

MAINE STATE LEGISLATURE

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Date: 4/10/24 Majority

L.D. 227
(Filing No. H-953)

HEALTH COVERAGE, INSURANCE AND FINANCIAL SERVICES

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
131ST LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 148, L.D. 227, "An Act Regarding Health Care in the State"

Amend the bill by striking out the title and substituting the following:
'An Act Regarding Legally Protected Health Care Activity in the State'

Amend the bill by striking out everything after the enacting clause and inserting the following:

'PART A

Sec. A-1. 14 MRSA c. 763 is enacted to read:

CHAPTER 763

LEGALLY PROTECTED HEALTH CARE ACTIVITY

§9001. Legislative findings and declaration of policy

The Legislature finds and declares that:

1. Legal right to gender-affirming health care services and reproductive health care services. Access to gender-affirming health care services and reproductive health care services in this State, as authorized under the laws of this State, is a legal right;

2. Interference with legally protected health care activity against public policy. Whether or not under the color of law, interference with legally protected health care activity and interference with aiding and assisting legally protected health care activity is against the public policy of this State; and

3. Public acts in other states. Any public act of another state that prohibits, criminalizes, sanctions, authorizes a person to bring a civil action against or otherwise interferes with a person in this State who engages in legally protected health care activity or who aids and assists legally protected health care activity;

COMMITTEE AMENDMENT

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- A. Interferes with the exercise and enjoyment of the rights secured by this State; and
- B. Is against the public policy of this State.

3 **§9002. Definitions**

4 As used in this chapter, unless the context otherwise indicates, the following terms
5 have the following meanings.

6 **1. Aid and assist legally protected health care activity.** "Aid and assist legally
7 protected health care activity" and "aiding and assisting legally protected health care
8 activity" mean:

9 A. Any act or omission of a person aiding or effectuating or attempting to aid or
10 effectuate any other person in legally protected health care activity; or

11 B. The provision or administration of, or attempted provision or administration of,
12 insurance coverage for gender-affirming health care services or reproductive health
13 care services to a beneficiary or a dependent of a beneficiary by any insurer, payor or
14 employer.

15 "Aiding and assisting legally protected health care activity" does not include any conduct
16 that deviates from the applicable standard of care or that could form the basis of a civil,
17 criminal or administrative action under the laws of this State had the course of conduct that
18 forms the basis for liability occurred entirely within this State.

19 **2. Aggrieved person.** "Aggrieved person" means:

20 A. A person against whom hostile litigation is filed or prosecuted or the legal
21 representative of a person against whom hostile litigation is filed or prosecuted;

22 B. The employer of a person against whom hostile litigation is filed or prosecuted if
23 the legally protected health care activity or aiding and assisting legally protected health
24 care activity of the person that forms the basis of the hostile litigation was performed
25 within the scope of the person's employment; or

26 C. A person in this State upon whom a subpoena seeking information concerning
27 legally protected health care activity or aiding and assisting legally protected health
28 care activity is served by any federal or state court in connection with hostile litigation.

29 **3. Foreign judgment.** "Foreign judgment" means any judgment, decree or order of a
30 court of another state.

31 **4. Gender-affirming health care services.** "Gender-affirming health care services"
32 means all supplies, care and services of a medical, behavioral health, mental health,
33 surgical, psychiatric, therapeutic, diagnostic, preventive, rehabilitative or supportive
34 nature, including medication, relating to the treatment of gender dysphoria and gender
35 incongruence in accordance with the accepted standard of care as defined by major medical
36 professional organizations and agencies with expertise in the field of gender-affirming
37 health care, including the Standards of Care for the Health of Transgender and Gender
38 Diverse People, Version 8, or subsequent version, published by the World Professional
39 Association for Transgender Health. "Gender-affirming health care services" does not
40 include conversion therapy as defined in Title 32, section 59-C, subsection 1.



1 5. Health care practitioner. "Health care practitioner" has the same meaning as in
2 Title 24, section 2502, subsection 1-A, except that "health care practitioner" does not
3 include a veterinarian. "Health care practitioner" also includes persons licensed under:

- 4 A. Title 32, chapter 18;
- 5 B. Title 32, chapter 32;
- 6 C. Title 32, chapter 83;
- 7 D. Title 32, chapter 117; and
- 8 E. Title 32, chapter 119.

9 6. Hostile litigation. "Hostile litigation" means any litigation or other legal action,
10 including civil, criminal or administrative action, to deter, prevent, sanction or punish any
11 health care practitioner or person assisting a health care practitioner who provides legally
12 protected health care activity or aids and assists legally protected health care activity by:

13 A. Filing or prosecuting any litigation or other legal action in any other state where
14 liability, in whole or in part, directly or indirectly, is based on legally protected health
15 care activity or aiding and assisting legally protected health care activity that occurred
16 in this State, including any action in which liability is based on any theory of vicarious,
17 joint or several liability; or

18 B. Attempting to enforce any order or judgment issued in connection with any litigation
19 or other legal action under paragraph A by any party to the action or by any person
20 acting on behalf of any party to the action.

21 For purposes of this chapter, litigation or other legal action is based on legally protected
22 health care activity or aiding and assisting legally protected health care activity that
23 occurred in this State if any part of any act or omission involved in the course of conduct
24 that forms the basis for liability in the action occurs or is initiated in this State, whether or
25 not the act or omission is alleged or included in any pleading or other filing in the lawsuit.

