

SENATE No. 2903

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

1 by inserting after section 10 the following section:-

2 “SECTION 10A. Chapter 12 of the General Laws is hereby amended by inserting after
3 section 11I the following 2 sections:-

4 Section 11I½. (a) As used in this section, the following words shall have the following
5 meanings unless the context clearly requires otherwise:

6 “Gender-affirming health care services”, all supplies, care and services of a medical,
7 behavioral health, mental health, surgical, psychiatric, therapeutic, diagnostic, preventative,
8 rehabilitative or supportive nature relating to the treatment of gender dysphoria.

9 “Interfere through abusive litigation”, to deter, prevent, sanction or punish any person
10 engaging in legally protected health care activity by: (i) filing or prosecuting any action in any
11 state other than the commonwealth where liability, in whole or part, directly or indirectly, is
12 based on legally protected health care activity that occurred in the commonwealth, including any
13 action in which liability is based on any theory of vicarious, joint or several liability derived
14 therefrom; or (ii) attempting to enforce any order or judgment issued in connection with any such
15 action by any party to the action or any person acting on behalf of a party to the action; provided,
16 however, that a lawsuit shall be considered to be based on conduct that occurred in the

commonwealth if any part of any act or omission involved in the course of conduct that forms the basis for liability in the lawsuit occurs or is initiated in the commonwealth, whether or not such act or omission is alleged or included in any pleading or other filing in the lawsuit.

“Legally protected health care activity”, (i) the exercise and enjoyment, or attempted exercise and enjoyment, by any person of rights to reproductive health care services or gender-affirming health care services secured by the constitution or laws of the commonwealth; or (ii) any act or omission undertaken to aid or encourage, or attempt to aid or encourage, any person in the exercise and enjoyment, or attempted exercise and enjoyment, of rights to reproductive health care services or gender-affirming health care services secured by the constitution or laws of the commonwealth; provided, however, that the provision of such a health care service by a person duly licensed under the laws of the commonwealth and physically present in the commonwealth shall be legally protected if the service is permitted under the laws of the commonwealth, regardless of the patient's location.

“Reproductive health care services”, all supplies, care and services of a medical, behavioral health, mental health, surgical, psychiatric, therapeutic, diagnostic, preventative, rehabilitative or supportive nature relating to pregnancy, contraception, assisted reproduction, miscarriage management or the termination of a pregnancy.

(b) If a person, including any plaintiff, prosecutor, attorney or law firm, whether or not acting under color of law, interferes through abusive litigation, or attempts to interfere through abusive litigation, with legally protected health care activity, any aggrieved person or entity, including any defendant in such abusive litigation, may institute and prosecute a civil action for injunctive, monetary or other appropriate relief within 3 years after the cause of action accrues.

39 If the court finds for the petitioner in an action authorized by this section, recovery shall
40 be in the amount of actual damages, which shall include damages for the amount of any
41 judgment issued in connection with any abusive litigation, and any and all other expenses, costs
42 or reasonable attorney’s fees incurred in connection with the abusive litigation.

43 (c) A court may exercise jurisdiction over a person in an action authorized by this section
44 if: (i) personal jurisdiction is found under section 3 of chapter 223A; (ii) the person has
45 commenced any action in any court in the commonwealth and, during the pendency of that
46 action or any appeal therefrom, a summons and complaint is served on the person or the attorney
47 appearing on the person’s behalf in that action or as otherwise permitted by law; or (iii) the
48 exercise of jurisdiction is permitted under the Constitution of the United States.

49 (d) This section shall not apply to a lawsuit or judgment entered in another state that is
50 based on conduct for which a cause of action exists under the laws of the commonwealth if the
51 course of conduct that forms the basis for liability had occurred entirely in the commonwealth,
52 including any contract, tort, common law or statutory claims.

