

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

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 9, 2023

CHAPTER _____

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, subject to a certain exception; prohibiting certain
9 judgment creditors from filing a copy of certain foreign judgments; prohibiting the
10 Governor from surrendering a person to the executive authority of another state for
11 an alleged violation of the laws of the requesting state relating to legally protected
12 health care if the violation would not be a crime in the State; prohibiting, subject to
13 certain exceptions, a State agency or a political subdivision of the State, an agent or
14 employee of the State or a political subdivision of the State, and certain private
15 parties from assisting in an interstate investigation related to legally protected
16 health care if the activity being investigated would not be subject to liability or
17 sanction in the State; prohibiting health occupations boards from disciplining a
18 health care practitioner or applicant because of certain actions relating to legally
19 protected health care subject to certain exceptions; exempting certain high
20 deductible insurance plans from covering certain abortion services; prohibiting
21 insurers from taking certain adverse actions against certain health care
22 practitioners; and generally relating to legally protected health care.

23 BY repealing and reenacting, with amendments,
24 Article – Courts and Judicial Proceedings

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Section 9–302(a) and (b), 9–402(a), 10–408(c), and 11–802(a)
2 Annotated Code of Maryland
3 (2020 Replacement Volume and 2022 Supplement)

4 BY repealing and reenacting, with amendments,
5 Article – Criminal Procedure
6 Section 9–106
7 Annotated Code of Maryland
8 (2018 Replacement Volume and 2022 Supplement)

9 BY adding to
10 Article – Health Occupations
11 Section 1–227
12 Annotated Code of Maryland
13 (2021 Replacement Volume and 2022 Supplement)

14 BY repealing and reenacting, with amendments,
15 Article – Insurance
16 Section 15–857
17 Annotated Code of Maryland
18 (2017 Replacement Volume and 2022 Supplement)

19 BY adding to
20 Article – Insurance
21 Section 19–117
22 Annotated Code of Maryland
23 (2017 Replacement Volume and 2022 Supplement)

24 BY adding to
25 Article – State Personnel and Pensions
26 Section 2–312
27 Annotated Code of Maryland
28 (2015 Replacement Volume and 2022 Supplement)

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

31 **Article – Courts and Judicial Proceedings**

32 9–302.

33 (a) If a judge of a court of record in any state which by its laws has made provision
34 for commanding persons within that state to attend and testify in the State certifies under
35 the seal of the court that there is a criminal prosecution pending in the court, or that a
36 grand jury investigation has commenced or is about to commence, that a person being
37 within the State is a material witness in the prosecution, or grand jury investigation, and
38 that [his] **THE** presence **OF THAT PERSON** will be required for a specified number of days,

1 upon presentation of the certificate to any judge of a court of record, in the county in which
2 the person is, the judge shall fix a time and place for a hearing, and shall make an order
3 directing the witness to appear at a time and place certain for the hearing.

4 (b) (1) (I) [If] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
5 SUBSECTION, IF at [the] A hearing UNDER THIS SUBSECTION the judge determines that
6 the witness is material and necessary, that it will not cause undue hardship to the witness
7 to be compelled to attend and testify in the prosecution or a grand jury investigation in the
8 other state, and that the laws of the state in which the prosecution is pending, or grand
9 jury investigation has commenced or is about to commence, and of any other state through
10 which the witness may be required to pass by ordinary course of travel, will give to [him]
11 THE WITNESS protection from arrest and the service of civil and criminal process, [he] THE
12 JUDGE shall issue a summons, with a copy of the certificate attached, directing the witness
13 to attend and testify in the court where the prosecution is pending, or where a grand jury
14 investigation has commenced or is about to commence at a time and place specified in the
15 summons.

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

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

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

30 9-402.

