

# SENATE BILL 859

E2, J2, J5

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CF HB 808

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By: Senator Smith

Introduced and read first time: February 6, 2023

Assigned to: Judicial Proceedings and Finance

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## A BILL ENTITLED

1 AN ACT concerning

### **Reproductive Health Protection Act**

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

22  
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

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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

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.

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

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.

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**

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

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

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.