26 7. Law enforcement agency. "Law enforcement agency" means any court,
27 department or agency of this State, a political subdivision of this State or a college or a
28 university in this State charged with the enforcement of laws or the custody of detained
29 persons. "Law enforcement agency" includes the Department of the Attorney General and
30 district attorneys' offices.

31 8. Legally protected health care activity. "Legally protected health care activity"
32 means:

33 A. The exercise and enjoyment or attempted exercise and enjoyment by any person of
34 the right secured by this State to gender-affirming health care services or reproductive
35 health care services; and

36 B. The provision or attempted provision of gender-affirming health care services or
37 reproductive health care services that are authorized under the laws of this State and
38 that are provided in accordance with the applicable standard of care by a health care
39 practitioner licensed under the laws of this State and physically present in this State,
40 regardless of whether the patient is located in this State or whether the health care
41 practitioner is licensed in the state where the patient is located at the time the services
42 are rendered.

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"Legally protected health care activity" does not include any conduct that could form the basis of a civil, criminal or administrative action under the laws of this State had the course of conduct that forms the basis for liability occurred entirely within this State.

9. Reproductive health care services. "Reproductive health care services" means all supplies, care and services of a medical, behavioral health, mental health, surgical, psychiatric, therapeutic, diagnostic, preventive, rehabilitative or supportive nature, including medication, relating to pregnancy, contraception, assisted reproduction, pregnancy loss management or the termination of a pregnancy in accordance with the applicable standard of care as defined by major medical professional organizations and agencies with expertise in the field of reproductive health care.

10. State. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

§9003. Tortious interference with legally protected health care activity

1. Civil action. An aggrieved person may bring a civil action for damages, punitive damages, equitable relief, injunctive relief or any other appropriate relief against another person that, whether or not acting under color of law, files or prosecutes hostile litigation. For purposes of this subsection, "damages" may include the amount of any judgment issued in connection with the hostile litigation as well as all other expenses, costs and reasonable attorney's fees incurred in connection with the hostile litigation.

2. Attorney's fees and costs. An aggrieved person that prevails in an action brought under this section is entitled to an award of attorney's fees and costs.

3. Exception. An aggrieved person may not bring an action under this section if the hostile litigation is based on conduct for which a civil, criminal or administrative action would exist under the laws of this State if the conduct or course of conduct that forms the basis for liability in the hostile litigation had occurred entirely within this State.

§9004. Foreign judgments issued in connection with hostile litigation

1. Jurisdiction and due process required. A court of this State may not give any force or effect to any foreign judgment in connection with hostile litigation if the court that issued the foreign judgment did not:

- A. Have personal jurisdiction over the defendant;
- B. Have jurisdiction over the subject matter; or
- C. Provide due process of law.

2. Limitations period. Notwithstanding any provision of law to the contrary, an action on a foreign judgment in connection with hostile litigation must be commenced by filing a new and independent action on the judgment within 5 years of the foreign judgment.

§9005. Testimony and documents in connection with hostile litigation

1. Court order. Notwithstanding any provision of state law or court rule to the contrary and except as required by federal law, a court of this State may not order a person who is domiciled or found within this State to give testimony or a statement or produce documents or other information in any proceeding involving hostile litigation.

1 **2. Subpoena.** An aggrieved person may move to modify or quash any subpoena issued
2 in connection with hostile litigation on any grounds provided by law or court rule or on the
3 ground that the subpoena is inconsistent with the public policy of this State as provided in
4 section 9001.

5 **3. Summons.** Except as required by federal law, a court in this State may not issue a
6 summons or warrant in a case involving criminal prosecution or a pending grand jury
7 investigation under the criminal laws of another state for engaging in legally protected
8 health care activity or aiding and assisting legally protected health care activity unless the
9 conduct forming the basis of the prosecution or grand jury investigation would also
10 constitute a criminal offense if the conduct occurred entirely within this State.

11 **§9006. Prohibition on expenditure of public resources; noncooperation**

12 **1. Prohibition on expenditure of public resources.** Notwithstanding any provision
13 of state law to the contrary and except as required by federal law, a public agency, including
14 a law enforcement agency, and an employee, appointee, officer or official or any other
15 person acting on behalf of a public agency may not knowingly provide any information or
16 expend or use time, money, facilities, property, equipment, personnel or other resources in
17 furtherance of any interstate investigation or proceeding seeking to impose civil,
18 administrative or criminal liability upon a person or entity for:

19 A. Legally protected health care activity; or

20 B. Aiding and assisting legally protected health care activity.

21 **2. Noncooperation.** Notwithstanding any provision of state law to the contrary and
22 except as required by federal law, an officer or employee of a law enforcement agency,
23 while acting under color of law, may not knowingly provide information or assistance to a
24 federal law enforcement agency, to any law enforcement agency in another state or political
25 subdivision of another state or to any private citizen in relation to an investigation or inquiry
26 into services constituting legally protected health care activity or aiding and assisting
27 legally protected health care activity.

28 **3. No arrest.** Notwithstanding any provision of state law to the contrary and except as
29 required by federal law, arrest of a person in this State is prohibited if the arrest is related
30 to criminal liability that is based on legally protected health care activity or aiding and
31 assisting legally protected health care activity.