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

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

1 **(II) THE REQUEST UNDER SUBPARAGRAPH (I) OF THIS**
 2 **PARAGRAPH SHALL INCLUDE A SWORN, WRITTEN STATEMENT SIGNED UNDER**
 3 **PENALTY OF PERJURY BY THE PARTY SEEKING ENFORCEMENT, OR THE PARTY'S**
 4 **COUNSEL, THAT NO PORTION OF THE SUBPOENA IS INTENDED OR ANTICIPATED TO**
 5 **FURTHER ANY INVESTIGATION OR PROCEEDING RELATED TO LEGALLY PROTECTED**
 6 **HEALTH CARE, UNLESS THE OUT-OF-STATE PROCEEDING IS:**

7 **1. BASED IN TORT, CONTRACT, OR STATUTE;**

8 **2. A CLAIM FOR WHICH A SIMILAR OR EQUIVALENT**
 9 **CLAIM WOULD EXIST IN THE STATE; AND**

10 **3. A. BROUGHT BY THE PATIENT WHO RECEIVED**
 11 **LEGALLY PROTECTED HEALTH CARE, OR THE PATIENT'S LEGAL REPRESENTATIVE;**
 12 **OR**

13 **B. BASED ON CONDUCT THAT WOULD BE PROHIBITED**
 14 **UNDER THE LAWS OF THIS STATE.**

15 **[(2)] (3)** A request for the issuance of a subpoena under this subtitle does
 16 not constitute an appearance in the courts of this State.

17 10-408.

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

23 (i) There is probable cause for belief that an individual is
 24 committing, has committed, or is about to commit a particular offense enumerated in §
 25 10-406 of this subtitle;

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

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

30 (iv) There is probable cause for belief:

31 1. That the facilities from which, or the place where, the
 32 wire, oral, or electronic communications are to be intercepted are being used, or are about
 33 to be used, in connection with the commission of the offense, or are leased to, listed in the

1 name of, or commonly used by this person in accordance with subsection (a)(1) of this
2 section; or

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

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

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

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

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

24 **(II) A JUDGE MAY NOT ISSUE AN EX PARTE ORDER UNDER THIS**
25 **SECTION FOR THE PURPOSE OF INVESTIGATING OR RECOVERING EVIDENCE OF**
26 **ACTIONS RELATED TO LEGALLY PROTECTED HEALTH CARE, UNLESS THE ACTS**
27 **FORMING THE BASIS FOR THE INVESTIGATION OR RECOVERY OF EVIDENCE WOULD**
28 **CONSTITUTE A CRIME IN THIS STATE.**

29 11-802.

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

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

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

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

7 (IV) EXCEPT AS REQUIRED BY FEDERAL LAW, A JUDGMENT
8 CREDITOR MAY NOT FILE A COPY OF ANY FOREIGN JUDGMENT UNDER THIS SECTION
9 IF THE JUDGMENT WAS ISSUED IN CONNECTION WITH ANY LITIGATION CONCERNING
10 LEGALLY PROTECTED HEALTH CARE, UNLESS THE UNDERLYING CAUSE OF ACTION
11 IS:

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

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

15 3. A. BROUGHT BY THE PATIENT WHO RECEIVED
16 LEGALLY PROTECTED HEALTH CARE, OR THE PATIENT'S LEGAL REPRESENTATIVE;
17 OR

18 B. BASED ON CONDUCT THAT WOULD BE PROHIBITED
19 UNDER THE LAWS OF THIS STATE.

20 [(2)] (3) The clerk shall treat the foreign judgment in the same manner
21 as a judgment of the court in which the foreign judgment is filed.

22 Article – Criminal Procedure

23 9–106.

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

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

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

4 (2) UNLESS COMPELLED BY A WRIT OF MANDAMUS ISSUED BY A
5 FEDERAL COURT, THE GOVERNOR MAY NOT SURRENDER A PERSON ON DEMAND OF
6 THE EXECUTIVE AUTHORITY OF ANY OTHER STATE IF THE ALLEGED ACT FOR WHICH
7 SURRENDER IS BEING DEMANDED RELATES TO PROVIDING, PROCURING, OR AIDING
8 ANOTHER IN PROVIDING OR PROCURING LEGALLY PROTECTED HEALTH CARE
9 SERVICES AND THE ACT WOULD NOT BE A CRIME IN THE STATE.

