



House of Representatives

File No. 581

General Assembly

February Session, 2022 **(Reprint of File No. 509)**

Substitute House Bill No. 5414
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
April 21, 2022

**AN ACT CONCERNING THE PROVISION OF PROTECTIONS FOR
PERSONS RECEIVING AND PROVIDING REPRODUCTIVE HEALTH
CARE SERVICES IN THE STATE AND ACCESS TO 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, but not limited to, services relating to pregnancy,
5 contraception or the 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 contract or statute, and for which a similar claim would exist under the
26 laws of this state, brought by the patient who received the reproductive
27 health care services upon which the original lawsuit was based or the
28 patient's authorized legal representative, for damages suffered by the
29 patient or damages derived from an individual's loss of consortium of
30 the patient; (2) an action founded in contract, and for which a similar
31 claim would exist under the laws of this state, brought or sought to be
32 enforced by a party with a contractual relationship with the person that
33 is the subject of the judgment entered in another state; or (3) an action
34 where no part of the acts that formed the basis for liability occurred in
35 this state.

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

45 as defined in section 1 of this act, that are permitted under the laws of
46 this state, or (2) any information obtained by personal examination of a
47 patient relating to reproductive health care services, as defined in
48 section 1 of this act, that are permitted under the laws of this state, unless
49 the patient or that patient's conservator, guardian or other authorized
50 legal representative explicitly consents in writing to such disclosure. A
51 covered entity shall inform the patient or the patient's conservator,
52 guardian or other authorized legal representative of the patient's right
53 to withhold such written consent.

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

68 (c) Nothing in this section shall be construed to impede the lawful
69 sharing of medical records as permitted by state or federal law or the
70 rules of the court prescribed by the Judicial Branch, except in the case of
71 a subpoena commanding the production, copying or inspection of
72 medical records relating to reproductive health care services, as defined
73 in section 1 of this act.

74 Sec. 3. (NEW) (*Effective July 1, 2022*) Notwithstanding the provisions
75 of section 52-155 of the general statutes and section 46 of substitute
76 house bill 5393 of the current session, a judge, justice of the peace, notary
77 public or commissioner of the Superior Court shall not issue a subpoena

78 requested by a commissioner, appointed according to the laws or usages
79 of any other state or government, or by any court of the United States or
80 of any other state or government, when such subpoena relates to
81 reproductive health care services, as defined in section 1 of this act, that
82 are permitted under the laws of this state, unless the subpoena relates
83 to: (1) An out-of-state action founded in tort, contract or statute, for
84 which a similar claim would exist under the laws of this state, brought
85 by a patient or the patient's authorized legal representative, for damages
86 suffered by the patient or damages derived from an individual's loss of
87 consortium of the patient; or (2) an out-of-state action founded in
88 contract, and for which a similar claim would exist under the laws of
89 this state, brought or sought to be enforced by a party with a contractual
90 relationship with the person that is the subject of the subpoena
91 requested by a commissioner appointed according to the laws or usages
92 of another state.

93 Sec. 4. Subsection (b) of section 54-82i of the general statutes is
94 repealed and the following is substituted in lieu thereof (*Effective July 1,*
95 *2022*):

96 (b) If a judge of a court of record in any state which by its laws has
97 made provision for commanding persons within that state to attend and
98 testify in this state certifies, under the seal of such court, that there is a
99 criminal prosecution pending in such court, or that a grand jury
100 investigation has commenced or is about to commence, that a person
101 being within this state is a material witness in such prosecution or grand
102 jury investigation and that the presence of such witness will be required
103 for a specified number of days, upon presentation of such certificate to
104 any judge of a court of record in the judicial district in which such
105 person is, such judge shall fix a time and place for a hearing and shall
106 make an order directing the witness to appear at such time and place for
107 such hearing. If, at such hearing, the judge determines that the witness
108 is material and necessary, that it will not cause undue hardship to the
109 witness to be compelled to attend and testify in the prosecution or a
110 grand jury investigation in the other state and that the laws of such other
111 state and the laws of any other state through which the witness may be