32 **4. Exceptions.** This section does not apply to a public agency, including a law
33 enforcement agency, or an employee, appointee, officer or official or any other person
34 acting on behalf of a public agency:

35 A. When responding to a warrant or extradition demand on the good faith belief that
36 the warrant or demand is valid in this State; or

37 B. When exigent circumstances make compliance with this section impossible. For the
38 purposes of this paragraph, "exigent circumstances" means circumstances in which
39 there is insufficient time to comply with this section and there is a compelling need for
40 action due to the presence of an imminent danger to public safety.

41 **§9007. Choice of law**

42 Notwithstanding any general or special law or common law conflict of law rule to the
43 contrary, the laws of this State govern in any case or controversy heard in this State

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1 involving legally protected health care activity or aiding and assisting legally protected
2 health care activity.

3 **PART B**

4 **Sec. B-1. 14 MRSA §402, sub-§2-A** is enacted to read:

5 2-A. Aiding and assisting legally protected health care activity. "Aiding and
6 assisting legally protected health care activity" has the same meaning as in section 9002,
7 subsection 1.

8 **Sec. B-2. 14 MRSA §402, sub-§2-B** is enacted to read:

9 2-B. Legally protected health care activity. "Legally protected health care activity"
10 has the same meaning as in section 9002, subsection 8.

11 **Sec. B-3. 14 MRSA §403, sub-§1-A** is enacted to read:

12 1-A. Attestation. A request for issuance of a subpoena under this section must be
13 accompanied by an affidavit stating whether the foreign subpoena seeks documents,
14 information, inspection or testimony related to the provision or receipt of or attempted
15 provision or receipt of legally protected health care activity or aiding and assisting legally
16 protected health care activity. The court shall provide a form for the completion of the
17 affidavit. The form must contain a statement informing the affiant that making a false
18 statement on the affidavit may be punishable as the crime of false swearing under the laws
19 of this State.

20 **Sec. B-4. 14 MRSA §403, sub-§2,** as enacted by PL 2019, c. 109, §1, is amended
21 to read:

22 2. Submission of foreign subpoena. ~~When~~ Except as provided in subsection 4, when
23 a party submits a foreign subpoena to a clerk of court in the State, the clerk, in accordance
24 with that court's procedure, shall promptly issue a subpoena for service upon the person to
25 which the foreign subpoena is directed.

26 **Sec. B-5. 14 MRSA §403, sub-§4** is enacted to read:

27 4. Prohibition. A clerk of court in this State may not issue a subpoena under
28 subsection 2 and must present the request to the court if the attestation submitted under
29 subsection 1-A indicates that the foreign subpoena seeks documents, information,
30 inspection or testimony related to the provision or receipt of or attempted provision or
31 receipt of legally protected health care activity or aiding and assisting legally protected
32 health care activity. After reviewing the request and attestation, if the court finds that the
33 foreign subpoena seeks documents, information, inspection or testimony related to the
34 provision or receipt of or attempted provision or receipt of legally protected health care
35 activity or aiding and assisting legally protected health care activity, the court shall deny
36 the request for issuance of a subpoena and quash any subpoena previously issued by the
37 court in connection with the request unless the court finds that the foreign subpoena seeks
38 documents, information, inspection or testimony related to:

39 A. An action in a foreign jurisdiction founded in tort, contract or statute brought by
40 the person who sought or received legally protected health care activity, or the person's
41 legal representative, for damages suffered by the person or damages derived from an



1 individual's loss of consortium of the person if a similar claim would exist under the
2 laws of this State;

3 B. An action in a foreign jurisdiction founded in contract that is brought by a person
4 with a contractual relationship to the individual whose documents or information are
5 the subject of the subpoena if a similar action would exist under the laws of this State;
6 or

7 C. An action in a foreign jurisdiction that is brought by a parent involving litigation
8 between parents over custody of a minor child of the parents if the custody dispute
9 involves legally protected health care activity or aiding and assisting legally protected
10 health care activity for the minor child.

11 If the court finds that the foreign subpoena seeks documents, information, inspection or
12 testimony as provided in paragraph A, B or C, the court shall direct the clerk to issue the
13 subpoena.

14 **PART C**

15 **Sec. C-1. 15 MRSA §203, sub-§5** is enacted to read:

16 **5. Exception; legally protected health care activity.** Notwithstanding any provision
17 of state law to the contrary and except as required by federal law, the Governor may not
18 surrender a person charged in another state as a result of the person's engaging in legally
19 protected health care activity or aiding and assisting legally protected health care activity
20 unless the executive authority of the demanding state alleges in writing that the accused
21 was physically present in the demanding state at the time of the commission of the alleged
22 offense and that thereafter the accused fled from the demanding state. For purposes of this
23 subsection, "aiding and assisting legally protected health care activity" and "legally
24 protected health care activity" have the same meanings as in Title 14, section 9002,
25 subsections 1 and 8, respectively.

26 **Sec. C-2. 16 MRSA §642, sub-§3** is enacted to read:

27 **3. Exception; legally protected health care activity.** Notwithstanding any provision
28 of state law to the contrary and except as required by federal law, a justice, judge or justice
29 of the peace may not issue a search warrant permitting a government entity to obtain
30 electronic device content information directly from a provider of electronic communication
31 service or remote computing service that relates to an investigation into legally protected
32 health care activity or aiding and assisting legally protected health care activity. For
33 purposes of this subsection, "aiding and assisting legally protected health care activity" and
34 "legally protected health care activity" have the same meanings as in Title 14, section 9002,
35 subsections 1 and 8, respectively.