53 Section 11I ³/₄. Notwithstanding any general or special law or common law conflict of
54 law rule to the contrary, the laws of the commonwealth shall govern in any case or controversy
55 related to reproductive health care services or gender-affirming health care services, as defined in
56 section 11I ¹/₂, heard in the commonwealth, except as may be required by federal law.”; and

57 by inserting after section 28 the following 8 sections:-

58 “SECTION 28A. Chapter 94C of the General Laws is hereby amended by striking out
59 section 19A, as appearing in the 2020 Official Edition, and inserting in place thereof the
60 following section:-

61 Section 19A. (a) As used in this section, “emergency contraception” shall, unless the
62 context clearly requires otherwise, mean any drug approved by the federal Food and Drug
63 Administration as a contraceptive method for use after sexual intercourse, whether provided
64 over-the-counter or by prescription.

65 (b) The department shall ensure that a statewide standing order is issued to authorize the
66 dispensing of emergency contraception by a licensed pharmacist. The statewide standing order
67 shall include, but not be limited to, written, standardized procedures or protocols for the
68 dispensing of emergency contraception by a licensed pharmacist. Notwithstanding any general or
69 special law to the contrary, the commissioner, or a physician designated by the commissioner
70 who is registered to distribute or dispense a controlled substance in the course of professional
71 practice pursuant to section 7, shall issue a statewide standing order that may be used by a
72 licensed pharmacist to dispense emergency contraception under this section.

73 (c) Notwithstanding any general or special law to the contrary, a licensed pharmacist may
74 dispense emergency contraception in accordance with the statewide standing order issued under
75 subsection (b). Except for an act of gross negligence or willful misconduct, a pharmacist who,
76 acting in good faith, dispenses emergency contraception shall not be subject to any criminal or
77 civil liability or any professional disciplinary action by the board of registration in pharmacy
78 related to the use or administration of emergency contraception.

79 (d) Before dispensing emergency contraception authorized under this section, a
80 pharmacist may complete a training program approved by the commissioner on emergency
81 contraception; provided, however, that the training shall include, but not be limited to, proper

documentation, quality assurance and referral to additional services, including appropriate recommendation that the patient follow-up with a medical practitioner.

(e) A pharmacist dispensing emergency contraception under this section shall annually provide to the department the number of times such emergency contraception is dispensed. Reports made pursuant to this section shall not identify any individual patient, shall be confidential and shall not be public records as defined by clause Twenty-sixth of section 7 of chapter 4 or section 10 of chapter 66.

(f) Except for an act of gross negligence or willful misconduct, the commissioner or a physician who issues the statewide standing order under subsection (b) and any medical practitioner who, acting in good faith, directly or through the standing order, prescribes or dispenses emergency contraception shall not be subject to any criminal or civil liability or any professional disciplinary action.

(g) The department, board of registration in medicine and board of registration in pharmacy shall independently adopt regulations to implement this section.

SECTION 28B. Chapter 112 of the General Laws is hereby amended by inserting after section 5F the following section:-

Section 5F½. Notwithstanding any general or special law to the contrary, no person shall be subject to discipline by the board, including the revocation, suspension or cancellation of the certificate of registration or reprimand, censure or monetary fine, for providing or assisting in the provision of reproductive health care services or gender-affirming health care services, as defined in section 11I½ of chapter 12, or for any judgment, discipline or other sanction arising

from such health care services if the services as provided would have been lawful and consistent with good medical practice if they occurred entirely in the commonwealth.

The board shall not make available for public dissemination on a physician's individual profile record of any criminal conviction or charge for a felony or serious misdemeanor, final disciplinary action by a licensing board in another state or a medical malpractice court judgment, arbitration award or settlement that resulted from providing or assisting in the provision of reproductive health care services or gender-affirming health care services or for any judgment, discipline or other sanction arising from such health care services if the services as provided would have been lawful and consistent with good medical practice if they occurred entirely in the commonwealth. The board shall not take adverse action on an application for registration of a qualified physician based on a criminal or civil action, disciplinary action by a licensing board of another state or a medical malpractice claim in another state arising from the provision of reproductive health care services or gender-affirming health care services that, as provided, would have been lawful and consistent with good medical practice if they occurred entirely in the commonwealth.