10 Article – Health Occupations

11 1-227.

12 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
13 INDICATED.

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

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

19 (B) 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 TO PRACTICE FOR ANY
22 HEALTH CARE PRACTITIONER IN WHOLE OR IN PART BECAUSE OF THE PROVISION
23 OR SUPPORT OF THE PROVISION OF LEGALLY PROTECTED HEALTH CARE IF THE
24 LEGALLY PROTECTED HEALTH CARE WAS PROVIDED IN ACCORDANCE WITH THE
25 STANDARD OF CARE AS DETERMINED BY THE RELEVANT HEALTH OCCUPATIONS
26 BOARD ESTABLISHED UNDER THIS ARTICLE AND IN ACCORDANCE WITH THE LAWS
27 OF THIS STATE; OR

28 (C) A HEALTH OCCUPATIONS BOARD MAY NOT REVOKE, SUSPEND,
29 DISCIPLINE, TAKE AN ADVERSE ACTION AGAINST, OR REFUSE TO ISSUE OR RENEW A
30 LICENSE, CERTIFICATION, OR OTHER AUTHORIZATION TO PRACTICE FOR ANY
31 HEALTH CARE PRACTITIONER IF THE HEALTH CARE PRACTITIONER IS DISCIPLINED
32 BY A LICENSURE BOARD IN ANOTHER STATE IN WHOLE OR IN PART BECAUSE OF THE
33 PROVISION OR SUPPORT OF THE PROVISION OF LEGALLY PROTECTED HEALTH CARE
34 IF THE LEGALLY PROTECTED HEALTH CARE WAS PROVIDED IN ACCORDANCE WITH
35 THE STANDARD OF CARE AS DETERMINED BY THE RELEVANT HEALTH OCCUPATIONS

1 BOARD ESTABLISHED UNDER THIS ARTICLE AND IN ACCORDANCE WITH THE LAWS
2 OF THIS STATE.

3 **Article – Insurance**

4 15–857.

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

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

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

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

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

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

19 (3) An organization that is eligible to obtain an exclusion from the coverage
20 requirements under § 15–826 of this subtitle may obtain from an entity subject to this
21 section an exclusion from the coverage and notice requirements of this section if the
22 requirements conflict with the organization’s bona fide religious beliefs and practices.

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

25 (1) cover abortion care services without:

26 (i) a deductible, coinsurance, copayment, or any other cost–sharing
27 requirement; and

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

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

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

5 (D) A HIGH-DEDUCTIBLE PLAN, AS DEFINED IN 26 U.S.C. § 223(C)(2)(C) OF
6 THE INTERNAL REVENUE CODE, IS EXEMPT FROM THE REQUIREMENTS OF THIS
7 SECTION IF THE COMMISSIONER DETERMINES THAT ABORTION CARE SERVICES ARE
8 EXCLUDED FROM THE SAFE HARBOR PROVISIONS FOR PREVENTIVE CARE UNDER §
9 223(C)(2)(C) OF THE INTERNAL REVENUE CODE.

10 19-117.

11 (A) (1) IN THIS SECTION, "ADVERSE ACTION" INCLUDES:

12 ~~(1)~~ (I) REFUSING TO RENEW OR EXECUTE A CONTRACT OR
13 AGREEMENT WITH A HEALTH CARE PRACTITIONER;

14 ~~(2)~~ (II) MAKING A REPORT OR COMMENTING TO AN APPROPRIATE
15 PRIVATE OR GOVERNMENTAL ENTITY REGARDING PRACTICES OF LEGALLY
16 PROTECTED HEALTH CARE AS DEFINED IN § 2-312 OF THE STATE PERSONNEL AND
17 PENSIONS ARTICLE; AND

18 ~~(3)~~ (III) INCREASING A PREMIUM FOR OR MAKING ANOTHER TYPE
19 OF UNFAVORABLE CHANGE REGARDING TERMS OF COVERAGE UNDER A MEDICAL
20 PROFESSIONAL LIABILITY INSURANCE CONTRACT AGREEMENT WITH A HEALTH
21 CARE PRACTITIONER.