36 **PART D**

37 **Sec. D-1. 5 MRSA §90-B, sub-§1, ¶B,** as amended by PL 2021, c. 649, §1, is
38 further amended to read:

39 B. "Application assistant" means an employee of a state or local agency or of a
40 nonprofit program that provides counseling, referral, shelter or other specialized
41 service to victims of domestic violence, sexual assault, stalking or human trafficking
42 or to minor victims of kidnapping or that provides services related to legally protected
43 health care activity who has been designated by the respective agency and trained,

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1 accepted and registered by the secretary to assist individuals in the completion of
2 program participation applications.

3 **Sec. D-2. 5 MRSA §90-B, sub-§1, ¶B-1** is enacted to read:

4 B-1. "Covered health care practitioner" has the same meaning as in Title 10, section
5 8012, subsection 1, paragraph B.

6 **Sec. D-3. 5 MRSA §90-B, sub-§1, ¶C-1** is enacted to read:

7 C-1. "Legally protected health care activity" has the same meaning as in Title 14,
8 section 9002, subsection 8.

9 **Sec. D-4. 5 MRSA §90-B, sub-§1, ¶F-1** is enacted to read:

10 F-1. "Reproductive or gender-affirming health care services practitioner" means a
11 person who in the person's capacity as a covered health care practitioner engages in
12 legally protected health care activity.

13 **Sec. D-5. 5 MRSA §90-B, sub-§2**, as amended by PL 2021, c. 649, §2, is further
14 amended to read:

15 **2. Program established.** The Address Confidentiality Program is established to
16 protect victims of domestic violence, sexual assault, stalking or human trafficking ~~and~~
17 ~~minor victims of kidnapping; and reproductive or gender-affirming health care services~~
18 ~~practitioners~~ by authorizing the use of designated addresses for such victims ~~and~~
19 ~~practitioners~~. The program is administered by the secretary under the following application
20 and certification procedures.

21 A. Upon recommendation of an application assistant, an adult person, a parent or
22 guardian acting on behalf of a minor or a guardian acting on behalf of an incapacitated
23 person may apply to the secretary to have a designated address assigned by the
24 secretary to serve as the person's address or the address of the minor or incapacitated
25 person.

26 B. The secretary may approve an application only if it is filed with the office of the
27 secretary in the manner established by rule and on a form prescribed by the secretary.
28 A completed application must contain:

29 (1) The application preparation date, the applicant's signature and the signature
30 and registration number of the application assistant who assisted the applicant in
31 applying to be a program participant;

32 (2) A designation of the secretary as agent for purposes of service of process and
33 for receipt of first-class mail;

34 (3) The mailing address where the applicant may be contacted by the secretary or
35 a designee and the telephone number or numbers where the applicant may be called
36 by the secretary or the secretary's designee; and

37 (4) One or more addresses that the applicant requests not be disclosed for the
38 reason that disclosure will jeopardize the applicant's safety or increase the risk of
39 violence to the applicant or members of the applicant's household.

40 C. Upon receipt of a properly completed application, the secretary may certify the
41 applicant as a program participant. A program participant is certified for 4 years



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following the date of initial certification unless the certification is withdrawn or invalidated before that date. The secretary shall send notification of lapsing certification and a reapplication form to a program participant at least 4 weeks prior to the expiration of the program participant's certification.

D. The secretary shall forward first-class mail to the appropriate program participants.

E. A person who violates this paragraph commits a Class E crime.

(1) An applicant may not file an application knowing that it:

- (a) Contains false or incorrect information; or
- (b) Falsely claims that disclosure of the applicant's address or mailing address threatens the safety of the applicant or the applicant's children or the minor or incapacitated person on whose behalf the application is made.

(2) An application assistant may not assist or participate in the filing of an application that the application assistant knows:

- (a) Contains false or incorrect information; or
- (b) Falsely claims that disclosure of the applicant's address or mailing address threatens the safety of the applicant or the applicant's children or the minor or incapacitated person on whose behalf the application is made.

PART E

Sec. E-1. 10 MRSA §8012 is enacted to read:

§8012. Legally protected health care activity

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Aiding and assisting legally protected health care activity" has the same meaning as in Title 14, section 9002, subsection 1.

B. "Covered health care practitioner" has the same meaning as "health care practitioner" in Title 24, section 2502, subsection 1-A, except that "covered health care practitioner" does not include a veterinarian. "Covered health care practitioner" also includes persons licensed under:

- (1) Title 32, chapter 18;
- (2) Title 32, chapter 32;
- (3) Title 32, chapter 83;
- (4) Title 32, chapter 117; and
- (5) Title 32, chapter 119.

C. "Legally protected health care activity" has the same meaning as in Title 14, section 9002, subsection 8.

D. "Professional discipline" means the issuance of a letter of guidance or concern; a warning, censure or reprimand; a license or registration denial, nonrenewal, suspension or revocation; a civil penalty for violation of applicable laws, rules and conditions of licensure or registration or for instances of actionable conduct or activity; the

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1 imposition of conditions of probation upon an applicant, licensee or registrant; or the
2 execution of a consent agreement with the consent of an applicant, licensee or
3 registrant.