Nothing in this section shall be construed to regulate the practice of medicine in any other state.

SECTION 28C. Section 9H of said chapter 112, as appearing in the 2020 Official Edition, is hereby amended by inserting after the word "sections", in line 4, the following words:- ; provided, however, that notwithstanding any general or special law to the contrary, no person shall be subject to discipline by the board, including the revocation, suspension or cancellation of the certificate of registration or reprimand, censure or monetary fine, for

125 providing or assisting in the provision of reproductive health care services or gender-affirming
126 health care services, as defined in section 11I½ of chapter 12, or for any judgment, discipline or
127 other sanction arising from such health care services if the services as provided would have been
128 lawful and consistent with the standards of conduct for physician assistants if they occurred
129 entirely in the commonwealth; provided further, that the board shall not take adverse action on
130 an application for registration of a qualified physician assistant based on a criminal or civil
131 action or disciplinary action by a licensing board of another state that arises from such health
132 care services that, as provided, would have been lawful and consistent with the standards of
133 conduct for physician assistants if they occurred entirely in the commonwealth.

134 Nothing in this section shall be construed to regulate the practice of physician assistants
135 in any other state.

136 SECTION 28D. Section 32 of said chapter 112, as so appearing, is hereby amended by
137 striking out, lines 6 and 7, the words “one hundred and thirty-eight” and inserting in place
138 thereof the following words:- 138; provided, however, that notwithstanding any general or
139 special law to the contrary, no person, pharmacy or pharmacy department shall be subject to
140 discipline by the board, including the revocation, suspension or cancellation of the certificate of
141 registration or reprimand, censure or monetary fine, for providing or assisting, including
142 dispensing of medication, in the provision of reproductive health care services or gender-
143 affirming health care services, as defined in section 11I ½ of chapter 12, or for any judgment,
144 discipline or other sanction arising from such health care services if the services as provided
145 would have been lawful and consistent with the code of professional conduct for pharmacists if
146 they occurred entirely in the commonwealth; provided further, that the board shall not take
147 adverse action on an application for registration of a qualified pharmacist based on a criminal or

148 civil action or disciplinary action by a licensing board of another state that arises from such
149 health care services, including the dispensing of medication, that, as provided, would have been
150 lawful and consistent with the code of professional conduct for pharmacists if they occurred
151 entirely in the commonwealth.

152 Nothing in this section shall be construed to regulate the practice of pharmacists in any
153 other state.

154 SECTION 28E. Section 77 of said chapter 112, as so appearing, is hereby amended by
155 adding the following paragraph:-

156 Notwithstanding any general or special law to the contrary, no person shall be subject to
157 discipline by the board, including the revocation, suspension or cancellation of the certificate of
158 registration or reprimand, censure or monetary fine, for providing or assisting in the provision of
159 reproductive health care services or gender-affirming health care services, as defined in section
160 11I ½ of chapter 12, or for any judgment, discipline or other sanction arising from such health
161 care services if the services as provided would have been lawful and consistent with the standard
162 of conduct for nurses if they occurred entirely in the commonwealth. The board shall not take
163 adverse action on an application for registration of a qualified nurse based on a criminal or civil
164 action or disciplinary action by a licensing board of another state that arises from such health
165 care services that, as provided, would have been lawful and consistent with the standard of
166 conduct for nurses if they occurred entirely in the commonwealth.

167 Nothing in this section shall be construed to regulate the practice of nursing in any other
168 state.

SECTION 28F. Section 128 of said chapter 112, as so appearing, is hereby amended by inserting after the word “inclusive”, in line 4, the following words:- ; provided, however, that notwithstanding any general or special law to the contrary, no person shall be subject to discipline by the board, including the revocation, suspension or cancellation of the certificate of registration or reprimand, censure or monetary fine, for providing or assisting in the provision of reproductive health care services or gender-affirming health care services, as defined in section 11I½ of chapter 12, or for any judgment, discipline or other sanction arising from such health care services if the services as provided would have been lawful and consistent with the standard of conduct adopted by the board by regulation if they occurred entirely in the commonwealth; provided further, that the board shall not take adverse action on an application for registration of a qualified psychologist based on a criminal or civil action or disciplinary action by a licensing board of another state that arises from such health care services that, as provided, would have been lawful and consistent with the standard of conduct adopted by the board by regulation if they occurred entirely in the commonwealth.