112 required to pass by ordinary course of travel will give to such witness
113 protection from arrest and from the service of civil or criminal process,
114 the judge shall issue a summons, with a copy of the certificate attached,
115 directing the witness to attend and testify in the court where the
116 prosecution is pending, or where a grand jury investigation has
117 commenced or is about to commence at a time and place specified in the
118 summons, except that no judge shall issue a summons in a case where
119 prosecution is pending, or where a grand jury investigation has
120 commenced or is about to commence for a criminal violation of a law of
121 such other state involving the provision or receipt of or assistance with
122 reproductive health care services, as defined in section 1 of this act, that
123 are legal in this state, unless the acts forming the basis of the prosecution
124 or investigation would also constitute an offense in this state. At any
125 such hearing, the certificate shall be prima facie evidence of all the facts
126 stated therein. If such certificate recommends that the witness be taken
127 into immediate custody and delivered to an officer of the requesting
128 state to assure the attendance of the witness in such state, such judge
129 may, in lieu of notification of the hearing, direct that such witness be
130 forthwith brought before such judge for such hearing, and, being
131 satisfied, at such hearing, of the desirability of such custody and
132 delivery, of which desirability such certificate shall be prima facie proof,
133 may, in lieu of issuing a subpoena or summons, order that such witness
134 be forthwith taken into custody and delivered to an officer of the
135 requesting state. If such witness, after being paid or tendered by an
136 authorized person the same amount per mile as provided for state
137 employees pursuant to section 5-141c for each mile by the ordinary
138 traveled route to and from the court where the prosecution is pending
139 and five dollars each day that such witness is required to travel and
140 attend as a witness, fails, without good cause, to attend and testify as
141 directed in the summons, the witness shall be punished in the manner
142 provided for the punishment of any witness who disobeys a summons
143 issued from a court of record in this state.

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

146 The Governor of this state may also surrender, on demand of the
147 executive authority of any other state, any person found in this state
148 who is charged in such other state in the manner provided in section 54-
149 159 with committing an act in this state, or in a third state, intentionally
150 resulting in a crime in the state whose executive authority is making the
151 demand, and the provisions of this chapter not otherwise inconsistent
152 shall apply to such cases, even though the accused was not in that state
153 at the time of the commission of the crime and has not fled therefrom,
154 provided the acts for which extradition is sought would be punishable
155 by the laws of this state, if the consequences claimed to have resulted
156 from those acts in the demanding state had taken effect in this state.

157 Sec. 6. (NEW) (*Effective July 1, 2022*) No public agency, as defined in
158 section 1-200 of the general statutes, or employee, appointee, officer or
159 official or any other person acting on behalf of a public agency may
160 provide any information or expend or use time, money, facilities,
161 property, equipment, personnel or other resources in furtherance of any
162 interstate investigation or proceeding seeking to impose civil or criminal
163 liability upon a person or entity for (1) the provision, seeking or receipt
164 of or inquiring about reproductive health care services, as defined in
165 section 1 of this act, that are legal in this state, or (2) assisting any person
166 or entity providing, seeking, receiving or responding to an inquiry
167 about reproductive health care services, as defined in section 1 of this
168 act, that are legal in this state. This section shall not apply to any
169 investigation or proceeding where the conduct subject to potential
170 liability under the investigation or proceeding would be subject to
171 liability under the laws of this state if committed in this state.

172 Sec. 7. Section 19a-602 of the general statutes is repealed and the
173 following is substituted in lieu thereof (*Effective July 1, 2022*):

174 (a) The decision to terminate a pregnancy prior to the viability of the
175 fetus shall be solely that of the [pregnant woman] patient in consultation
176 with [her] the patient's physician or, pursuant to the provisions of
177 subsection (d) of this section, the patient's advanced practice registered
178 nurse, nurse-midwife or physician assistant.

179 (b) No abortion may be performed upon a [pregnant woman] patient
180 after viability of the fetus except when necessary to preserve the life or
181 health of the [pregnant woman] patient.

182 (c) A physician licensed pursuant to chapter 370 may perform an
183 abortion, as defined in section 19a-912.

184 (d) An advanced practice registered nurse licensed pursuant to
185 chapter 378, a nurse-midwife licensed pursuant to chapter 377 and a
186 physician assistant licensed pursuant to chapter 370 may perform
187 medication and aspiration abortions under and in accordance with said
188 chapters.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2022	New section
Sec. 2	July 1, 2022	New section
Sec. 3	July 1, 2022	New section
Sec. 4	July 1, 2022	54-82i(b)
Sec. 5	July 1, 2022	54-162
Sec. 6	July 1, 2022	New section
Sec. 7	July 1, 2022	19a-602

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 bill also allows advanced practiced registered nurses, nurse-midwives, and physician assistant to perform medication and aspiration abortions, which is not anticipated to result in a fiscal impact to the state.

House "A" struck the language of the underlying bill and replaced it with language that resulted in the fiscal impact described above.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 5414 (as amended by House "A")******AN ACT CONCERNING PROTECTIONS FOR PERSONS RECEIVING AND PROVIDING REPRODUCTIVE HEALTH CARE SERVICES IN THE STATE.*****SUMMARY**

This bill principally (1) limits the governor's discretionary extradition authority, (2) establishes a cause of action for persons against whom there is an out of state judgement based on reproductive health care services, and (3) authorizes additional types of health care providers to perform certain abortion services.

It limits the governor's discretion to extradite individuals accused of performing acts in Connecticut that result in crimes in another state. Specifically, he may only do so if the acts would also be punishable under Connecticut's laws if their consequences, as claimed by the demanding state, had taken effect in this state.

