territorial jurisdiction of the court
4 in which the application was filed.

5 (3) If an application for an ex parte order is made by the Attorney General,
6 the State Prosecutor, or a State's Attorney, an order issued under paragraph (1) of this
7 subsection may authorize the interception of communications received or sent by a
8 communication device anywhere within the State so as to permit the interception of the
9 communications regardless of whether the communication device is physically located
10 within the jurisdiction of the court in which the application was filed at the time of the
11 interception. The application must allege that the offense being investigated may transpire
12 in the jurisdiction of the court in which the application is filed.

13 (4) In accordance with this subsection, a judge of competent jurisdiction
14 may authorize continued interception within the State, both within and outside the judge's
15 jurisdiction, if the original interception occurred within the judge's jurisdiction.

16 **(5) (I) IN THIS PARAGRAPH, "LEGALLY PROTECTED HEALTH**
17 **CARE" HAS THE MEANING STATED IN § 2-312 OF THE STATE PERSONNEL AND**
18 **PENSIONS ARTICLE.**

19 **(II) A JUDGE MAY NOT ISSUE AN EX PARTE ORDER UNDER THIS**
20 **SECTION FOR THE PURPOSE OF INVESTIGATING OR RECOVERING EVIDENCE OF**
21 **ACTIONS RELATED TO LEGALLY PROTECTED HEATH CARE.**

22 11-802.

23 **(a) (1) IN THIS SUBSECTION, "LEGALLY PROTECTED HEALTH CARE" HAS**
24 **THE MEANING STATED UNDER § 2-312 OF THE STATE PERSONNEL AND PENSIONS**
25 **ARTICLE.**

26 **(2) (i)** Except as provided in subparagraphs (ii) [and], (iii), **AND (IV)** of
27 this paragraph, a copy of any foreign judgment authenticated in accordance with an act of
28 Congress or statutes of this State may be filed in the office of the clerk of a circuit court.

29 (ii) If the face amount of the judgment is \$2,500 or less, the copy
30 shall be filed with the clerk of the District Court.

31 (iii) If the face amount of the judgment is not more than a
32 jurisdictional amount described in § 4-401 of this article, but more than \$2,500, the copy
33 may be filed either with the clerk of the District Court or in the office of the clerk of a circuit
34 court.

35 **(IV) EXCEPT AS REQUIRED BY FEDERAL LAW, A JUDGMENT**
36 **CREDITOR MAY NOT FILE A COPY OF ANY FOREIGN JUDGMENT UNDER THIS SECTION**

1 IF THE JUDGMENT WAS ISSUED IN CONNECTION WITH ANY LITIGATION CONCERNING
 2 LEGALLY PROTECTED HEALTH CARE, UNLESS THE UNDERLYING CAUSE OF ACTION
 3 IS:

4 1. BASED IN TORT, CONTRACT, OR STATUTE;

5 2. A CLAIM FOR WHICH A SIMILAR OR EQUIVALENT
 6 CLAIM WOULD EXIST IN THE STATE; AND

7 3. A. BROUGHT BY THE PATIENT WHO RECEIVED
 8 LEGALLY PROTECTED HEALTH CARE, OR THE PATIENT'S LEGAL REPRESENTATIVE;
 9 OR

10 B. BASED ON CONDUCT THAT WOULD BE PROHIBITED
 11 UNDER THE LAWS OF THIS STATE.

12 [(2)] (3) The clerk shall treat the foreign judgment in the same manner
 13 as a judgment of the court in which the foreign judgment is filed.

14 **Article – Criminal Procedure**

15 9–106.

16 (a) (1) [The] EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION,
 17 THE Governor of this State may also surrender, on demand of the executive authority of
 18 any other state, any person in this State charged in the other state in the manner provided
 19 in § 9–103 of this title with committing an act in this State or in a third state that
 20 intentionally results in a crime in the state whose executive authority is making the
 21 demand.

22 [(b)] (2) The provisions of this title that are not otherwise inconsistent shall
 23 apply to [those] cases DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION, even
 24 though the accused was not in that state at the time of the commission of the crime and
 25 has not fled therefrom.

26 (B) (1) IN THIS SUBSECTION, “LEGALLY PROTECTED HEALTH CARE
 27 SERVICES” HAS THE MEANING STATED IN § 2–312 OF THE STATE PERSONNEL AND
 28 PENSIONS ARTICLE.

29 (2) UNLESS COMPELLED BY A WRIT OF MANDAMUS ISSUED BY A
 30 FEDERAL COURT, THE GOVERNOR MAY NOT SURRENDER A PERSON ON DEMAND OF
 31 THE EXECUTIVE AUTHORITY OF ANY OTHER STATE IF THE ALLEGED ACT FOR WHICH
 32 SURRENDER IS BEING DEMANDED RELATES TO PROVIDING, PROCURING, OR AIDING

1 ANOTHER IN PROVIDING OR PROCURING LEGALLY PROTECTED HEALTH CARE
2 SERVICES AND THE ACT WOULD NOT BE A CRIME IN THE STATE.

