



City of Philadelphia

City Council
Chief Clerk's Office
402 City Hall
Philadelphia, PA 19107

BILL NO. 220665-A
(As Amended on Floor 12/1/22)

Introduced September 15, 2022

Councilmembers Gauthier, Gym and Brooks

Referred to the
Committee on Public Health and Human Services

AN ORDINANCE

Amending Title 6 of The Philadelphia Code, entitled "Health Code," to establish legal protections related to entities or individuals seeking, providing, or assisting others to obtain reproductive services, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. City Council hereby makes the following findings:

(1) Seeking or providing, or assisting others in the receipt or provision of, reproductive healthcare involves the exercise and enjoyment of the rights secured by the Constitution and laws of Pennsylvania.

(2) Reproductive healthcare is essential to the health of all Philadelphians, including people who can become pregnant and birthing people, and access to such healthcare without fear of harassment or criminal prosecution enables Philadelphians to make the healthiest choices for themselves and their families.

(3) Allowing individuals to access reproductive healthcare and make their own decisions about their bodies, becoming pregnant, and healthcare during pregnancies enables birthing people to make the healthiest choices for themselves and their families.

(4) Birthing people have a right to privacy in making decisions about their pregnancies and bodies.

City of Philadelphia

BILL NO. 220665-A, as amended continued

(5) All Philadelphians have a right to privacy in making decisions about their reproductive health.

(6) All individuals in Pennsylvania have a right to informational privacy under the Pennsylvania Constitution, namely the right to control access to, or the dissemination of, personal information about themselves.

(7) The threat of legal actions or harassment over reproductive healthcare has a detrimental effect on the health of all Philadelphians and their ability to make decisions about their bodies. Reproductive healthcare providers are less likely to render services, helpers are less likely to provide assistance to patients seeking reproductive healthcare, and patients are less likely to access care given the monetary, emotional, and physical danger posed by legal actions or harassment against them.

(8) Across the country reproductive healthcare providers, helpers, and patients have faced increasing harassment, which hinders access to reproductive healthcare and results in significant and dangerous consequences to providers, helpers, and patients.

(9) The disclosure of reproductive healthcare information facilitates the harassment of patients who are seeking or have sought reproductive healthcare, and the disclosure of the identities and contact information of reproductive healthcare providers or helpers likewise facilitates those who seek to harass them.

(10) State and local governments have passed hundreds of restrictions on abortions that can, and have, impacted other forms of reproductive healthcare, interfering with the ability of providers and helpers to render, facilitate or assist in reproductive healthcare, and harming patients' ability to obtain reproductive healthcare. These restrictions include laws criminalizing providing, receiving or assisting others in receiving an abortion and laws allowing parties in other jurisdictions to sue reproductive healthcare providers, helpers, and patients suspected of providing, facilitating, or receiving an abortion.

(11) Laws criminalizing reproductive healthcare or permitting legal action by parties outside of Philadelphia for the receipt or provision of reproductive healthcare in Philadelphia that is legal in the City of Philadelphia, including abortion, infringes upon the rights of reproductive healthcare patients, helpers, and providers in Philadelphia and is anticipated to result in worse health outcomes.

(12) Such laws are also likely to deter people who are pregnant or can become pregnant from accessing non-abortion healthcare related to their reproductive health, including gynecological and prenatal care, endangering the health of themselves and their pregnancies.

(13) The ability to sue an individual for seeking or providing reproductive healthcare and attempts to criminalize the provision or receipt of reproductive healthcare in a jurisdiction where such healthcare is legal do not confer any health benefit or make reproductive healthcare safer. These actions will harm Philadelphia patients, helpers, and providers who face threats of

City of Philadelphia

BILL NO. 220665-A, as amended continued

criminal penalties or are burdened with the costs of defending themselves against such actions and result in worse health outcomes for those who need reproductive healthcare in Philadelphia.

(14) The disclosure of reproductive healthcare information can be used to wrongfully facilitate criminal or civil liability for providers, helpers, and patients for reproductive care that is legal in Philadelphia.