4 **2. Professional discipline prohibited.** Notwithstanding any provision of state law to
5 the contrary and except as required by federal law, the commissioner; the Director of the
6 Office of Professional and Occupational Regulation within the department; any agency,
7 bureau, board or commission within or affiliated with the department; and the Department
8 of Health and Human Services may not subject a covered health care practitioner to
9 professional discipline based solely on:

10 A. The covered health care practitioner's engaging in legally protected health care
11 activity or aiding and assisting legally protected health care activity;

12 B. A criminal action, civil action or professional discipline action in another state
13 against the covered health care practitioner that is based on the covered health care
14 practitioner engaging in legally protected health care activity or aiding and assisting
15 legally protected health care activity; or

16 C. Conviction of a crime or any civil judgment or professional discipline in this State
17 or another state against the covered health care practitioner based solely on a violation
18 of another state's law prohibiting legally protected health care activity or aiding and
19 assisting legally protected health care activity.

20 **3. Confidentiality.** Notwithstanding any provision of state law to the contrary and
21 except when public disclosure is authorized by federal law or another state law, the portions
22 of a record of a conviction of a crime in this State or another state, any civil judgment,
23 arbitration award or settlement agreement from this State or another state or professional
24 discipline imposed in this State or another state that are in the possession of the
25 commissioner; the Director of the Office of Professional and Occupational Regulation
26 within the department; any agency, bureau, board or commission within or affiliated with
27 the department; or, for a licensed electrologist, the Department of Health and Human
28 Services are confidential to the extent that the criminal conviction, civil judgment,
29 arbitration award or settlement agreement or professional discipline is based on the covered
30 health care practitioner's engaging in legally protected health care activity or aiding and
31 assisting legally protected health care activity.

32 **Sec. E-2. 24 MRSA §2513** is enacted to read:

33 **§2513. Legally protected health care activity**

34 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
35 following terms have the following meanings.

36 A. "Adverse action" means the reduction of, restriction of, suspension of, denial of,
37 revocation of or failure to grant or renew a covered health care practitioner's
38 membership, clinical privileges, clinical practice authority, professional certification
39 or participation on a provider panel by a health care provider or health care entity.

40 B. "Aiding and assisting legally protected health care activity" has the same meaning
41 as in Title 14, section 9002, subsection 1.

42 C. "Covered health care practitioner" has the same meaning as in Title 10, section 8012,
43 subsection 1, paragraph B.

1 D. "Formal disciplinary action" means the reduction of, restriction of, suspension of,
2 denial of, revocation of or failure to grant or renew a covered health care practitioner's
3 membership in a professional society.

4 E. "Legally protected health care activity" has the same meaning as in Title 14, section
5 9002, subsection 8.

6 F. "Professional discipline" has the same meaning as in Title 10, section 8012,
7 subsection 1, paragraph D.

8 **2. Prohibited actions of health care entity or health care provider.** A health care
9 entity or health care provider within this State may not take any adverse action against a
10 covered health care practitioner solely as a result of:

11 A. The covered health care practitioner's engaging in legally protected health care
12 activity or aiding and assisting legally protected health care activity;

13 B. An adverse action or formal disciplinary action in another state against the covered
14 health care practitioner based on the covered health care practitioner's engaging in
15 legally protected health care activity or aiding and assisting legally protected health
16 care activity; or

17 C. Professional discipline imposed on the covered health care practitioner by another
18 state's professional licensing board, agency or organization based on the covered health
19 care practitioner's engaging in legally protected health care activity or aiding and
20 assisting legally protected health care activity.

21 **Sec. E-3. 24-A MRSA §2159-F**, as enacted by PL 2023, c. 345, §1, is amended to
22 read:

23 **§2159-F. ~~Discrimination based solely on provision of reproductive health care~~**
24 **~~services in medical malpractice insurance based solely on legally protected~~**
25 **health care activity**

26 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
27 following terms have the following meanings.

28 A. "Adverse action" means revocation, suspension or other disciplinary action against
29 a health care professional's license.

30 ~~B. "Health care professional who provides reproductive health care services" means a~~
31 ~~health care professional who provides, authorizes, recommends, aids, assists, refers for~~
32 ~~or otherwise participates in an abortion or any other reproductive health care services~~
33 ~~provided for the purpose of an abortion performed on an individual.~~

34 C. "Aid and assist legally protected health care activity" and "aiding and assisting
35 legally protected health care activity" have the same meanings as in Title 14, section
36 9002, subsection 1.

37 D. "Legally protected health care activity" has the same meaning as in Title 14, section
38 9002, subsection 8.

39 **2. Discrimination prohibited.** An insurer that provides medical malpractice
40 insurance in this State may not refuse to issue or renew coverage, cancel or restrict
41 coverage, impose any sanctions, fines, penalties or rate increases or require the payment of
42 additional charges by a health care professional who ~~provides reproductive health care~~

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1 services engages in legally protected health care activity or aids and assists legally
2 protected health care activity on the sole basis that the health care professional is acting in
3 violation of another state's law related to legally protected health care activity or aiding and
4 assisting legally protected health care activity or is subject to an adverse action against the
5 health care professional's license in another state for a violation of that state's law related
6 to legally protected health care activity or aiding and assisting legally protected health care
7 activity.