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. Under the bill, "reproductive health care services" include all medical, surgical, counseling, or referral services related to the human reproductive system, such as pregnancy, contraception, or pregnancy termination.

The bill limits the assistance officers of Connecticut courts, public 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. public agencies, or individuals acting on their behalf, from providing information or expending resources to support an investigation seeking to impose criminal or civil liability; and
3. certain health care providers, payors, or information processors from disclosing protected information without written consent from a patient or an authorized legal representative.

Additionally, the bill allows advanced practice registered nurses (APRNs), nurse-midwives, and physician assistants (PAs) to perform aspiration abortions (the most common type of abortion during the first trimester). The bill also explicitly authorizes these providers to perform medication abortions, which conforms to existing practice resulting from a 2001 attorney general opinion. It specifies that these providers may perform either type of abortion in accordance with their respective licensing statutes (see BACKGROUND).

The bill correspondingly specifies that the decision to terminate a pregnancy before the viability of the fetus must be made solely by that patient in consultation with the patient's physician, APRN, nurse-midwife, or PA, not just the patient and physician as under current law.

Under the bill, as under existing law, physicians may perform any type of abortion. Existing law, unchanged by the bill, prohibits an abortion from being performed after the viability of the fetus except when needed to preserve the pregnant patient's life or health.

The bill also makes technical changes to terminology.

*House Amendment "A" (1) adds the provisions authorizing APRNs, nurse-midwives, and PAs to perform certain types of abortions; (2) modifies the provision limiting the governor's extradition authority to require that a person's act, rather than crime, be one that is punishable in this state; (3) limits the cause of action created under the bill to cases where the underlying liability arose from an act, or part of an act, that

occurred in this state; (4) specifies the medical record disclosure provision does not, with exceptions, impede disclosures that are allowable by state or federal laws or court rules; and (5) expands the ban on agencies assisting in certain out-of-state actions to all public agencies, rather than only state agencies, but adds an exemption for assistance in actions based on conduct that could result in liability here.

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 the acts for which extradition is sought would be punishable under Connecticut law if their consequences, as claimed by 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 if no part of the acts that formed the basis for liability occurred in Connecticut. It is also 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-, contract-, or statutory-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). The bill, with two exceptions, prohibits them 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-, contract-, or statutory-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 generally prohibits Connecticut public 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 that are legal in this state 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. These prohibitions do not apply to investigations or proceedings if the conduct at issue would be subject to liability under Connecticut's laws if committed here.

Under the bill, a "public agency" is any (1) state or local governmental agency, department, institution, bureau, board, or commission, including any executive, administrative, or legislative office, and the administrative functions of any judicial office, including the Division of Public Defender Services or (2) entity that is the functional equivalent of these agencies.

§ 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

Under the bill, 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 impede sharing medicals records if state or federal law or the judicial branch's court rules allows them to be shared, but it may impede subpoenas to produce, copy, or inspect records relating to reproductive health services. Additionally, it 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;
4. relating to a social worker's evaluation or treatment; or
5. by a physician, surgeon, or other licensed health care provider in

a civil action (including a related preliminary proceeding), or a probate, legislative, or administrative proceeding.

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).

Attorney General Opinion on Medical Abortions

Existing state regulations only expressly allow physicians to perform abortions (Conn. Agencies Regs., § 19-13-D54(a)). However, a 2001 Connecticut’s attorney general opinion (2001-15) concluded that this restriction only applied to surgical abortions, and that state statutes allowing APRNs, nurse-midwives, and PAs to prescribe drugs authorized them, under certain conditions, to dispense or administer a drug that would medically terminate a pregnancy.

APRNs, Nurse-Midwives, and PAs

For each of these professions, the existing licensing statutes establish, among other things, certain required relationships with other providers.

APRNs must practice in collaboration with a physician for the first three years after becoming licensed in the state. They may practice without this collaboration if they have been licensed and practicing in collaboration with a physician for at least three years with at least 2,000 hours of practice (CGS § 20-87a).

Nurse-midwives must practice within a health care system. They must have clinical relationships with obstetricians-gynecologists that

provide for consultation, collaborative management, or referral, as indicated by the patient’s health status (CGS § 20-86b).

Each PA must have a clearly identified supervising physician who has final responsibility for patient care and the PA’s performance. The functions a physician delegates to a PA must be implemented in accordance with a written delegation agreement between them (CGS §§ 20-12c & -12d).

Related Bill and Resolution

sHB 5261 (File 467), reported favorably by the Public Health Committee, contains substantially similar provisions (1) authorizing APRNs, nurse-midwives, and PAs to perform certain types of abortions and (2) making related changes.

SJ 30 (File 389), reported favorably by the Government Administration and Elections Committee, proposes a constitutional amendment that prohibits any laws infringing the right of personal reproductive autonomy unless justified by a compelling state interest achieved by the least restrictive means.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 24 Nay 14 (03/31/2022)