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H.89

Introduced by Representatives Donnally of Hyde Park, LaLonde of South
Burlington, Small of Winooski, Andrews of Westford,
Andriano of Orwell, Anthony of Barre City, Arrison of
Weathersfield, Arsenault of Williston, Austin of Colchester,
Bartholomew of Hartland, Berbeco of Winooski, Birong of
Vergennes, Black of Essex, Bluemle of Burlington, Bongartz of
Manchester, Bos-Lun of Westminster, Brady of Williston,
Brown of Richmond, Brumsted of Shelburne, Burke of
Brattleboro, Burrows of West Windsor, Buss of Woodstock,
Campbell of St. Johnsbury, Casey of Montpelier, Chapin of
East Montpelier, Chase of Chester, Chase of Colchester,
Chesnut-Tangerman of Middletown Springs, Christie of
Hartford, Cina of Burlington, Coffey of Guilford, Cole of
Hartford, Conlon of Cornwall, Corcoran of Bennington, Cordes
of Lincoln, Demrow of Corinth, Dodge of Essex, Dolan of
Essex Junction, Dolan of Waitsfield, Durfee of Shaftsbury,
Elder of Starksboro, Emmons of Springfield, Farlice-Rubio of
Barnet, Garofano of Essex, Goldman of Rockingham, Graning
of Jericho, Headrick of Burlington, Holcombe of Norwich,
Hooper of Burlington, Houghton of Essex Junction, Howard of

1 Rutland City, Hyman of South Burlington, James of
2 Manchester, Jerome of Brandon, Kornheiser of Brattleboro,
3 Krasnow of South Burlington, Lalley of Shelburne, LaMont of
4 Morristown, Lanpher of Vergennes, Leavitt of Grand Isle,
5 Logan of Burlington, Long of Newfane, Masland of Thetford,
6 McCann of Montpelier, McCarthy of St. Albans City, McGill of
7 Bridport, Mihaly of Calais, Minier of South Burlington,
8 Mrowicki of Putney, Mulvaney-Stanak of Burlington, Nicoll of
9 Ludlow, Notte of Rutland City, Noyes of Wolcott, Nugent of
10 South Burlington, Ode of Burlington, Pajala of Londonderry,
11 Patt of Worcester, Pouech of Hinesburg, Priestley of Bradford,
12 Rachelson of Burlington, Rice of Dorset, Roberts of Halifax,
13 Satcowitz of Randolph, Scheu of Middlebury, Sheldon of
14 Middlebury, Sibia of Dover, Sims of Craftsbury, Squirrell of
15 Underhill, Stebbins of Burlington, Stevens of Waterbury, Stone
16 of Burlington, Surprenant of Barnard, Taylor of Colchester,
17 Templeman of Brownington, Toleno of Brattleboro, Torre of
18 Moretown, Troiano of Stannard, Waters Evans of Charlotte,
19 White of Bethel, Williams of Barre City, and Wood of
20 Waterbury

1 Referred to Committee on
2 Date:
3 Subject: Civil and criminal procedure; legally protected health care
4 Statement of purpose of bill as introduced: This bill proposes to define legally
5 protected health care activity to include reproductive health care services and
6 gender-affirming health care; exempt cases involving tortious interference with
7 legally protected health care activity from the SLAPP statute; prohibit civil
8 arrest of a person for purposes of abusive litigation concerning legally
9 protected health care activity; establish a new cause of action regarding
10 tortious interference with legally protected health care activity; prohibit a court
11 from ordering a person to give testimony or a statement or produce documents
12 or other things for use in connection with abusive litigation involving legally
13 protected health care activity; prohibit a public agency from cooperating in an
14 interstate investigation or proceeding seeking to impose civil or criminal
15 liability upon a person or entity for obtaining or providing legally protected
16 health care; establish a misdemeanor crime for using force or threat of force or
17 physical obstruction to interfere with someone obtaining or providing legally
18 protected health care; prohibit the extradition of a nonfugitive person in
19 connection with abusive litigation in another jurisdiction; prohibit a court from
20 issuing a summons when a prosecution is pending in another state concerning
21 legally protected health care activity or where a grand jury investigation

1 concerning legally protected health care activity has commenced or is about to
2 commence for a criminal violation of a law of the other state unless the acts
3 forming the basis of the prosecution or investigation would also constitute an
4 offense if occurring entirely in Vermont; and expand eligibility to the Address
5 Confidentiality Program to a person providing, assisting another person in
6 obtaining, or obtaining for themselves reproductive health care services or
7 gender-affirming health care services.