8 **3. Action based on adverse action in another state prohibited.** An insurer that
9 provides medical malpractice insurance in this State may not refuse to issue or renew
10 coverage, cancel or restrict coverage or require the payment of additional charges by a
11 health care professional who ~~provides reproductive health care services~~ engages in legally
12 protected health care activity or aids and assists legally protected health care activity as a
13 result of an adverse action against the health care professional's license in another state if
14 the adverse action is solely based on a violation of the other state's law ~~that prohibits~~
15 ~~abortion and any related reproductive health care services in that state or for a resident of~~
16 ~~that state~~ related to legally protected health care activity or aiding and assisting legally
17 protected health care activity.

18 **Sec. E-4. 24-A MRSA §4301-A, sub-§1-A** is enacted to read:

19 **1-A. Aids and assists legally protected health care activity.** "Aids and assists legally
20 protected health care activity" has the same meaning as in Title 14, section 9002, subsection
21 1.

22 **Sec. E-5. 24-A MRSA §4301-A, sub-§5-A** is enacted to read:

23 **5-A. Gender-affirming health care services.** "Gender-affirming health care
24 services" has the same meaning as in Title 14, section 9002, subsection 4.

25 **Sec. E-6. 24-A MRSA §4301-A, sub-§8-A** is enacted to read:

26 **8-A. Legally protected health care activity.** "Legally protected health care activity"
27 has the same meaning as in Title 14, section 9002, subsection 8.

28 **Sec. E-7. 24-A MRSA §4301-A, sub-§17-A** is enacted to read:

29 **17-A. Reproductive health care services.** "Reproductive health care services" has
30 the same meaning as in Title 14, section 9002, subsection 9.

31 **Sec. E-8. 24-A MRSA §4303, sub-§2, ¶B,** as amended by PL 2015, c. 84, §1, is
32 further amended to read:

33 B. All credentialing decisions, including those granting, denying or withdrawing
34 credentials, must be in writing. The provider must be provided with all reasons for the
35 denial of an application for credentialing or the withdrawal of credentials. A
36 withdrawal of credentials must be treated as a provider termination and is subject to
37 the requirements of ~~subsection~~ subsections 3-A and 3-C.

38 **Sec. E-9. 24-A MRSA §4303, sub-§3, ¶A,** as enacted by PL 1995, c. 673, Pt. C,
39 §1 and affected by §2, is amended to read:

40 A. For the purposes of this section, "to advocate for medically appropriate health care"
41 means to discuss or recommend a course of treatment, including gender-affirming
42 health care services and reproductive health care services, to an enrollee; to appeal a

1 managed care plan's decision to deny payment for a service, including gender-affirming
2 health care services and reproductive health care services, pursuant to an established
3 grievance or appeal procedure; or to protest a decision, policy or practice that the
4 provider, consistent with the degree of learning and skill ordinarily possessed by
5 reputable providers, reasonably believes impairs the provider's ability to provide
6 medically appropriate health care, including gender-affirming health care services and
7 reproductive health care services, to the provider's patients.

8 **Sec. E-10. 24-A MRSA §4303, sub-§3-C** is enacted to read:

9 **3-C. Provider's right to engage in legally protected health care activity.** A carrier
10 offering or renewing a health plan in this State may not terminate or nonrenew a contract
11 with a participating provider or impose any monetary penalties or financial disincentives
12 on a participating provider on the sole basis that the participating provider engages in
13 legally protected health care activity or aids and assists legally protected health care
14 activity.

15 **PART F**

16 **Sec. F-1. 22 MRSA §1711-C, sub-§1, ¶A-2** is enacted to read:

17 A-2. "Aiding and assisting legally protected health care activity" has the same meaning
18 as in Title 14, section 9002, subsection 1.

19 **Sec. F-2. 22 MRSA §1711-C, sub-§1, ¶B-1** is enacted to read:

20 B-1. "Gender-affirming health care services" has the same meaning as in Title 14,
21 section 9002, subsection 4.

22 **Sec. F-3. 22 MRSA §1711-C, sub-§1, ¶G-1** is enacted to read:

23 G-1. "Legally protected health care activity" has the same meaning as in Title 14,
24 section 9002, subsection 8.

25 **Sec. F-4. 22 MRSA §1711-C, sub-§1, ¶G-2** is enacted to read:

26 G-2. "Reproductive health care services" has the same meaning as in Title 14, section
27 9002, subsection 9.

28 **Sec. F-5. 22 MRSA §1711-C, sub-§8**, as amended by PL 2011, c. 373, §2, is
29 repealed and the following enacted in its place:

30 **8. Prohibited disclosure.** Disclosure of health care information is prohibited as
31 follows.

32 A. A health care practitioner, facility or state-designated statewide health information
33 exchange may not disclose health care information for the purpose of marketing or
34 sales without written or oral authorization for the disclosure.

35 B. Notwithstanding any provision of this section to the contrary and except as provided
36 in paragraph C, a health care practitioner, facility or state-designated statewide health
37 information exchange may not disclose any of the following in a civil or administrative
38 action or proceeding or in response to a subpoena issued in a civil or administrative
39 action or proceeding unless authorized in writing by the individual or the individual's
40 authorized representative or pursuant to a court order issued by a court of competent
41 jurisdiction in this State upon a showing of good cause, as long as the court order limits

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1 the use and disclosure of records and includes sanctions for misuse of records or sets
2 forth other methods to ensure confidentiality:

3 (1) Any communication about reproductive health care services or gender-
4 affirming health care services made to the health care practitioner, facility or state-
5 designated statewide health information exchange from the individual or anyone
6 acting on behalf of the individual, including an authorized representative of the
7 individual; and

8 (2) Any information obtained through a personal examination of an individual
9 relating to reproductive health care services or gender-affirming health care
10 services.

