

SENATE, No. 49

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JANUARY 6, 2022

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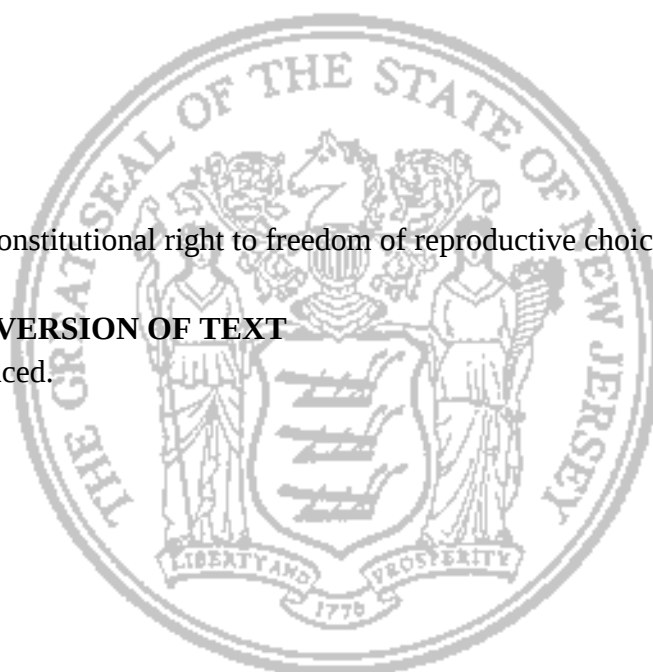
**Assemblywoman Downey, Assemblyman Zwicker, Assemblywomen
Lampitt and Swain**

SYNOPSIS

Codifies constitutional right to freedom of reproductive choice.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/10/2022)

1 AN ACT concerning freedom of reproductive choice and
2 supplementing Title 10 of the Revised Statutes, P.L.1997, c.192
3 (C.26:2S-1 et seq.), and Title 52 of the Revised Statutes.
4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*
7

8 1. The Legislature finds and declares that:

9 a. In cases such as Right to Choose v. Byrne, 91 N.J. 287 (1982)
10 and Planned Parenthood of Cent. N.J. v. Farmer, 165 N.J. 609 (2000),
11 the New Jersey Supreme Court has recognized that the right to
12 reproductive choice is a fundamental right enshrined in the State
13 Constitution, that this right is independent of the United States
14 Constitution, and that Article I, paragraph 1 of the New Jersey
15 Constitution is independent of, and protects reproductive autonomy
16 to an extent that exceeds the protections established under, the United
17 States Constitution.

18 b. The New Jersey Supreme Court has found that the right to
19 reproductive choice includes the right to determine whether and when
20 to bear children. In particular, the citizens of New Jersey may:
21 access contraception, including emergency contraception; may not be
22 denied public benefits based on the choice to have additional
23 children; may choose to terminate a pregnancy; and may choose to
24 carry a pregnancy to term.

25 c. Self-determination in reproductive choice is key to helping
26 establish equality among the genders and to allowing all people of
27 childbearing age to participate equally in the economic and social life
28 of the United States and the State of New Jersey.

29 d. An unplanned pregnancy can disrupt educational and career
30 plans, forcing the pregnant person to drop out of school, abandon
31 pursuit of a college or advanced degree, accept lower-paying
32 employment or employment with limited opportunities for
33 advancement, or delay entrance into the workforce, which can have
34 the effect of limiting the person's lifetime earnings and can prevent
35 the person from following a chosen career path.

36 e. The right to choose whether and when to have children allows
37 people to more effectively plan in a way that is compatible with the
38 person's overall life goals. Although each person retains the right to
39 exercise the freedom of reproductive choice regardless of the health
40 and strength of the person's interpersonal relationships, where and
41 how the person lives, or the person's income level and overall
42 resources, the essence of the right to reproductive choice is that
43 people have the ability to make reproductive choices in a manner
44 commensurate with their own personal beliefs, life plan, and moral
45 code.