8 An act relating to civil and criminal procedures concerning legally protected
9 health care activity

10 It is hereby enacted by the General Assembly of the State of Vermont:

11 * * * Definitions * * *

12 Sec. 1. 1 V.S.A. § 150 is added to read:

13 § 150. LEGALLY PROTECTED HEALTH CARE ACTIVITY

14 (a) “Gender-affirming health care services” means all supplies, care, and
15 services of a medical, behavioral health, mental health, surgical, psychiatric,
16 therapeutic, diagnostic, preventative, rehabilitative, or supportive nature
17 relating to the treatment of gender dysphoria. Gender-affirming health care
18 services does not include conversion therapy as defined by 18 V.S.A. § 8351.

19 (b)(1) “Legally protected health care activity” means:

1 (A) the exercise and enjoyment, or attempted exercise and
2 enjoyment, by any person of rights to reproductive health care services or
3 gender-affirming health care services secured by this State or the provision of
4 insurance coverage for such services; or

5 (B) any act or omission undertaken to aid or encourage, or attempt to
6 aid or encourage, any person in the exercise and enjoyment, or attempted
7 exercise and enjoyment, of rights to reproductive health care services or
8 gender-affirming health care services secured by this State or to provide
9 insurance coverage for such services, provided that the provision of such a
10 health care service by a person duly licensed under the laws of this State and
11 physically present in this State and the provision of insurance coverage for
12 such services shall be legally protected if the service is permitted under the
13 laws of this State, regardless of the patient’s location.

14 (2) “Legally protected health care activity” does not include any service
15 rendered below an applicable professional standard of care or that would
16 violate antidiscrimination laws of this State.

17 (c) “Reproductive health care services” means all supplies, care, and
18 services of a medical, behavioral health, mental health, surgical, psychiatric,
19 therapeutic, diagnostic, preventative, rehabilitative, or supportive nature
20 relating to pregnancy, contraception, assisted reproduction, pregnancy loss
21 management, or the termination of a pregnancy.

1 (ii) attempting to enforce any order or judgment issued in
2 connection with any such action by any party to the action or any person acting
3 on behalf of a party to the action.

4 (B) A lawsuit shall be considered to be based on conduct that
5 occurred in this State if any part of any act or omission involved in the course
6 of conduct that forms the basis for liability in the lawsuit occurs or is initiated
7 in this State, whether or not such act or omission is alleged or included in any
8 pleading or other filing in the lawsuit.

9 (2) “Gender-affirming health care services” has the same meaning as
10 provided in 1 V.S.A. § 150.

11 (3) “Legally protected health care activity” has the same meaning as in 1
12 V.S.A. § 150.

13 (4) “Public agency” has the same meaning as in 1 V.S.A. § 317(a).

14 (5) “Reproductive health care services” has the same meaning as
15 provided in 1 V.S.A. § 150.

16 § 7302. TORTIOUS INTERFERENCE WITH LEGALLY PROTECTED
17 HEALTH CARE ACTIVITY

18 (a) Access to reproductive health care services and gender-affirming health
19 care services is a legal right in this State. Interference with legally protected
20 health care activity, whether or not under the color of law, is against the public
21 policy of this State.

1 (b) Any public act or record of a foreign jurisdiction that prohibits,
2 criminalizes, sanctions, or authorizes a person to bring a civil action against or
3 otherwise interferes with a person, provider, carrier, or other entity in this State
4 that seeks, receives, causes, aids in access to, aids or abets, or provides, or
5 attempts or intends to seek, receive, cause, aid in access to, aid or abet, or
6 provide, legally protected health care services shall be an interference with the
7 exercise and enjoyment of the rights secured by this State and shall be a
8 violation of the public policy of this State.

