



House of Representatives

General Assembly

File No. 509

February Session, 2022

Substitute House Bill No. 5414

House of Representatives, April 14, 2022

The Committee on Judiciary reported through REP. STAFSTROM of the 129th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING PROTECTIONS FOR PERSONS RECEIVING AND PROVIDING REPRODUCTIVE HEALTH CARE SERVICES IN THE STATE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 Section 1. (NEW) (*Effective July 1, 2022*) (a) As used in this section:
- 2 (1) "Reproductive health care services" includes all medical, surgical,
3 counseling or referral services relating to the human reproductive
4 system, including services relating to pregnancy, contraception or the
5 termination of a pregnancy; and
- 6 (2) "Person" includes an individual, a partnership, an association, a
7 limited liability company or a corporation.
- 8 (b) When any person has had a judgment entered against such
9 person, in any state, where liability, in whole or in part, is based on the
10 alleged provision, receipt, assistance in receipt or provision, material
11 support for, or any theory of vicarious, joint, several or conspiracy
12 liability derived therefrom, for reproductive health care services that are
13 permitted under the laws of this state, such person may recover

14 damages from any party that brought the action leading to that
15 judgment or has sought to enforce that judgment. Recoverable damages
16 shall include: (1) Just damages created by the action that led to that
17 judgment, including, but not limited to, money damages in the amount
18 of the judgment in that other state and costs, expenses and reasonable
19 attorney's fees spent in defending the action that resulted in the entry of
20 a judgment in another state; and (2) costs, expenses and reasonable
21 attorney's fees incurred in bringing an action under this section as may
22 be allowed by the court.

23 (c) The provisions of this section shall not apply to a judgment
24 entered in another state that is based on: (1) An action founded in tort
25 or contract, and for which a similar claim would exist under the laws of
26 this state, brought by the patient who received the reproductive health
27 care services upon which the original lawsuit was based or the patient's
28 authorized legal representative, for damages suffered by the patient or
29 damages derived from an individual's loss of consortium of the patient;
30 or (2) an action founded in contract, and for which a similar claim would
31 exist under the laws of this state, brought or sought to be enforced by a
32 party with a contractual relationship with the person that is the subject
33 of the judgment entered in another state.

34 Sec. 2. (NEW) (*Effective July 1, 2022*) (a) Except as provided in sections
35 52-146c to 52-146k, inclusive, sections 52-146p, 52-146q and 52-146s of
36 the general statutes and subsection (b) of this section, in any civil action
37 or any proceeding preliminary thereto or in any probate, legislative or
38 administrative proceeding, no covered entity, as defined in 45 CFR
39 160.103, shall disclose (1) any communication made to such covered
40 entity, or any information obtained by such covered entity from, a
41 patient or the conservator, guardian or other authorized legal
42 representative of a patient relating to reproductive health care services,
43 as defined in section 1 of this act, that are permitted under the laws of
44 this state, or (2) any information obtained by personal examination of a
45 patient relating to reproductive health care services, as defined in
46 section 1 of this act, that are permitted under the laws of this state, unless
47 the patient or that patient's conservator, guardian or other authorized

48 legal representative explicitly consents in writing to such disclosure. A
49 covered entity shall inform the patient or the patient's conservator,
50 guardian or other authorized legal representative of the patient's right
51 to withhold such written consent.

52 (b) Written consent of the patient or the patient's conservator,
53 guardian or other authorized legal representative shall not be required
54 for the disclosure of such communication or information (1) pursuant to
55 the laws of this state or the rules of court prescribed by the Judicial
56 Branch, (2) by a covered entity against whom a claim has been made, or
57 there is a reasonable belief will be made, in such action or proceeding,
58 to the covered entity's attorney or professional liability insurer or such
59 insurer's agent for use in the defense of such action or proceeding, (3) to
60 the Commissioner of Public Health for records of a patient of a covered
61 entity in connection with an investigation of a complaint, if such records
62 are related to the complaint, or (4) if child abuse, abuse of an elderly
63 individual, abuse of an individual who is physically disabled or
64 incompetent or abuse of an individual with intellectual disability is
65 known or in good faith suspected.