Nothing in this section shall be construed to regulate the practice of psychology in any other state.

SECTION 28G. Section 137 of said chapter 112, as so appearing, is hereby amended by inserting after the word “practice”, in line 8, the following words:- ; provided, however, that notwithstanding any general or special law to the contrary, no person shall be subject to discipline by the board, including the revocation, suspension or cancellation of the certificate of registration or reprimand, censure or monetary fine, for providing or assisting in the provision of reproductive health care services or gender-affirming health care services, as defined in section 11I ½ of chapter 12, or for any judgment, discipline or other sanction arising from such health

care services if the services as provided would have been lawful and consistent with the standards of professional practice and conduct for social workers if they occurred entirely in the commonwealth; provided further, that the board shall not take adverse action on an application for registration of a qualified social worker based on a criminal or civil action or disciplinary action by a licensing board of another state that arises from such health care services that, as provided, would have been lawful and consistent with the standards of professional practice and conduct for social workers if they occurred entirely in the commonwealth.

Nothing in this section shall be construed to regulate the practice of social work in any other state.”; and

by inserting after section 41 the following 2 sections:-

“SECTION 41A. Chapter 147 of the General Laws is hereby amended by adding the following section:-

Section 63. (a) As used in this section, the following words shall have the following meanings unless the context clearly requires otherwise:

“Law enforcement agency of the commonwealth”, any state, municipal, college or university police department, sheriff’s department, correctional facility, prosecutorial office, court, probation office, or a program of more than 1 of any such entity, or any other non-federal entity in the commonwealth charged with the enforcement of laws or the custody of detained persons.

(b) Notwithstanding any general or special law to the contrary, and except as required by federal law, no officer or employee of a law enforcement agency of the commonwealth, while

213 acting under color of law, shall provide information or assistance to a federal law enforcement
214 agency or any other state’s law enforcement agency or any private citizen or quasi-law
215 enforcement agent in relation to an investigation or inquiry into services constituting legally
216 protected health care activity, as defined in section 11I½ of chapter 12, if such services would be
217 lawful as provided if they occurred entirely in the commonwealth.

218 SECTION 41B. Section 193U of chapter 175 of the General Laws, as appearing in the
219 2020 Official Edition, is hereby amended by inserting after the word “specialty”, in line 14, the
220 following words:- ; provided further, that no medical malpractice insurer shall discriminate
221 against a provider or adjust or otherwise calculate a provider’s risk classification or premium
222 charges on the basis that: (i) the health care provider offers or provides reproductive health care
223 services or gender-affirming health care services, as defined in section 11I½ of chapter 12; (ii)
224 the specific services offered or provided in connection with reproductive health care services or
225 gender-affirming health care services are unlawful in another state; (iii) another state’s laws
226 create potential or actual liability for those services; or (iv) litigation against a provider
227 concerning reproductive health care services or gender-affirming health care services resulted in
228 a judgment against the provider, if such health care services would be lawful and consistent with
229 good medical practice as provided if they occurred entirely in the commonwealth.”; and

230 by inserting after section 46 the following 10 sections:-

231 “SECTION 46A. Section 4A of chapter 218 of the General Laws, as appearing in the
232 2020 Official Edition, is hereby amended by inserting after the word “filing”, in line 20, the
233 following words:- ; provided further, that, except as required by federal law, a judgment creditor
234 shall not file a copy of any foreign judgment under this section if the judgment was issued in

235 connection with any litigation concerning legally protected health care activity as defined in
236 section 11I½ of chapter 12.