22 (2) "ADVERSE ACTION" DOES NOT INCLUDE MAKING A RATE FILING
23 IN ACCORDANCE WITH § 11-206 OF THIS ARTICLE.

24 (B) AN INSURER THAT ISSUES TO, DELIVERS TO, OR RENEWS MEDICAL
25 PROFESSIONAL LIABILITY INSURANCE FOR A HEALTH CARE PRACTITIONER
26 LICENSED, CERTIFIED, OR OTHERWISE AUTHORIZED BY LAW TO PRACTICE IN THE
27 STATE MAY NOT TAKE ADVERSE ACTION AGAINST A HEALTH CARE PRACTITIONER IN
28 WHOLE OR IN PART BECAUSE THE HEALTH CARE PRACTITIONER PROVIDES LEGALLY
29 PROTECTED HEALTH CARE OR MAKES A REFERRAL FOR LEGALLY PROTECTED
30 HEALTH CARE.

31 (C) THIS SECTION DOES NOT PROHIBIT THE MEDICAL PROFESSIONAL
32 LIABILITY INSURER FROM TAKING ADVERSE ACTION AGAINST A HEALTH CARE
33 PRACTITIONER FOR CONDUCT THAT WOULD OTHERWISE CONSTITUTE
34 PROFESSIONAL MISCONDUCT.

1 **Article – State Personnel and Pensions**

2 **2–312.**

3 (A) IN THIS SECTION, “LEGALLY PROTECTED HEALTH CARE” MEANS ALL
4 REPRODUCTIVE HEALTH SERVICES, MEDICATIONS, AND SUPPLIES RELATED TO THE
5 DIRECT PROVISION OR SUPPORT OF THE PROVISION OF CARE RELATED TO
6 PREGNANCY, CONTRACEPTION, ASSISTED REPRODUCTION, AND ABORTION THAT IS
7 LAWFUL IN THE STATE.

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

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

13 (2) THE SUBJECT OF THE INTERSTATE INVESTIGATION OR
14 PROCEEDING SUBMITS A WRITTEN REQUEST TO PROVIDE INFORMATION OR
15 ASSISTANCE TO THE INVESTIGATION OR PROCEEDING.

16 (C) AN AGENCY OF THE STATE OR A POLITICAL SUBDIVISION OF THE STATE,
17 AN AGENT OR EMPLOYEE OF THE STATE OR A POLITICAL SUBDIVISION OF THE
18 STATE ACTING IN THE AGENT’S OR EMPLOYEE’S OFFICIAL CAPACITY, OR A PRIVATE
19 PARTY PROVIDING SERVICES ON BEHALF OF THE STATE OR A POLITICAL
20 SUBDIVISION OF THE STATE, MAY NOT PROVIDE INFORMATION, EXPEND TIME OR
21 MONEY, OR USE STATE FACILITIES, STATE PROPERTY, STATE EQUIPMENT, STATE
22 PERSONNEL, OR OTHER STATE RESOURCES IN FURTHERANCE OF ANY INTERSTATE
23 INVESTIGATION OR PROCEEDING SEEKING TO IMPOSE CIVIL OR CRIMINAL
24 LIABILITY ON, OR ADMINISTRATIVE SANCTION AGAINST, A PERSON FOR ANY
25 ACTIVITY RELATING TO LEGALLY PROTECTED HEALTH CARE IF THE ACTIVITY
26 WOULD NOT BE SUBJECT TO CIVIL OR CRIMINAL LIABILITY OR PROFESSIONAL
27 SANCTION IN THE STATE.

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 ~~October~~ June 1, 2023.