3 **Article – Health Occupations**

4 **1–227.**

5 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
6 INDICATED.

7 (2) “HEALTH CARE PRACTITIONER” MEANS AN INDIVIDUAL WHO IS A
8 LICENSED, CERTIFIED, OR OTHERWISE AUTHORIZED BY LAW TO PROVIDE HEALTH
9 CARE SERVICES UNDER THIS ARTICLE.

10 (3) “LEGALLY PROTECTED HEALTH CARE” HAS THE MEANING
11 STATED IN § 2–312 OF THE STATE PERSONNEL AND PENSIONS ARTICLE.

12 (B) A HEALTH OCCUPATIONS BOARD MAY NOT REVOKE, SUSPEND,
13 DISCIPLINE, TAKE AN ADVERSE ACTION AGAINST, OR REFUSE TO ISSUE OR RENEW A
14 LICENSE, CERTIFICATION, OR OTHER AUTHORIZATION FOR ANY HEALTH CARE
15 PRACTITIONER IN WHOLE OR IN PART BECAUSE OF THE PROVISION OR SUPPORT OF
16 THE PROVISION OF LEGALLY PROTECTED HEALTH CARE IF THE LEGALLY
17 PROTECTED HEALTH CARE WAS PROVIDED IN ACCORDANCE WITH THE LAWS OF THIS
18 STATE; OR

19 (C) A HEALTH OCCUPATIONS BOARD MAY NOT REVOKE, SUSPEND,
20 DISCIPLINE, TAKE AN ADVERSE ACTION AGAINST, OR REFUSE TO ISSUE OR RENEW A
21 LICENSE, CERTIFICATION, OR OTHER AUTHORIZATION FOR ANY HEALTH CARE
22 PRACTITIONER IF THE HEALTH CARE PRACTITIONER IS DISCIPLINED BY A
23 LICENSURE BOARD IN ANOTHER STATE IN WHOLE OR IN PART BECAUSE OF THE
24 PROVISION OR SUPPORT OF THE PROVISION OF LEGALLY PROTECTED HEALTH CARE
25 IF THE LEGALLY PROTECTED HEALTH CARE WAS PROVIDED IN ACCORDANCE WITH
26 THE LAWS OF THIS STATE.

27 **Article – Insurance**

28 **15–857.**

29 (a) (1) This section applies to:

30 (i) insurers and nonprofit health service plans that provide labor
31 and delivery coverage to individuals or groups on an expense–incurred basis under health
32 insurance policies or contracts that are issued or delivered in the State; and

1 (ii) health maintenance organizations that provide labor and
2 delivery coverage to individuals or groups under contracts that are issued or delivered in
3 the State.

4 (2) This section does not apply to[:

5 (i)] a multistate plan that does not provide coverage for abortions in
6 accordance with 42 U.S.C. § 18054(a)(6)[; or

7 (ii) a high-deductible plan, as defined in 26 U.S.C. § 223(c)(2)(C) of
8 the Internal Revenue Code, unless the Commissioner determines that abortion care is not
9 excluded from the safe harbor provisions for preventive care under § 223(c)(2)(C) of the
10 Internal Revenue Code].

11 (3) An organization that is eligible to obtain an exclusion from the coverage
12 requirements under § 15-826 of this subtitle may obtain from an entity subject to this
13 section an exclusion from the coverage and notice requirements of this section if the
14 requirements conflict with the organization's bona fide religious beliefs and practices.

15 (b) Except as provided in subsection (c) **OR (D)** of this section, an entity subject to
16 this section shall:

17 (1) cover abortion care services without:

18 (i) a deductible, coinsurance, copayment, or any other cost-sharing
19 requirement; and

20 (ii) restrictions that are inconsistent with the protected rights under
21 Title 20, Subtitle 2 of the Health – General Article; and

22 (2) provide information to consumers about abortion care coverage using
23 the terminology “abortion care” to describe coverage.

24 (c) If the Commissioner determines that enforcement of this section may
25 adversely affect the allocation of federal funds to the State, the Commissioner may grant
26 an exemption to the requirements of this section to the minimum extent necessary to
27 ensure the continued receipt of federal funds.

28 **(D) A HIGH-DEDUCTIBLE PLAN, AS DEFINED IN 26 U.S.C. § 223(C)(2)(C) OF**
29 **THE INTERNAL REVENUE CODE, IS EXEMPT FROM THE REQUIREMENTS OF THIS**
30 **SECTION IF THE COMMISSIONER DETERMINES THAT ABORTION CARE SERVICES ARE**
31 **EXCLUDED FROM THE SAFE HARBOR PROVISIONS FOR PREVENTIVE CARE UNDER §**
32 **223(C)(2)(C) OF THE INTERNAL REVENUE CODE.**

33 19-117.

