

Testimony of the Human Trafficking Prevention Project

BILL NO: Senate Bill 790
TITLE: Commercial Law – Health Data Privacy
COMMITTEE: Finance
HEARING DATE: March 8, 2023
POSITION: **FAVORABLE**

Senate Bill 790 would ensure that the private health information of individuals online is not utilized to prosecute, harass, or intimidate people seeking reproductive health care. Specifically, it provides that a private entity may not collect, use, disclose or disseminate the private health data of a consumer without the consumer’s express consent. Amongst the many things included as health data are medical information, diagnostic testing, treatments, medication, and significantly, legally protected health care, which includes all reproductive health services related to pregnancy, contraception, assisted reproduction, and abortion. The Human Trafficking Prevention Project supports this bill because it is essential that HTPP clients, the majority of whom have survived all manner of sexual violence, are able to access reproductive care seamlessly, as access to this type of medical care is often an essential part of their healing.

Reproductive freedom depends on the ability to keep personal information private. But it is nearly impossible not to leave an electronic trail when seeking reproductive health information and services. The harsh reality is that people can be easily identified through:

- their searches for a reproductive health care provider on the internet;
- the use of their phones for driving directions to a reproductive health provider; or
- geo-tracking applications collecting data on an individual’s precise location.

Access to this data can have very serious consequences. In the wake of the Supreme Court’s ruling in *Dobbs v. Jackson Whole Women’s Health*, 14 states have already fully or nearly banned abortion, and another ten are expected to do so. Over 300 abortion-related bills have already been filed this year across the country, the majority of which are anti-abortion. With the overturning of *Roe v. Wade*, many of them now target providers.¹ Some examples include:

- Wyoming – providers face up to 14 years in prison for performing an abortion²;
- Nebraska – providers will have license stripped for performing abortion after fetal heartbeat and be found guilty of a felony³;
- Iowa – providers face 10 years in prison for prescribing abortion pills⁴
- Idaho – makes transporting minors to obtain an abortion the crime of human trafficking⁵.

¹ Many States Impose a Jail Sentence for Doctors Who Perform Abortions Past Gestational Limits, Kaiser Family Foundation, May 22, 2023

² WY ST. §35-6-110

³ NE ST. §28-332

⁴ Chen, David W., The New York Times, A New Goal for Abortion Bills: Punish or Protect Doctors, 2/16/23.

⁵ Idaho House Bill 98 (2023)

While anti-abortion laws have not historically targeted those who obtain abortions, that landscape has also changed significantly in the past year.⁶ Already the Attorney General of Alabama has announced that the state could seek to penalize pregnant people who take abortion pills, while legislation has been proposed in Louisiana that would see pregnant people facing murder charges for receiving an abortion. Lawmakers in Indiana seek to change the state's criminal statutes to apply to the moment of fertilization. In Arizona, a bill was introduced that included abortion in the state's homicide laws and legislation in Texas was proposed last year that would have made getting an abortion punishable by the death penalty if it had gone into law.⁷

Given the extreme rhetoric and actions of these states, steps must be taken to prevent people's search histories, location data, medical information, and other digitally collected health information from being used by law enforcement agencies investigating or prosecuting abortion-related cases. Unfortunately, individuals currently have little recourse in this matter, as online data is owned by private companies rather than consumers themselves. For many people, particularly those currently living in states with abortion bans, the internet is the only source for medical information and referrals related to abortion care. These fears are already being substantiated; for example, in Nebraska where police have used information from Facebook Messenger to prosecute a mother for obtaining abortion pills for her pregnant daughter. Reports have found that Facebook and anti-abortion clinics together collect sensitive information on would-be patients, while pharmacies selling abortion pills also share data with Google.⁸

In this post-Dobbs environment, online information will be sought by states and anti-abortion organizations aiming to intimidate people seeking reproductive health services. The disclosure of online data will put reproductive health patients at risk for civil litigation or even criminal charges. Passage of Senate Bill 790 will ensure that no one ideologically-driven person *or* state government will be permitted to dictate the ability of any Marylander to make their own decisions about their bodies or their lives. For HTPP clients, SB 790 will allow them access to the crucial health care they need and the support they deserve as they work to heal from the trauma of their life experiences. For these reasons, the Human Trafficking Prevention Project respectfully urges a favorable report.

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⁶ Talk of Prosecuting Women for Abortion Pills Roils Antiabortion Movement, The Washington Post, Kitchener and Francis, 01/11/23.

⁷ <https://www.cnn.com/2022/09/20/politics/abortion-bans-murder-charges-invs/index.html>

⁸ How US police use digital data to prosecute abortions, TechCrunch, Sandvik, Runa, 01/27/23.