66 Sec. 3. (NEW) (*Effective July 1, 2022*) Notwithstanding the provisions
67 of section 52-155 of the general statutes and section 46 of substitute
68 house bill 5393 of the current session, a judge, justice of the peace, notary
69 public or commissioner of the Superior Court shall not issue a subpoena
70 requested by a commissioner, appointed according to the laws or usages
71 of any other state or government, or by any court of the United States or
72 of any other state or government, when such subpoena relates to
73 reproductive health care services, as defined in section 1 of this act, that
74 are permitted under the laws of this state, unless the subpoena relates
75 to: (1) An out-of-state action founded in tort or contract, for which a
76 similar claim would exist under the laws of this state, brought by a
77 patient or the patient's authorized legal representative, for damages
78 suffered by the patient or damages derived from an individual's loss of
79 consortium of the patient; or (2) an out-of-state action founded in
80 contract, and for which a similar claim would exist under the laws of
81 this state, brought or sought to be enforced by a party with a contractual

82 relationship with the person that is the subject of the subpoena
83 requested by a commissioner appointed according to the laws or usages
84 of another state.

85 Sec. 4. Subsection (b) of section 54-82i of the general statutes is
86 repealed and the following is substituted in lieu thereof (*Effective July 1,*
87 *2022*):

88 (b) If a judge of a court of record in any state which by its laws has
89 made provision for commanding persons within that state to attend and
90 testify in this state certifies, under the seal of such court, that there is a
91 criminal prosecution pending in such court, or that a grand jury
92 investigation has commenced or is about to commence, that a person
93 being within this state is a material witness in such prosecution or grand
94 jury investigation and that the presence of such witness will be required
95 for a specified number of days, upon presentation of such certificate to
96 any judge of a court of record in the judicial district in which such
97 person is, such judge shall fix a time and place for a hearing and shall
98 make an order directing the witness to appear at such time and place for
99 such hearing. If, at such hearing, the judge determines that the witness
100 is material and necessary, that it will not cause undue hardship to the
101 witness to be compelled to attend and testify in the prosecution or a
102 grand jury investigation in the other state and that the laws of such other
103 state and the laws of any other state through which the witness may be
104 required to pass by ordinary course of travel will give to such witness
105 protection from arrest and from the service of civil or criminal process,
106 the judge shall issue a summons, with a copy of the certificate attached,
107 directing the witness to attend and testify in the court where the
108 prosecution is pending, or where a grand jury investigation has
109 commenced or is about to commence at a time and place specified in the
110 summons, except that no judge shall issue a summons in a case where
111 prosecution is pending, or where a grand jury investigation has
112 commenced or is about to commence for a criminal violation of a law of
113 such other state involving the provision or receipt of or assistance with
114 reproductive health care services, as defined in section 1 of this act, that
115 are legal in this state, unless the acts forming the basis of the prosecution

116 or investigation would also constitute an offense in this state. At any
117 such hearing, the certificate shall be prima facie evidence of all the facts
118 stated therein. If such certificate recommends that the witness be taken
119 into immediate custody and delivered to an officer of the requesting
120 state to assure the attendance of the witness in such state, such judge
121 may, in lieu of notification of the hearing, direct that such witness be
122 forthwith brought before such judge for such hearing, and, being
123 satisfied, at such hearing, of the desirability of such custody and
124 delivery, of which desirability such certificate shall be prima facie proof,
125 may, in lieu of issuing a subpoena or summons, order that such witness
126 be forthwith taken into custody and delivered to an officer of the
127 requesting state. If such witness, after being paid or tendered by an
128 authorized person the same amount per mile as provided for state
129 employees pursuant to section 5-141c for each mile by the ordinary
130 traveled route to and from the court where the prosecution is pending
131 and five dollars each day that such witness is required to travel and
132 attend as a witness, fails, without good cause, to attend and testify as
133 directed in the summons, the witness shall be punished in the manner
134 provided for the punishment of any witness who disobeys a summons
135 issued from a court of record in this state.

136 Sec. 5. Section 54-162 of the general statutes is repealed and the
137 following is substituted in lieu thereof (*Effective July 1, 2022*):

138 The Governor of this state may also surrender, on demand of the
139 executive authority of any other state, any person found in this state
140 who is charged in such other state in the manner provided in section 54-
141 159 with committing an act in this state, or in a third state, intentionally
142 resulting in a crime in the state whose executive authority is making the
143 demand, and the provisions of this chapter not otherwise inconsistent
144 shall apply to such cases, even though the accused was not in that state
145 at the time of the commission of the crime and has not fled therefrom
146 provided (1) the crime for which extradition is sought would be
147 punishable by the laws of this state if committed in this state, and (2) the
148 consequences claimed to have resulted from the crime in the demanding
149 state had taken effect in this state.