9 (c) If a person, including any plaintiff, prosecutor, attorney, or law firm,
10 whether or not acting under color of law, engages or attempts to engage in
11 abusive litigation that infringes on or interferes with, or attempts to infringe on
12 or interfere with, legally protected health care activity, any aggrieved person,
13 provider, carrier, or other entity, including any defendant in such abusive
14 litigation, may initiate a civil action for injunctive, monetary, or other
15 appropriate relief within three years after the cause of action accrues.

16 (d) Any aggrieved person, provider, carrier, or other entity, including any
17 defendant in such abusive litigation, may move to modify or quash any
18 subpoena issued in connection with such abusive litigation on the grounds that
19 the subpoena is unreasonable, oppressive, or inconsistent with the public
20 policy of this State.

1 (e) If the court finds for the petitioner in an action authorized by this
2 section, recovery shall be in the amount of actual damages, which shall include
3 damages for the amount of any judgment issued in connection with any
4 abusive litigation, and any and all other expenses, costs, or reasonable
5 attorney's fees incurred in connection with the abusive litigation.

6 (f) A court may exercise jurisdiction over a person in an action authorized
7 by this section if:

8 (1) personal jurisdiction is found;

9 (2) the person has commenced any action in any court in this State and,
10 during the pendency of that action or any appeal therefrom, a summons and
11 complaint is served on the person or the attorney appearing on the person's
12 behalf in that action or as otherwise permitted by law; or

13 (3) the exercise of jurisdiction is permitted under the Constitution of the
14 United States.

15 (g) This section shall not apply to a lawsuit or judgment entered in another
16 state that is based on conduct for which a cause of action exists under the laws
17 of this State if the course of conduct that forms the basis for liability had
18 occurred entirely in this State, including any contract, tort, common law, or
19 statutory claims.

1 § 7303. FOREIGN JUDGMENTS

2 In any action filed to enforce a foreign judgment issued in connection with
3 any litigation concerning legally protected health care activity, the court shall
4 not give any force or effect to any judgment issued without jurisdiction or to
5 any judgment that is penal in nature.

6 § 7304. TESTIMONY AND DOCUMENTS

7 Notwithstanding any other provision in this title to the contrary, except as
8 required by federal law, a court shall not order a person who is domiciled or
9 found within this State to give testimony or a statement or produce documents
10 or other things for use in connection with any proceeding in a tribunal outside
11 this State concerning abusive litigation involving legally protected health care
12 activity.

13 § 7305. CHOICE OF LAW

14 Notwithstanding any general or special law or common law conflict of law
15 rule to the contrary, the laws of this State shall govern in any case or
16 controversy heard in this State related to legally protected health care activity,
17 except as may be required by federal law.

18 § 7306. NONCOOPERATION

19 (a) No public agency or employee, appointee, officer or official, or any
20 other person acting on behalf of a public agency may provide any information
21 or expend or use time, money, facilities, property, equipment, personnel, or

1 other resources in furtherance of any interstate investigation or proceeding
2 seeking to impose civil or criminal liability upon a person or entity for:

3 (1) the provision, seeking or receipt of, or inquiring about legally
4 protected health care activity that is legal in this State; or

5 (2) assisting any person or entity providing, seeking, receiving, or
6 responding to an inquiry about legally protected health care activity that is
7 legal in this State.

8 (b) This section shall not apply to any investigation or proceeding where
9 the conduct subject to potential liability under the investigation or proceeding
10 would be subject to liability under the laws of this State if committed in this
11 State.

12 Sec. 5. 13 V.S.A. § 1033 is added to read:

13 § 1033. INTERFERENCE WITH ACCESS TO HEALTH CARE FACILITY

14 (a) The General Assembly finds that:

15 (1) all persons must be able to access health care facilities for the
16 purpose of obtaining or providing legally protected health care activity;

17 (2) the exercise of a person's right to protest or counsel against certain
18 medical procedures must be balanced against another person's right to obtain
19 or provide legally protected health care activity in an unobstructed manner;

1 (3) preventing the willful obstruction of a person’s access to legally
2 protected health care activity at a health care facility is a matter of public
3 concern; and

4 (4) it is necessary and appropriate to prohibit individuals from
5 knowingly obstructing another person’s entry to or exit from a health care
6 facility that provides legally protected health care activity.