(15) The City has an interest in protecting the personal information of patients who receive reproductive healthcare in Philadelphia, as well as providers who provide reproductive healthcare in Philadelphia, and helpers who support patients receiving reproductive healthcare in Philadelphia; and in protecting all such individuals from unlawful harassment or legal action.

(16) Protecting patients who receive reproductive healthcare in Philadelphia, as well as providers who provide reproductive healthcare in Philadelphia, and helpers who support patients receiving reproductive healthcare in Philadelphia will benefit the public health of Philadelphia; particularly Philadelphia birthing persons, babies, and children.

SECTION 2: Title 6 of The Philadelphia Code is hereby amended to read as follows:

TITLE 6. HEALTH CODE

* * *

CHAPTER 6-1500. PROTECTION OF REPRODUCTIVE HEALTHCARE.

§ 6-1501. Definitions. The following definitions shall apply to this Chapter:

(1) In addition to definitions set forth in Sections 1-103 and 6-102 of the Code, the definitions set forth in Section 6-1401 of the Code shall apply to this Chapter.

(2) Abusive Litigant. A person who voluntarily initiates or intervenes in abusive litigation.

(3) Abusive Litigation. Litigation or other legal action, whether civil or criminal in nature, that is intended to deter, prevent, sanction or punish any person providing or obtaining reproductive healthcare, or assisting another to receive or provide reproductive healthcare by: (i) filing or prosecuting any action where liability, in whole or in part, is based on reproductive healthcare that occurred in Philadelphia, was provided in Philadelphia, or was intended to be obtained or provided in Philadelphia, including any action in which liability is based on any theory of vicarious, joint or several liability derived therefrom; or (ii) attempting to enforce any order or judgment issued in connection with any action described in subsection (3)(i) against a Philadelphia protected party.

City of Philadelphia

BILL NO. 220665-A, as amended continued

(4) *Contraception.* Any medication, device, procedure or practice designed or employed to prevent pregnancy, the use of which is lawful in the City of Philadelphia.

(5) *Philadelphia Protected Party.* A Philadelphia reproductive healthcare patient, a Philadelphia reproductive healthcare provider, or a Philadelphia reproductive healthcare helper.

(6) *Philadelphia Reproductive Healthcare Patient.* Any individual who has received, or who is seeking or receiving, reproductive healthcare in Philadelphia.

(7) *Philadelphia Reproductive Healthcare Provider.* A healthcare provider who provides reproductive healthcare in Philadelphia.

(8) *Philadelphia Reproductive Healthcare Helper.* A person who facilitates or otherwise has supported or is supporting a Philadelphia Reproductive Healthcare Patient in seeking or receiving reproductive healthcare in Philadelphia, including but not limited to, a person who provides funding, lodging, transportation, doula services, information, or other financial or practical support to an individual seeking reproductive healthcare.

(9) *Reproductive healthcare.* All medical, surgical, counseling or referral services that are lawful in Pennsylvania or the receipt of products relating to the human reproductive system that is lawful in Pennsylvania, including but not limited to, services or products relating to the use or intended use of a particular medicine or device, medical service or procedure, practice or similar intervention related to the human reproductive system, including, but not limited to, fertility-related medical procedures or medicines; sexually transmitted disease prevention, testing, or treatment; gender affirming care, or family planning services and counseling, such as those related to birth control medication or supplies, other contraception methods, sterilization procedures, pregnancy testing, or the intended or actual initiation or termination of a pregnancy.

(10) *Take part in abusive litigation.* Voluntarily engages in abusive litigation without legal compulsion in a manner that is intended to deter, prevent, sanction or punish a Philadelphia protected party for such party's connection to reproductive healthcare in Philadelphia.

(11) *Wrongful Action.* The procurement, initiation or continuation of abusive litigation that causes harm to a Philadelphia protected party where:

(a) A Philadelphia court definitively concludes that the abusive litigation is plainly baseless as a matter of law.