1 (A) IN THIS SECTION, “ADVERSE ACTION” INCLUDES:

2 (1) REFUSING TO RENEW OR EXECUTE A CONTRACT OR AGREEMENT
3 WITH A HEALTH CARE PRACTITIONER;

4 (2) MAKING A REPORT OR COMMENTING TO AN APPROPRIATE
5 PRIVATE OR GOVERNMENTAL ENTITY REGARDING PRACTICES OF LEGALLY
6 PROTECTED HEALTH CARE AS DEFINED IN § 2-312 OF THE STATE PERSONNEL AND
7 PENSIONS ARTICLE; AND

8 (3) INCREASING A PREMIUM FOR OR MAKING ANOTHER TYPE OF
9 UNFAVORABLE CHANGE REGARDING TERMS OF COVERAGE UNDER A MEDICAL
10 PROFESSIONAL LIABILITY INSURANCE CONTRACT AGREEMENT WITH A HEALTH
11 CARE PRACTITIONER.

12 (B) AN INSURER THAT ISSUES TO, DELIVERS TO, OR RENEWS MEDICAL
13 PROFESSIONAL LIABILITY INSURANCE FOR A HEALTH CARE PRACTITIONER
14 LICENSED, CERTIFIED, OR OTHERWISE AUTHORIZED BY LAW TO PRACTICE IN THE
15 STATE MAY NOT TAKE ADVERSE ACTION AGAINST A HEALTH CARE PRACTITIONER IN
16 WHOLE OR IN PART BECAUSE THE HEALTH CARE PRACTITIONER PROVIDES LEGALLY
17 PROTECTED HEALTH CARE.

18 (C) THIS SECTION DOES NOT PROHIBIT THE MEDICAL PROFESSIONAL
19 LIABILITY INSURER FROM TAKING ADVERSE ACTION AGAINST A HEALTH CARE
20 PRACTITIONER FOR CONDUCT THAT WOULD OTHERWISE CONSTITUTE
21 PROFESSIONAL MISCONDUCT.

22 Article – State Personnel and Pensions

23 2-312.

24 (A) IN THIS SECTION, “LEGALLY PROTECTED HEALTH CARE” MEANS ALL
25 REPRODUCTIVE HEALTH SERVICES, MEDICATIONS, AND SUPPLIES RELATED TO THE
26 DIRECT PROVISION OR SUPPORT OF THE PROVISION OF CARE RELATED TO
27 PREGNANCY, CONTRACEPTION, ASSISTED REPRODUCTION, AND ABORTION THAT IS
28 LAWFUL IN THE STATE.

29 (B) THIS SECTION DOES NOT APPLY TO AN INTERSTATE INVESTIGATION OR
30 PROCEEDING DESCRIBED UNDER SUBSECTION (C) OF THIS SECTION IF:

31 (1) THE INTERSTATE INVESTIGATION OR PROCEEDING CONCERNS
32 CONDUCT THAT WOULD BE SUBJECT TO CIVIL LIABILITY, CRIMINAL LIABILITY, OR
33 ADMINISTRATIVE SANCTION IF COMMITTED IN THE STATE; OR

1 **(2) THE SUBJECT OF THE INTERSTATE INVESTIGATION OR**
2 **PROCEEDING SUBMITS A WRITTEN REQUEST TO PROVIDE INFORMATION OR**
3 **ASSISTANCE TO THE INVESTIGATION OR PROCEEDING.**

4 **(C) AN AGENCY OF THE STATE OR A POLITICAL SUBDIVISION OF THE STATE,**
5 **AN AGENT OR EMPLOYEE OF THE STATE OR A POLITICAL SUBDIVISION OF THE**
6 **STATE ACTING IN THE AGENT’S OR EMPLOYEE’S OFFICIAL CAPACITY, OR A PRIVATE**
7 **PARTY PROVIDING SERVICES ON BEHALF OF THE STATE OR A POLITICAL**
8 **SUBDIVISION OF THE STATE, MAY NOT PROVIDE INFORMATION, EXPEND TIME OR**
9 **MONEY, OR USE STATE FACILITIES, STATE PROPERTY, STATE EQUIPMENT, STATE**
10 **PERSONNEL, OR OTHER STATE RESOURCES IN FURTHERANCE OF ANY INTERSTATE**
11 **INVESTIGATION OR PROCEEDING SEEKING TO IMPOSE CIVIL OR CRIMINAL**
12 **LIABILITY ON, OR ADMINISTRATIVE SANCTION AGAINST, A PERSON FOR ANY**
13 **ACTIVITY RELATING TO LEGALLY PROTECTED HEALTH CARE IF THE ACTIVITY**
14 **WOULD NOT BE SUBJECT TO CIVIL OR CRIMINAL LIABILITY OR PROFESSIONAL**
15 **SANCTION IN THE STATE.**

16 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**
17 **October 1, 2023.**