7 (b) As used in this section:

8 (1) “Health care facility” means a hospital, ambulatory surgical center,
9 health center, clinic, health care provider’s office, or other facility that
10 provides reproductive health care services or gender-affirming health care
11 services, and includes the building or structure in which the facility is located.

12 (2) “Health care provider” has the same meaning as provided in 18
13 V.S.A. § 9402.

14 (3) “Legally protected health care activity” has the same meaning as
15 provided in 1 V.S.A. § 150.

16 (4) “Physical obstruction” means rendering impassable ingress to or
17 egress from a facility that provides legally protected health care activity or
18 rendering passage to or from such a facility unreasonably difficult or
19 hazardous.

20 (c) No person shall:

1 (1) by force or threat of force or by physical obstruction knowingly
2 injure, intimidate, harass, or interfere with, or attempt to injure, intimidate,
3 harass, or interfere with, another person because such other person was or is
4 obtaining or providing legally protected health care activity; or

5 (2) knowingly damage the property of a health care facility, or attempt
6 to do so, because such facility provides legally protected health care activity.

7 (d) A person who violates this section shall be imprisoned not more than
8 one year or fined not more than \$1,000.00, or both.

9 * * * Prohibition Against Extradition of Person Charged with Engaging

10 in Legally Protected Health Care Activity * * *

11 Sec. 6. 13 V.S.A. § 4970 is added to read:

12 § 4970. LEGALLY PROTECTED HEALTH CARE ACTIVITY

13 EXCEPTION

14 Notwithstanding any other provision in this chapter to the contrary, except
15 as required by federal law, no person may be arrested and the Governor shall
16 not surrender a person charged in another state as a result of engaging in
17 legally protected health care activity as defined in 1 V.S.A. § 150 unless the
18 executive authority of the demanding state alleges in writing that the accused
19 was physically present in the demanding state at the time of the commission of
20 the alleged offense and that thereafter the accused fled from the demanding
21 state.

1 * * * Prohibition of Issuance of a Summons Concerning a Person Charged
2 with Engaging in Legally Protected Health Care Activity * * *

3 Sec. 7. 13 V.S.A. § 6650 is added to read:

4 § 6650. LEGALLY PROTECTED HEALTH CARE ACTIVITY

5 EXCEPTION

6 Notwithstanding any other provision in this chapter to the contrary, except
7 as required by federal law, a court shall not issue a summons where a
8 prosecution is pending in another state concerning legally protected health care
9 activity as defined in 1 V.S.A. § 150 or where a grand jury investigation
10 concerning legally protected health care activity has commenced or is about to
11 commence for a criminal violation of a law of such other state unless the acts
12 forming the basis of the prosecution or investigation would also constitute an
13 offense if occurring entirely in this State.

14 * * * Address Confidentiality for Persons Engaging in
15 Legally Protected Health Care Activity * * *

16 Sec. 8. 15 V.S.A. chapter 21, subchapter 3 is amended to read:

17 Subchapter 3. Address Confidentiality for Victims of Domestic Violence,
18 Sexual Assault, or Stalking

19 § 1150. FINDINGS AND INTENT

20 (a) The General Assembly finds that:

1 (1) persons attempting to escape from actual or threatened domestic
2 violence, sexual assault, ~~and~~ stalking, and human trafficking frequently
3 establish new addresses in order to prevent their assailants or probable
4 assailants from finding them; and

5 (2) persons who provide reproductive health care services or gender-
6 affirming health care services, persons who assist others in obtaining
7 reproductive health care services or gender-affirming health care services, and
8 persons who exercise their legal right to obtain reproductive health care
9 services or gender-affirming health care services in this State may be harassed,
10 intimidated, or threatened because of their legally protected health care
11 activity.

12 (b) It is the purpose of this subchapter to:

13 (1) enable state and local agencies to respond to requests for public
14 records without disclosing the location of ~~a victim of domestic violence, sexual~~
15 ~~assault, or stalking~~ persons identified in subsection (a) of this section;

16 (2) promote interagency cooperation with the Secretary of State in
17 providing address confidentiality for ~~victims of domestic violence, sexual~~
18 ~~assault, and stalking~~ persons identified in subsection (a) of this section; and

19 (3) enable State and local agencies and ~~local agencies~~ school districts to
20 accept a Program participant's use of an address, and local agencies to accept
21 an address, designated by the Secretary of State as a substitute mailing address.