(b) The abusive litigation at issue was voluntarily withdrawn or dismissed and there was no objective basis to conclude the abusive litigation would result in an enforceable judgment against the Philadelphia protected party;

City of Philadelphia

BILL NO. 220665-A, as amended continued

(c) *The abusive litigation was dismissed by a court and there was no objective basis to conclude the abusive litigation would result in an enforceable judgment against the Philadelphia protected party;*

(d) *An abusive litigant has obtained a judgment in a foreign state through abusive litigation and sought to enforce such judgment in Pennsylvania but enforcement has been refused because the judgment is penal in nature or proscribes future conduct, the original court lacked jurisdiction, or the court has otherwise recognized an exception to recognition of such judgment, and there was no objective basis to conclude the judgment would be enforceable against the Philadelphia protected party in Pennsylvania; or*

(e) *An abusive litigant has collected on a judgment obtained through abusive litigation predicated, in whole or in material part, on conduct that occurred in Philadelphia and that was lawful in Pennsylvania at the time it took place; there is no comparable cause of action or liability under Pennsylvania law; and there is no law or legal principle that prevents the recoupment of damages for the harm caused to the Philadelphia protected party aggrieved by such abusive litigation.*

§ 6-1502. *Wrongful Interference with Reproductive Health Decisions.*

No person shall take part in abusive litigation against any Philadelphia reproductive healthcare patient, that such person knows or should know will constitute a wrongful action where liability, in whole or in part, is based on a Philadelphia reproductive healthcare patient seeking or receiving reproductive healthcare in Philadelphia that are lawful in Pennsylvania.

§ 6-1503. *Wrongful Interference with Provision of Reproductive Healthcare.*

(1) *Except as provided in subsection (2) below, no person shall take part in abusive litigation against any Philadelphia reproductive healthcare provider or Philadelphia reproductive healthcare helper that such person knows or should know will constitute a wrongful action where liability, in whole or in part, is related to the alleged provision of, the alleged seeking of, or an individual allegedly receiving reproductive healthcare in Philadelphia; or the alleged aiding or assisting in the provision, seeking, or receipt of reproductive healthcare in Philadelphia that are lawful in Pennsylvania.*

(2) *The provisions of this Section 6-1503 shall not apply to:*

(a) *a tort, contract, or statute-based litigation, if a similar claim would exist under Pennsylvania law if brought by the patient who received the reproductive healthcare service on which the original lawsuit was based, or if brought by the patient's authorized legal representative, for damages suffered from harm to the patient or an individual's loss of consortium with the patient; or*

City of Philadelphia

BILL NO. 220665-A, as amended continued

(b) a breach of contract litigation, if a similar claim would exist under Pennsylvania law if brought or sought to be enforced by a party with a contractual relationship with the person that is the subject of the action in another state.

§ 6-1504. Private Right of Action.

This Chapter shall be enforced exclusively through a private right of action. Any person aggrieved by a wrongful action in violation of Section 6-1502 or Section 6-1503 may bring a civil action in a court of competent jurisdiction against an abusive litigant and may recover, for each violation:

(1) Actual damages created by the wrongful action, including money damages in the amount of any judgment awarded in such wrongful action; and reasonable attorney's fees and costs incurred to defend against such wrongful action, whether or not a judgment was awarded.

(2) Reasonable attorney's fees and costs incurred to bring an action for a violation of this Section.

(3) Any other legal or equitable relief as the court may determine appropriate to remedy the violation.

§ 6-1505. Limitations and Severability.

(1) Nothing in this Chapter applies to a lawsuit brought in another jurisdiction where no part of the acts that formed the basis for liability occurred in Philadelphia or application of this Chapter would result in the extraterritorial application of the Chapter in a manner that is not incidental. Nor does this Chapter limit the rights of an aggrieved person to recover damages or seek legal protection under any other applicable law or legal theory.

(2) The provisions of this Chapter shall be interpreted consistently with the United States Constitution and other applicable law and shall not unlawfully prohibit constitutionally protected activity.

(3) Nothing in this Chapter limits the rights of an aggrieved person to recover damages or seek legal protection under any other applicable law or legal theory.

(4) Severability. If any paragraph, subsection, clause, provision, or exception of this Chapter shall be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of this Chapter as a whole or any part thereof. It is the intention of City Council that the remainder of this Chapter would have been adopted as if such invalid paragraph, subsection, clause, provision, or exception had not been enacted.