11 C. Paragraph B does not apply if:

12 (1) The communication or information to be disclosed relates to an individual who
13 is a plaintiff in a medical malpractice action and the health care practitioner, facility
14 or state-designated statewide health information exchange from which the
15 communication or information is requested is a defendant in the medical
16 malpractice action;

17 (2) The communication or information to be disclosed is requested by a
18 professional licensing board that licenses health care practitioners in this State and
19 the request relates to and is made in connection with a complaint investigation.
20 This subparagraph does not apply if the complaint is based solely on an allegation
21 that a licensee of the board provided reproductive health care services or gender-
22 affirming health care services that are legally protected health care activity or
23 aiding and assisting legally protected health care activity within the licensee's
24 scope of practice; or

25 (3) The communication or information to be disclosed is requested by the United
26 States Department of Justice, a law enforcement agency of this State or a political
27 subdivision of this State or any other federal agency or agency of this State that
28 pursuant to statute is responsible for investigating abuse, neglect or exploitation
29 and the request is made in connection with an investigation of abuse, neglect or
30 exploitation of a child pursuant to the Child and Family Services and Child
31 Protection Act or of an incapacitated or dependent adult pursuant to the Adult
32 Protective Services Act.

33 D. This subsection may not be construed to impede the lawful disclosure of information
34 to another health care practitioner or facility for diagnosis, treatment or care of
35 individuals or to complete the responsibilities of a health care practitioner or facility
36 that provides diagnosis, treatment or care of individuals or to impede the lawful
37 disclosure of information to an insurer or payor related to the treatment provided by a
38 health care practitioner or facility or to the payment or operations of a health care
39 practitioner or facility.

40 PART G

41 **Sec. G-1. Construction.** This Act may not be construed to conflict with or in any
42 way amend the Uniform Child Custody Jurisdiction and Enforcement Act, Maine Revised
43 Statutes, Title 19-A, chapter 58.'

1 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
2 number to read consecutively.

3 **SUMMARY**

4 This amendment, which is the majority report of the committee, replaces the bill, which
5 is a concept draft, and changes the title. The amendment provides protections to persons
6 who seek, health care practitioners who provide and those who assist health care
7 practitioners in providing gender-affirming health care services and reproductive health
8 care services in accordance with the applicable standard of care.

9 Part A of the amendment does the following.

10 1. It establishes that access to gender-affirming health care services and reproductive
11 health care services, when those services are authorized under the laws of this State, is a
12 legal right and that interference with access to such services or the provision of such
13 services is against the public policy of this State.

14 2. It defines "legally protected health care activity" as the exercise or attempted
15 exercise of the right to gender-affirming health care services or reproductive health care
16 services secured in this State as well as the provision or attempted provision of gender-
17 affirming health care services or reproductive health care services authorized under the
18 laws of this State by a health care practitioner licensed and physically present in this State,
19 regardless of whether the patient is located in this State or the health care practitioner is
20 licensed in the state where the patient is located. "Legally protected health care activity"
21 does not include conduct that could form the basis of civil, criminal or administrative
22 liability under the laws of this State had the course of conduct occurred entirely within this
23 State.

24 3. It authorizes a health care practitioner or person assisting a health care practitioner
25 against whom a civil, criminal or administrative action in another state is brought to deter,
26 prevent, sanction or punish that health care practitioner for engaging in legally protected
27 health care activity or that person for aiding and assisting legally protected health care
28 activity, referred to in the amendment as "hostile litigation," to bring a civil action in this
29 State for damages, punitive damages and equitable relief. A court in this State may include
30 in a damage award the amount of any judgment issued in connection with the hostile
31 litigation as well as the person's reasonable attorney's fees and expenses incurred in
32 connection with that action.

33 4. It requires a person seeking to enforce in this State a judgment from another state,
34 referred to in the amendment as a "foreign judgment," in connection with hostile litigation
35 to bring an action on the judgment within 5 years. A court in this State may not enforce a
36 foreign judgment in connection with hostile litigation if the court that issued the judgment
37 lacked jurisdiction or failed to provide due process of law.

38 5. It provides that, unless required by federal law, a court of this State may not order a
39 person in this State to give testimony or produce documents or other information in any
40 proceeding involving hostile litigation. In addition, unless required by federal law, a court
41 in this State may not issue a summons or warrant in a case involving a grand jury
42 investigation of or prosecution under the criminal laws of another state for engaging in or
43 for aiding and assisting legally protected health care activity unless the conduct at issue
44 would constitute a criminal offense if it had occurred entirely within this State.

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1 6. It prohibits public agencies, including law enforcement agencies, from knowingly
2 cooperating with or expending public resources in furtherance of an investigation or
3 proceeding against a person for engaging in or aiding and assisting legally protected health
4 care activity. It also prohibits the arrest of a person in this State if the arrest is related to
5 criminal liability for engaging in or aiding and assisting legally protected health care
6 activity. The amendment does not prohibit a public agency, including a law enforcement
7 agency, from cooperating or assisting an investigation or proceeding or from responding to
8 a warrant or extradition demand on the good faith belief that the warrant or demand is valid
9 in this State or when exigent circumstances make compliance impossible.