1 § 1151. DEFINITIONS

2 Unless the context clearly requires otherwise, the definitions in this section
3 apply throughout the subchapter.

4 (1) “Actual address” means the physical location where the applicant
5 resides and may include a school address or work address of an individual, as
6 specified on the individual’s application to be a Program participant under this
7 chapter.

8 (2) “Agency” means any subdivision of the State of Vermont, a
9 municipality, or a subdivision of a municipality.

10 (3) “Domestic violence” means an act of abuse as defined in subdivision
11 1101(1) of this title and includes a threat of such acts committed against an
12 individual in a domestic situation, regardless of whether these acts or threats
13 have been reported to law enforcement officers.

14 (4) “Gender-affirming health care services” has the same meaning as
15 provided in 1 V.S.A. § 150.

16 (5) “Human trafficking” means conduct prohibited by 13 V.S.A. § 2652
17 or 2653, and includes a threat of such, regardless of whether the conduct or
18 threat of conduct has been reported to law enforcement officers.

19 ~~(5)~~(6) “Law enforcement agency” means the Department of Public
20 Safety, a municipal police department, a sheriff’s department, the Attorney
21 General’s Office, a State’s Attorney’s Office, or certified law enforcement

1 officers of the Department of Motor Vehicles, Agency of Natural Resources, or
2 Department of Liquor and Lottery. “Law enforcement agency” ~~shall~~ also
3 ~~mean~~ means the Department for Children and Families when engaged in:

4 (A) the investigation of child abuse and neglect;

5 (B) the delivery of services to families and children with whom the
6 Department is working pursuant to the provisions of 33 V.S.A. chapters 51, 52,
7 and 53; or

8 (C) the performance of the Department’s responsibilities pursuant to
9 an interstate compact to which the State is a party.

10 ~~(6)(7)~~ “Law enforcement purpose” means all matters relating to:

11 (A) the prevention, investigation, prosecution, or adjudication of
12 criminal offenses, civil matters, or juvenile matters;

13 (B) the investigation, prosecution, adjudication, detention,
14 supervision, or correction of persons suspected, charged, or convicted of
15 criminal offenses or juvenile delinquencies;

16 (C) the protection of the general health, welfare, and safety of the
17 public or the State of Vermont;

18 (D) the execution and enforcement of court orders;

19 (E) service of criminal or civil process or court orders;

20 (F) screening for criminal justice employment;

1 (G) other actions taken in performance of official duties, as set forth
2 by statutes, rules, policies, judicial case law, and the U.S. and Vermont
3 Constitutions; and

4 (H) criminal identification activities, including the collection,
5 storage, and dissemination of criminal history records, as defined in 20 V.S.A.
6 § 2056a(a)(1), sex offender registry information, and DNA material and
7 information.

8 ~~(7)~~(8) “Program participant” means a person certified as a Program
9 participant under this chapter.

10 ~~(8)~~(9) “Public record” means a public record as defined in 1 V.S.A.
11 § 317.

12 (10) “Reproductive health care services” has the same meaning as
13 provided in 1 V.S.A. § 150.

14 ~~(9)~~(11) “Secretary” means the Vermont Secretary of State.

15 ~~(10)~~(12) “Sexual assault” means an act of assault as defined in 13
16 V.S.A. § 3252(a) or (b) (sexual assault) or 3253(a) (aggravated sexual assault),
17 and includes a threat of such acts, regardless of whether these acts or threats
18 have been reported to law enforcement officers.

19 ~~(11)~~(13) “Stalking” means conduct as defined in 13 V.S.A. § 1061
20 (stalking) or 1063 (aggravated stalking), and includes a threat of such acts,

1 regardless of whether these acts or threats have been reported to law
2 enforcement officers.

3 ~~(12)~~(14) “Substitute address” means the Secretary’s designated address
4 for the Address Confidentiality Program.