150 Sec. 6. (NEW) (*Effective July 1, 2022*) (a) No state agency or employee,
 151 appointee, officer or official or any other person acting on behalf of a
 152 state agency may provide any information or expend or use time,
 153 money, facilities, property, equipment, personnel or other resources in
 154 furtherance of any interstate investigation or proceeding seeking to
 155 impose civil or criminal liability upon a person or entity for (1) the
 156 provision, seeking or receipt of or inquiring about reproductive health
 157 care services, as defined in section 1 of this act, or (2) assisting any
 158 person or entity providing, seeking, receiving or responding to an
 159 inquiry about reproductive health care services, as defined in section 1
 160 of this act.

161 (b) For purposes of this section, "state agency" has the same meaning
 162 as provided in section 4-250 of the general statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2022</i>	New section
Sec. 2	<i>July 1, 2022</i>	New section
Sec. 3	<i>July 1, 2022</i>	New section
Sec. 4	<i>July 1, 2022</i>	54-82i(b)
Sec. 5	<i>July 1, 2022</i>	54-162
Sec. 6	<i>July 1, 2022</i>	New section

JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill creates procedural court changes to provide protection for persons receiving and providing reproductive health services in the state and does not result in a fiscal impact to the state or municipalities.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 5414*****AN ACT CONCERNING PROTECTIONS FOR PERSONS RECEIVING AND PROVIDING REPRODUCTIVE HEALTH CARE SERVICES IN THE STATE.*****SUMMARY**

This bill limits the governor's discretion to extradite individuals who are accused of performing acts in Connecticut that result in crimes in another state. Specifically, he may only do so if the resulting crime alleged by the demanding state would also be a crime under Connecticut's laws if committed here.

The bill also establishes a cause of action that allows persons who were sued in another state for allegedly providing, or receiving support for, reproductive health services that are legal in Connecticut to recover certain costs they incurred defending the original action and bringing an action under the bill.

It limits the assistance officers of Connecticut courts, state agencies, and certain health care providers may provide in out-of-state judicial actions related to reproductive health care services that are legal in this state. With exceptions, the bill generally prohibits the following with respect to these actions:

1. court officers from issuing summons for criminal cases or subpoenas for civil actions or proceedings;
2. state agencies, or individuals acting on their behalf, from providing information or expending resources to support an investigation seeking to impose criminal or civil liability (§ 6); and
3. certain health care providers, payors, or information processors from disclosing protected information without a patient's, or an authorized legal representative's, written consent.

Under the bill, “reproductive health care services” include all medical, surgical, counseling, or referral services related to the human reproductive system, including pregnancy, contraception, or pregnancy termination.

EFFECTIVE DATE: July 1, 2022

§ 5 — LIMITS ON NON-FUGITIVE EXTRADITIONS

The bill limits the governor’s discretion to extradite someone accused of performing an act in this state that results in a crime in another state (i.e., the person did not flee the other state as a fugitive for which federal law and the U.S. Constitution would require extradition; see BACKGROUND).

Under existing law, the executive authority (i.e., governor) of another state may demand that Connecticut’s governor surrender an individual located in Connecticut who is accused of committing an act here, or in a third state, that intentionally resulted in a crime in the demanding state. And under current law, in that situation, the governor may surrender the accused. Under the bill, he may only do so if (1) the crime would be punishable under Connecticut law if committed in this state and (2) the consequences claimed to have resulted from the crime in the demanding state had taken effect in this state.

§ 1 — RECOUPERATION OF OUT-OF-STATE JUDGMENTS RELATED TO REPRODUCTIVE HEALTH SERVICES

Cause of Action

The bill creates a cause of action for persons against whom a judgment was entered in another state based on allegedly providing or receiving, or helping another person to provide or receive, or providing material support for reproductive health care services that are legal in Connecticut. For this purpose, a “person” is an individual, partnership, association, limited liability company, or corporation.

The bill applies to judgments where the person’s liability in the original action was entirely or partially based on these alleged actions or any theory of vicarious, joint, several, or conspiracy liability arising from them. It allows the person to recover damages from any party that

(1) brought the original action that resulted in the judgment or (2) tried to enforce it.

Under the bill, this cause of action is unavailable when the judgment entered in the other state is based on a claim similar to one that exists under Connecticut law and is a:

1. tort- or contract-based claim brought by a patient, or their authorized legal representative, who received the reproductive health care services, for damages the patient suffered or from another individual's loss of consortium with the patient, or
2. contract-based claim brought or enforced by someone with a contractual relationship with the person who is subject to the judgment.

Recoverable Damages

Under the bill, the court must award a person who successfully brings an action:

1. just damages resulting from the original action (e.g., the amount of the judgment entered in the other state and costs, expenses, and reasonable attorney's fees spent defending the action) and
2. costs, expenses, and reasonable attorney's fees spent bringing the action under the bill, as the court allows.

