SENATE, No. 49

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JANUARY 6, 2022

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District 33 (Hudson)

Co-Sponsored by:
Assemblywoman Downey, Assemblyman Zwicker, Assemblywomen Lampitt and Swain

SYNOPSIS
Codifies constitutional right to freedom of reproductive choice.

CURRENT VERSION OF TEXT
As introduced.

(Sponsorship Updated As Of: 1/10/2022)
AN ACT concerning freedom of reproductive choice and
supplementing Title 10 of the Revised Statutes, P.L.1997, c.192
(C.26:2S-1 et seq.), and Title 52 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State
of New Jersey:

1. The Legislature finds and declares that:
   a. In cases such as Right to Choose v. Byrne, 91 N.J. 287 (1982)
the New Jersey Supreme Court has recognized that the right to
reproductive choice is a fundamental right enshrined in the State
Constitution, that this right is independent of the United States
Constitution, and that Article I, paragraph 1 of the New Jersey
Constitution is independent of, and protects reproductive autonomy
to an extent that exceeds the protections established under, the United
States Constitution.
   b. The New Jersey Supreme Court has found that the right to
reproductive choice includes the right to determine whether and when
to bear children. In particular, the citizens of New Jersey may:
access contraception, including emergency contraception; may not be
denied public benefits based on the choice to have additional
children; may choose to terminate a pregnancy; and may choose to
carry a pregnancy to term.
   c. Self-determination in reproductive choice is key to helping
establish equality among the genders and to allowing all people of
childbearing age to participate equally in the economic and social life
of the United States and the State of New Jersey.
   d. An unplanned pregnancy can disrupt educational and career
plans, forcing the pregnant person to drop out of school, abandon
pursuit of a college or advanced degree, accept lower-paying
employment or employment with limited opportunities for
advancement, or delay entrance into the workforce, which can have
the effect of limiting the person’s lifetime earnings and can prevent
the person from following a chosen career path.
   e. The right to choose whether and when to have children allows
people to more effectively plan in a way that is compatible with the
person’s overall life goals. Although each person retains the right to
exercise the freedom of reproductive choice regardless of the health
and strength of the person’s interpersonal relationships, where and
how the person lives, or the person’s income level and overall
resources, the essence of the right to reproductive choice is that
people have the ability to make reproductive choices in a manner
commensurate with their own personal beliefs, life plan, and moral
code.
f. Governmental restrictions on reproductive choice, by their very nature, impinge on the constitutional right to reproductive autonomy, particularly when they fail to confer any benefits to patients in the form of improved health or safety. Moreover, restrictions of this nature often have a disparate impact that is predominantly felt by persons who already experience barriers to health care access, including young people, people of color, people with disabilities, people with low income, people living in rural areas, immigrants, and people who are transgender or non-binary.

g. The Legislature is committed to ensuring that no barriers to reproductive freedom exist in the State. Individuals have the right to make their own decisions concerning reproduction, including the right to contraception, the right to terminate a pregnancy, and the right to carry a pregnancy to term, without government interference or fear of prosecution.

h. It is both reasonable and necessary for the State to enable, facilitate, support, and safeguard the provision of high quality, comprehensive reproductive and sexual health care, including the full range of evidence-based information, counseling, and health care services, to all individuals in the State, and to enable, facilitate, support, and safeguard the ability of such individuals to access affordable and timely reproductive health care services and to engage in autonomous reproductive decision-making, in consultation with health care professionals of their choosing, without fear of prosecution, discrimination, or unnecessary barriers to care. To achieve those ends, it shall be the policy of this State to:

(1) explicitly guarantee, to every individual, the fundamental right to reproductive autonomy, which includes the right to contraception, the right to terminate a pregnancy, and the right to carry a pregnancy to term;

(2) enable all qualified health care professionals to provide pregnancy termination services in the State;

(3) advance comprehensive insurance coverage for reproductive care, including primary reproductive health care services, services to terminate a pregnancy, long-acting contraceptives, and long-term supplies of hormonal contraceptives, that enables the citizens of New Jersey to fully exercise their freedom of reproductive choice while recognizing the rights of certain religious employers to request an exemption from such coverage; and

(4) ensure that all laws, rules, regulations, ordinances, resolutions, policies, standards, or parts thereof, that are currently in force or enacted in the future, conform to the provisions and the express or implied purposes of this act, and that any law, rule, regulation, ordinance, resolution, policy, standard, or part thereof that conflicts with the provisions of this act or its express or implied purposes is subject to invalidation.
2. a. Every individual present in the State, including, but not limited to, an individual who is under State control or supervision, shall have the fundamental right to: choose or refuse contraception or sterilization; and choose whether to carry a pregnancy, to give birth, or to terminate a pregnancy. The New Jersey Constitution recognizes the fundamental nature of the right to reproductive choice, including the right to access contraception, to terminate a pregnancy, and to carry a pregnancy to term, shall not be abridged by any law, rule, regulation, ordinance, or order issued by any State, county, or local governmental authority. Any law, rule, regulation, ordinance, or order, in effect on or adopted after the effective date of this act, that is determined to have the effect of limiting the constitutional right to freedom of reproductive choice and that does not conform with the provisions and the express or implied purposes of this act, shall be deemed invalid and shall have no force or effect.

b. The provisions of this section shall be enforceable under the “New Jersey Civil Rights Act,” P.L.2004, c.143 (C.10:6-1 et seq.) or in any other manner provided by law.