10 7. It provides that the laws of this State apply to any case or controversy heard in this
11 State involving legally protected health care activity or aiding and assisting legally
12 protected health care activity.

13 Part B of the amendment amends the Uniform Interstate Depositions and Discovery
14 Act, through which a person may request that a court in this State issue a subpoena to
15 effectuate a subpoena issued under the authority of a court in another state, referred to as a
16 "foreign subpoena." Under the amendment, a person submitting a foreign subpoena to a
17 clerk of court must also submit an affidavit attesting whether the foreign subpoena seeks
18 documents, information, inspection or testimony related to the provision or receipt of
19 legally protected health care activity or aiding and assisting legally protected health care
20 activity. If the affidavit reveals that the foreign subpoena is related to legally protected
21 health care activity or aiding and assisting legally protected health care activity, the clerk
22 may not issue the subpoena and must present the request to the court. The court must deny
23 the request unless it finds that the foreign subpoena seeks documents, information,
24 inspection or testimony related to specified types of civil actions either brought by a person
25 or brought under a contract for which a similar cause of action exists under the laws of this
26 State.

27 Part C of the amendment amends the Uniform Criminal Extradition Act to prohibit the
28 Governor from surrendering a person charged in another state for engaging in or aiding and
29 assisting legally protected health care activity unless the executive authority in the other
30 state alleges that the accused was physically present in the other state when the alleged
31 offense was committed and thereafter fled the other state.

32 In addition, Part C of the amendment prohibits a court in this State from issuing a
33 search warrant authorizing a government entity to obtain portable electronic device content
34 information that relates to an investigation into legally protected health care activity or
35 aiding and assisting legally protected health care activity.

36 Part D of the amendment provides that a health care practitioner that provides services
37 related to legally protected health care activity may participate in the Address
38 Confidentiality Program administered by the Secretary of State.

39 Current law prohibits an insurer that provides medical malpractice insurance in this
40 State from discriminating or taking any adverse action against a health care professional
41 who provides reproductive health care services on the sole basis that the health care
42 professional is acting in violation of another state's law or is subject to an adverse action
43 against the health care professional's license in another state. Part E of the amendment
44 extends analogous protections to health care practitioners who engage in or aid and assist
45 legally protected health care activity as defined in Part A of the amendment.

1 Part E of the amendment also:

2 1. Prohibits a professional licensing authority in this State from subjecting a health care
3 practitioner to professional discipline based solely on the health care practitioner's engaging
4 in or aiding and assisting legally protected health care activity or a pending or final
5 criminal, civil or professional discipline action in another state based on engaging in or
6 aiding and assisting legally protected health care activity;

7 2. Prohibits a health care provider or health care entity from restricting or denying the
8 clinical privileges of or taking formal disciplinary action against a health care practitioner
9 solely as a result of the health care practitioner's engaging in or aiding and assisting legally
10 protected health care activity or the initiation or final disposition of a professional discipline
11 action by a professional licensing authority in another state based on the health care
12 practitioner's engaging in or aiding and assisting legally protected health care activity; and

13 3. Prohibits a carrier offering or renewing a health care plan in this State from
14 terminating or not renewing a contract with or imposing any monetary penalties against a
15 participating provider on the sole basis that the participating provider engages in or aids
16 and assists legally protected health care activity.

17 Part F of the amendment prohibits a health care practitioner or facility from disclosing
18 in a civil or administrative action or proceeding or in response to a subpoena issued in such
19 a proceeding information obtained through an examination of an individual relating to
20 reproductive health care services or gender-affirming health care services and from
21 disclosing a communication from an individual or a person acting on the individual's behalf
22 about reproductive health care services or gender-affirming health care services unless:

23 1. The disclosure is authorized in writing by the individual;

24 2. The disclosure is requested in connection with a medical malpractice claim brought
25 by the individual against the health care practitioner or facility;

26 3. The disclosure is requested by a professional licensing board in this State in
27 connection with a complaint that is not based solely on an allegation that a licensee
28 provided reproductive health care services or gender-affirming health care services that are
29 lawful in this State and within the licensee's scope of practice; or

30 4. The disclosure is requested in connection with an investigation of abuse, neglect or
31 exploitation of a child or an incapacitated or dependent adult by a federal or Maine agency
32 responsible for investigating such abuse, neglect or exploitation.

33 Part G of the amendment makes clear that the legislation may not be construed to
34 conflict with or amend the Uniform Child Custody Jurisdiction and Enforcement Act.

35 **FISCAL NOTE REQUIRED**

36 (See attached)



131st MAINE LEGISLATURE

LD 227

LR 2287(02)

An Act Regarding Health Care in the State

Fiscal Note for Bill as Amended by Committee Amendment "A" (H-953)
Committee: Health Coverage, Insurance and Financial Services

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund
Minor revenue increase - General Fund

Correctional and Judicial Impact Statements

This bill may increase the number of civil suits filed in the court system. The additional workload associated with minimal number of new cases filed in the court system does not require additional funding at this time. The collection of additional filing fees will increase General Fund revenue by minor amounts.

Fiscal Detail and Notes

Any additional costs to the Department of Secretary of State associated with including reproductive or gender-affirming health care services practitioners to the Address Confidentiality Program are expected to be minor and can be absorbed within existing budgeted resources.

Any additional costs to the Office of the Attorney General associated with the provisions of this bill are expected to be minor and can be absorbed within existing budgeted resources.