§§ 3 & 4 — LIMITS ON COMPELLING WITNESS PARTICIPATION IN CERTAIN OUT-OF-STATE ACTIONS

Depositions

Under current law, judges, justices of the peace, notaries public, and Superior Court commissioners (Connecticut licensed attorneys) may subpoena and compel material witnesses to appear before (i.e., be deposed by) attorneys licensed in other jurisdictions, including for lawsuits in other states (CGS § 52-155). Under the bill, they are, with two exceptions, prohibited from issuing a subpoena that relates to reproductive health care services that are legal in Connecticut.

Under the bill's two exceptions, these court officers may issue a

subpoena if it is for an out-of-state action for which a similar claim would exist under Connecticut law and it is a:

1. tort- or contract-based claim brought by a patient, or their authorized legal representative, who received the reproductive health care services upon which the original lawsuit was based, for damages the patient suffered or from another individual's loss of consortium with the patient, or
2. contract-based claim brought or enforced by someone with a contractual relationship with the person who is subject to the judgment.

Testimony in Criminal Cases

Current law allows a Connecticut judge to issue a summons ordering a person located in this state to attend and testify in a criminal prosecution or grand jury investigation in another state, at that other state's request, if the person is a material witness and certain other requirements are met.

The bill prohibits Connecticut judges from issuing a summons when the other state's prosecution or investigation is for a violation of its law on providing, receiving, or assisting with reproductive health services that are legal in Connecticut. However, it allows a judge to issue a subpoena if the acts being prosecuted or investigated would also constitute an offense in this state.

§ 6 — LIMITS ON USE OF AGENCY RESOURCES

The bill prohibits Connecticut state agencies, or people acting on their behalf (e.g., employees, appointees, officers, and officials), from providing information or using state resources to help another state's investigation or proceeding to impose civil or criminal liability on a person or entity for (1) providing, seeking, receiving, or inquiring about reproductive health care services or (2) assisting another person or entity to do so. Specifically, state agencies, and those acting on their behalf, may not expend or use time, money, facilities, property, equipment, personnel, or other resources for these purposes.

Under the bill, a “state agency” is any office, department, board, council, commission, institution, or other agency in the executive, legislative, or judicial branch.

§ 2 — PROHIBITED PATIENT INFORMATION DISCLOSURES

The bill prohibits, with exceptions, certain covered entities that provide health care, payments, or billing services from disclosing specified information in a civil action, or a preliminary proceeding before a civil action, or a probate, legislative, or administrative proceeding. (“Covered entities” are health care plans or payors; health care clearinghouses; and health care providers that electronically transmit health information pursuant to Health Insurance Portability and Accountability Act (HIPAA) regulations (45 C.F.R. § 160.103).)

Without explicit written consent from the patient or patient’s legal representative (e.g., conservator or guardian), the bill prohibits disclosing the following about reproductive health care services that are legal under Connecticut law:

1. communications made to a covered entity or obtained by it from a patient or the patient’s legal representative or
2. information obtained by a physical examination of the patient.

It requires covered entities to inform patients or their legal representatives of the patient’s right to withhold consent for these disclosures.

Exceptions

A covered entity does not have to obtain written consent to disclose communications or information:

1. pursuant to state law or judicial branch court rules;
2. to their attorney or professional liability insurer or agent to defend against a claim, or one that is reasonably believed to occur, against the covered entity;
3. to the public health commissioner if the disclosure is for a

patient's records that are related to a complaint investigation; or

4. about the abuse of a child, elderly person, incompetent person, or person with a mental or physical disability if it is known or suspected in good faith.

The bill does not replace existing law's disclosure requirements for communications or records, as applicable:

1. between an individual and psychologist, psychiatric mental health provider, domestic violence or sexual assault counselor, marital and family therapist, or professional counselor;
2. disclosed by a mental health facility for approved research purposes;
3. to the Department Mental Health and Addiction Services (DMHAS) commissioner by facilities or individuals under contract with DMHAS; or
4. relating to a social worker's evaluation or treatment.

BACKGROUND

Extraditions Required by Federal Law and the Constitution

By law, the governor may, but is not required to, extradite a person who commits an act in this state that results in a crime in another state. But he generally does not have discretion and must extradite individuals who were present in the demanding state at the time of the alleged crime, and then fled the demanding state (i.e., "fugitives"). The U.S. Constitution's Privileges and Immunities Clause, as well as federal and state law, require that a person charged with treason or a felony or other crime who flees to another state be extradited to the demanding state (see CGS § 54-159, 18 U.S.C. § 3182, and U.S. Const., art IV, § 2, cl. 2).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 24 Nay 14 (03/31/2022)