3. a. Upon concluding a study and issuing a report to the Governor and the Legislature demonstrating that such a regulation is necessary, the Department of Banking and Insurance may, through regulation adopted pursuant to the “Administrative Procedure Act”, P.L.1968 c.410 (C.52:14B-1 et seq.), provide that health benefit plans delivered, issued, executed, or renewed in this State, provide coverage for abortion. If the department provides for coverage pursuant to this section, then the department shall also require carriers to grant, upon request of a religious employer, an exclusion under the contract for the coverage required if the required coverage conflicts with the religious employer’s bona fide religious beliefs and practices. A religious employer that obtains such an exclusion shall provide written notice thereof to covered persons and prospective covered persons, and the carrier shall provide notice to the Commissioner of Banking and Insurance in such form and manner as may be determined by the commissioner. The provisions of this paragraph shall not be construed as authorizing a carrier to exclude coverage for care that is necessary to preserve the life or health of a subscriber. An exclusion from an insurance coverage mandate granted to a religious employer pursuant to this section shall not be considered a violation of section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill).

b. For the purposes of this section, “religious employer” means an organization that is organized and operates as a nonprofit entity and is referred to in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986 (26 U.S.C. s.6033), as amended.

4. A contract providing hospital or medical expense benefits purchased by the State Health Benefits Commission may provide
coverage for abortion. A contract providing hospital or medical expense benefits purchased by the commission shall not exclude a provider from its network or otherwise restrict services from the provider solely on the basis that the provider is a religious employer, as defined in section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill), that refuses to provide abortion services.

5. A contract providing hospital or medical expense benefits purchased by the School Employees’ Health Benefits Commission may provide coverage for abortion. A contract providing hospital or medical expense benefits purchased by the commission shall not exclude a provider from its network or otherwise restrict services from the provider solely on the basis that the provider is a religious employer, as defined in section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill), that refuses to provide abortion services.

6. This act shall take effect immediately.

STATEMENT

This bill establishes certain requirements related to the right to reproductive choice in New Jersey. Specifically, the bill codifies the constitutional right, which has been recognized by the New Jersey Supreme Court, to freedom of reproductive choice, including the right to access contraception, to terminate a pregnancy, and to carry a pregnancy to term. Any law, rule, regulation, ordinance, or order that has the effect of abridging the constitutional right to freedom of reproductive choice, including a law, rule, regulation, ordinance, or order in effect on, or adopted after, the effective date of the bill, will be deemed invalid and will have no force or effect. The bill specifically provides that every individual present in the State, including, but not limited to, an individual who is under State control or supervision, has the fundamental right to choose or refuse contraception or sterilization; and to choose whether to carry a pregnancy, to give birth, or to terminate a pregnancy.

The bill additionally provides that, after concluding a study and issuing a report to the Governor and the Legislature demonstrating the need that such a regulation is necessary, the Department of Banking and Insurance may adopt regulations providing that health benefit plans delivered, issued, executed, or renewed in this State, require coverage for abortion. If the department adopts a regulation establishing this coverage requirement, the department will also be required to mandate that carriers grant, upon request of a religious employer, an exclusion under the contract for the required coverage if the coverage conflicts with the religious employer’s bona fide
religious beliefs and practices. A religious employer that obtains such an exclusion will be required to provide written notice thereof to covered persons and prospective covered persons, and the carrier will additionally be required to provide notice to the Commissioner of Banking and Insurance in such form and manner as may be determined by the commissioner. Nothing in this requirement is to be construed as authorizing a carrier to exclude coverage for care that is necessary to preserve the life or health of a subscriber. An insurance exclusion authorized by the department will not constitute a violation of the provisions of the bill invalidating laws determined to have the effect of abridging or limiting the constitutional right to freedom of reproductive choice.

The bill provides that a contract providing hospital or medical expense benefits purchased by the State Health Benefits Commission or the School Employees’ Health Benefits Commission may provide coverage for abortion. A contract providing hospital or medical expense benefits purchased by either commission may not exclude a provider from its network or otherwise restrict services from the provider solely on the basis that the provider is a religious employer that refuses to provide abortion services.