237 SECTION 46B. Subsection (g) of said section 4A of said chapter 218, as so appearing, is
238 hereby amended by adding the following sentence:- In any action filed to enforce a judgment
239 issued in connection with any litigation concerning legally protected health care activity, as
240 defined in section 11I½ of chapter 12, the court in the commonwealth hearing the action shall not
241 give any force or effect to any judgment issued without jurisdiction.

242 SECTION 46C. Section 11 of chapter 223A of the General Laws, as so appearing, is
243 hereby amended by adding the following paragraph:-

244 Notwithstanding any other provision of this section to the contrary and except as required
245 by federal law, a court of this commonwealth shall not order a person who is domiciled or found
246 within this commonwealth to give testimony or statement or produce documents or other things
247 for use in connection with any proceeding in a tribunal outside the commonwealth concerning
248 legally protected health care activity, as defined at section 11I½ of chapter 12.

249 SECTION 46D. Section 59H of chapter 231 of the General Laws, as so appearing, is
250 hereby amended by inserting after the word “case”, in line 1, the following words:- , except a
251 case brought pursuant to section 11I½ of chapter 12,.

252 SECTION 46E. Section 13A of chapter 233 of the General Laws, as so appearing, is
253 hereby amended by inserting after the word “summons”, in line 32, the following words:- ,
254 except that no justice shall issue a summons in a case, except as required by federal law, where
255 prosecution is pending concerning legally protected health care activity, as defined in section
256 11I½ of chapter 12, or where a grand jury investigation concerning legally protected health care

activity has commenced or is about to commence for a criminal violation of a law of such other state unless the acts forming the basis of the prosecution or investigation would also constitute an offense if occurring entirely in the commonwealth.

SECTION 46F. Section 13 of chapter 276 of the General Laws, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following 2 paragraphs:-

The governor may also surrender, on demand of the executive authority of any other state, any person in the commonwealth charged in such other state in the manner provided in section 14 with committing an act in this commonwealth, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, hereafter in this section and in sections 14 to 20P, inclusive, referred to as the demanding state, only when the acts for which extradition is sought would be punishable by the laws of the commonwealth if the consequences claimed to have resulted therefrom in the demanding state had taken effect in this commonwealth and the provisions of sections 11 to 20R, inclusive, not otherwise inconsistent shall apply to such cases even though the accused was not in the demanding state at the time of the commission of the crime and has not fled therefrom; provided, however, that the governor may, in the governor's discretion, make any such surrender conditional upon agreement by the executive authority of the demanding state that the person so surrendered will be held to answer no criminal charges of any nature except those set forth in the requisition upon which such person is so surrendered, at least until such person has been given reasonable opportunity to return to the commonwealth after the person's acquittal, if the person shall be acquitted, or after the person shall be released from confinement, if the person shall be convicted.

279 Except as required by federal law, the governor shall not surrender a person charged in
280 another state as a result of engaging in legally protected health care activity, as defined in section
281 11I½ of chapter 12, unless the executive authority of the demanding state shall allege in writing
282 that the accused was physically present in the demanding state at the time of the commission of
283 the alleged offense and that thereafter the accused fled from the demanding state.

284 SECTION 46G. Section 14 of said chapter 276, as so appearing, is hereby amended by
285 inserting the after word “state”, in line 7, the following words:- only when the acts for which
286 extradition is sought would be punishable by the laws of the commonwealth, if the consequences
287 claimed to have resulted therefrom in the demanding state had taken effect in this
288 commonwealth.

289 SECTION 46H. Section 20A of said chapter 276, as so appearing, is hereby amended by
290 inserting after the word “thirteen”, in lines 5 and 12 and 13, the following words:- , with the
291 exception of cases for which the governor shall not surrender a person under said section 13.

292 SECTION 46I. Section 20B of said chapter 276, as so appearing, is hereby amended by
293 adding the following sentence:- This section shall not apply to cases arising under section 13 for
294 which the governor shall not surrender a person.

295 SECTION 46J. Section 20C of said chapter 276, as so appearing, is hereby amended by
296 inserting after the word “thirteen”, in line 4, the following words:- , with the exception of cases
297 for which the governor shall not surrender a person under said section 13.”.