5 § 1152. ADDRESS CONFIDENTIALITY PROGRAM; APPLICATION;
6 CERTIFICATION

7 (a) An adult person, a parent, or a legal guardian acting on behalf of a
8 minor; or a legal guardian acting on behalf of an incapacitated person may
9 apply to the Secretary of State to have an address designated by the Secretary
10 serve as the person’s address or the address of the minor or incapacitated
11 person. The Secretary of State shall approve an application if it is filed in the
12 manner and on the form prescribed by the Secretary of State, and if it contains:

13 (1) a statement made under oath by the applicant that:

14 (A) the applicant, or the minor or incapacitated person on whose
15 behalf the application is made;

16 (i) is a victim of domestic violence, sexual assault, stalking, or
17 human trafficking; or

18 (ii) is a person providing, assisting another person in obtaining, or
19 obtaining for themselves reproductive health care services or gender-affirming
20 health care services in this State;

1 (B) the applicant fears for ~~his or her~~ the applicant's safety or ~~his or~~
2 ~~her~~ the applicant's children's safety, or the safety of the minor or incapacitated
3 person on whose behalf the application is made;

4 (C) the parent or legal guardian applying on behalf of a minor or
5 incapacitated person has legal authority to act on the person's behalf;

6 (D) if the applicant is under the supervision of the Department of
7 Corrections, the applicant has notified the Department of the actual address
8 and the applicant authorizes the release of the actual address to the
9 Department; and

10 (E) if the applicant is required to report the actual address for the Sex
11 Offender Registry under 13 V.S.A. chapter 167, subchapter 3, the applicant
12 authorizes the release of the actual address to the Registry;

13 (2) a designation of the Secretary as agent for purposes of service of
14 process and for the purpose of receipt of mail;

15 (3) the mailing address and e-mail address where the applicant can be
16 contacted by the Secretary and the telephone number or numbers where the
17 applicant can be called by the Secretary;

18 (4) the new address or addresses within Vermont that the applicant
19 requests not be disclosed for the reason that disclosure will increase the risk of
20 domestic violence, sexual assault, stalking, ~~or~~ human trafficking, harassment,
21 intimidation, or threats; and

1 (5) the signature of the applicant and the name of any individual or
2 representative of any office who assisted in the preparation of the application
3 and the date on which the applicant signed the application.

4 (b) Applications shall be filed directly with the Office of the Secretary or
5 through a certified applicant assistant.

6 (c) Upon receipt of a properly completed application, the Secretary shall
7 certify the applicant as a Program participant. Applicants shall be certified for
8 four years following the date of filing, unless the certification is withdrawn or
9 cancelled before that date. The Secretary shall by rule establish a renewal
10 procedure.

11 (d) A person who knowingly provides false or incorrect information to the
12 Secretary as required by this chapter may be prosecuted under 13 V.S.A.
13 § 2904.

14 (e) A Program participant shall notify the Secretary of State of a change of
15 actual address within seven days ~~of~~ following the change of address.

16 (f) The Civil or Family Division of Washington County Superior Court
17 shall have jurisdiction over petitions for protective orders filed by Program
18 participants pursuant to 12 V.S.A. §§ 5133 and 5134, to sections 1103 and
19 1104 of this title, and to 33 V.S.A. § 6935. A Program participant may file a
20 petition for a protective order in the county in which ~~he or she~~ the participant

1 resides or in Washington County to protect the confidentiality of ~~his or her~~ the
2 participant's address.

3 * * *

4 § 1157. ASSISTANCE FOR PROGRAM APPLICANTS

5 The Secretary of State shall make available a list of State and local agencies
6 and nonprofit agencies that provide counseling and shelter services to victims
7 of domestic violence, sexual assault, stalking, and human trafficking to assist
8 persons applying to be ~~program~~ Program participants pursuant to subdivision
9 1152(a)(1)(A)(i) of this title. Such information provided by the Office of the
10 Secretary or designees to applicants shall in no way be construed as legal
11 advice.

12 * * *

13 § 1160. ADOPTION OF RULES

14 (a) The Secretary of State shall adopt rules necessary to perform ~~his or her~~
15 the Secretary's duties under this subchapter relating to:

- 16 (1) program application and certification;
17 (2) certification cancellation;
18 (3) agency use of designated addresses and exceptions;
19 (4) voting by Program participants; and
20 (5) recording of vital statistics for Program participants.