1 f. Governmental restrictions on reproductive choice, by their
2 very nature, impinge on the constitutional right to reproductive
3 autonomy, particularly when they fail to confer any benefits to
4 patients in the form of improved health or safety. Moreover,
5 restrictions of this nature often have a disparate impact that is
6 predominantly felt by persons who already experience barriers to
7 health care access, including young people, people of color, people
8 with disabilities, people with low income, people living in rural areas,
9 immigrants, and people who are transgender or non-binary.

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

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

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

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

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

40 (4) ensure that all laws, rules, regulations, ordinances,
41 resolutions, policies, standards, or parts thereof, that are currently in
42 force or enacted in the future, conform to the provisions and the
43 express or implied purposes of this act, and that any law, rule,
44 regulation, ordinance, resolution, policy, standard, or part thereof
45 that conflicts with the provisions of this act or its express or implied
46 purposes is subject to invalidation.

1 2. a. Every individual present in the State, including, but not
2 limited to, an individual who is under State control or supervision,
3 shall have the fundamental right to: choose or refuse contraception
4 or sterilization; and choose whether to carry a pregnancy, to give
5 birth, or to terminate a pregnancy. The New Jersey Constitution
6 recognizes the fundamental nature of the right to reproductive choice,
7 including the right to access contraception, to terminate a pregnancy,
8 and to carry a pregnancy to term, shall not be abridged by any law,
9 rule, regulation, ordinance, or order issued by any State, county, or
10 local governmental authority. Any law, rule, regulation, ordinance,
11 or order, in effect on or adopted after the effective date of this act,
12 that is determined to have the effect of limiting the constitutional
13 right to freedom of reproductive choice and that does not conform
14 with the provisions and the express or implied purposes of this act,
15 shall be deemed invalid and shall have no force or effect.

16 b. The provisions of this section shall be enforceable under the
17 “New Jersey Civil Rights Act,” P.L.2004, c.143 (C.10:6-1 et seq.) or
18 in any other manner provided by law.
19

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

42 b. For the purposes of this section, “religious employer” means
43 an organization that is organized and operates as a nonprofit entity
44 and is referred to in section 6033(a)(3)(A)(i) or (iii) of the Internal
45 Revenue Code of 1986 (26 U.S.C. s.6033), as amended.
46

47 4. A contract providing hospital or medical expense benefits
48 purchased by the State Health Benefits Commission may provide

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

7
8 5. A contract providing hospital or medical expense benefits
9 purchased by the School Employees' Health Benefits Commission
10 may provide coverage for abortion. A contract providing hospital or
11 medical expense benefits purchased by the commission shall not
12 exclude a provider from its network or otherwise restrict services
13 from the provider solely on the basis that the provider is a religious
14 employer, as defined in section 3 of P.L. , c. (C.) (pending
15 before the Legislature as this bill), that refuses to provide abortion
16 services.

17
18 6. This act shall take effect immediately.
19
20

21 STATEMENT

22
23 This bill establishes certain requirements related to the right to
24 reproductive choice in New Jersey.

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

39 The bill additionally provides that, after concluding a study and
40 issuing a report to the Governor and the Legislature demonstrating
41 the need that such a regulation is necessary, the Department of
42 Banking and Insurance may adopt regulations providing that health
43 benefit plans delivered, issued, executed, or renewed in this State,
44 require coverage for abortion. If the department adopts a regulation
45 establishing this coverage requirement, the department will also be
46 required to mandate that carriers grant, upon request of a religious
47 employer, an exclusion under the contract for the required coverage
48 if the coverage conflicts with the religious employer's bona fide

1 religious beliefs and practices. A religious employer that obtains
2 such an exclusion will be required to provide written notice thereof
3 to covered persons and prospective covered persons, and the carrier
4 will additionally be required to provide notice to the Commissioner
5 of Banking and Insurance in such form and manner as may be
6 determined by the commissioner. Nothing in this requirement is to
7 be construed as authorizing a carrier to exclude coverage for care that
8 is necessary to preserve the life or health of a subscriber. An
9 insurance exclusion authorized by the department will not constitute
10 a violation of the provisions of the bill invalidating laws determined
11 to have the effect of abridging or limiting the constitutional right to
12 freedom of reproductive choice.

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