

HB5779



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB5779

Introduced 11/16/2022, by Rep. Margaret Croke

SYNOPSIS AS INTRODUCED:

775 ILCS 55/1-5
775 ILCS 55/1-10
775 ILCS 55/1-15
775 ILCS 55/1-20

Amends the Reproductive Health Act. Specifies that every individual has certain fundamental rights with respect to the use of assisted reproductive technology. Prohibits the State from taking certain actions that would restrict or interfere with those rights. Defines "assisted reproductive technology". Makes conforming changes.

LRB102 28446 LNS 40318 b

A BILL FOR

1 AN ACT concerning human rights.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Reproductive Health Act is amended by
5 changing Sections 1-5, 1-10, 1-15, and 1-20 as follows:

6 (775 ILCS 55/1-5)

7 Sec. 1-5. Scope. This Act sets forth the fundamental
8 rights of individuals to make autonomous decisions about one's
9 own reproductive health, including the fundamental right to
10 use or refuse reproductive health care. This includes the
11 fundamental right of an individual to use or refuse
12 contraception or sterilization, and to make autonomous
13 decisions about how to exercise that right; and the
14 fundamental right of an individual who becomes pregnant to
15 continue the pregnancy and give birth to a child, or to have an
16 abortion, and to make autonomous decisions about how to
17 exercise that right. This Act restricts the ability of the
18 State to deny, interfere with, or discriminate against these
19 fundamental rights.

20 The purposes of this Act are:

21 (1) To establish laws and policies that protect
22 individual decision-making in the area of reproductive
23 health and that support access to the full scope of

1 quality reproductive health care for all in our State; and

2 (2) To permit regulation of reproductive health care,
3 including contraception, abortion, assisted reproductive
4 technology, and maternity care, only to the extent that
5 such regulation is narrowly tailored to protect a
6 compelling State interest, which for the purposes of this
7 Act means: consistent with accepted standards of clinical
8 practice, evidence based, and narrowly tailored for the
9 limited purpose of protecting the health of people seeking
10 such care and in the manner that least restricts a
11 person's autonomous decision-making.

12 (Source: P.A. 101-13, eff. 6-12-19.)

13 (775 ILCS 55/1-10)

14 Sec. 1-10. Definitions. As used in this Act:

15 "Abortion" means the use of any instrument, medicine,
16 drug, or any other substance or device to terminate the
17 pregnancy of an individual known to be pregnant with an
18 intention other than to increase the probability of a live
19 birth, to preserve the life or health of the child after live
20 birth, or to remove a dead fetus.

21 "Advanced practice registered nurse" has the same meaning
22 as it does in Section 50-10 of the Nurse Practice Act.

23 "Assisted reproductive technology" means clinical
24 fertility treatments and laboratory procedures that involve
25 the handling of human oocytes, sperm, or embryos for the

1 purpose of establishing a pregnancy. "Assisted reproductive
2 technology" includes, but is not limited to, in vitro
3 fertilization, gamete intrafallopian transfer, zygote
4 intrafallopian transfer, embryo biopsy, preimplantation
5 genetic diagnosis, embryo cryopreservation, oocyte or embryo
6 donation, and gestational surrogacy. "Assisted reproductive
7 technology" does not include artificial insemination.

8 "Department" means the Illinois Department of Public
9 Health.

10 "Fetal viability" means that, in the professional judgment
11 of the attending health care professional, based on the
12 particular facts of the case, there is a significant
13 likelihood of a fetus' sustained survival outside the uterus
14 without the application of extraordinary medical measures.

15 "Health care professional" means a person who is licensed
16 as a physician, advanced practice registered nurse, or
17 physician assistant.

18 "Health of the patient" means all factors that are
19 relevant to the patient's health and well-being, including,
20 but not limited to, physical, emotional, psychological, and
21 familial health and age.

22 "Maternity care" means the health care provided in
23 relation to pregnancy, labor and childbirth, and the
24 postpartum period, and includes prenatal care, care during
25 labor and birthing, and postpartum care extending through
26 one-year postpartum. Maternity care shall, seek to optimize

1 positive outcomes for the patient, and be provided on the
2 basis of the physical and psychosocial needs of the patient.
3 Notwithstanding any of the above, all care shall be subject to
4 the informed and voluntary consent of the patient, or the
5 patient's legal proxy, when the patient is unable to give
6 consent.

7 "Physician" means any person licensed to practice medicine
8 in all its branches under the Medical Practice Act of 1987.

9 "Physician assistant" has the same meaning as it does in
10 Section 4 of the Physician Assistant Practice Act of 1987.

11 "Pregnancy" means the human reproductive process,
12 beginning with the implantation of an embryo.

13 "Prevailing party" has the same meaning as in the Illinois
14 Civil Rights Act of 2003.

15 "Reproductive health care" means health care offered,
16 arranged, or furnished for the purpose of preventing
17 pregnancy, terminating a pregnancy, managing pregnancy loss,
18 establishing a pregnancy, or improving maternal health and
19 birth outcomes. Reproductive health care includes, but is not
20 limited to: contraception; sterilization; preconception care;
21 assisted reproductive technology; maternity care; abortion
22 care; and counseling regarding reproductive health care.

23 "State" includes any branch, department, agency,
24 instrumentality, and official or other person acting under
25 color of law of this State or a political subdivision of the
26 State, including any unit of local government (including a

1 home rule unit), school district, instrumentality, or public
2 subdivision.

3 (Source: P.A. 101-13, eff. 6-12-19.)

4 (775 ILCS 55/1-15)

5 Sec. 1-15. Fundamental reproductive health rights.

6 (a) Every individual has a fundamental right to make
7 autonomous decisions about the individual's own reproductive
8 health, including the fundamental right to use or refuse
9 reproductive health care.

10 (b) Every individual who becomes pregnant has a
11 fundamental right to continue the pregnancy and give birth or
12 to have an abortion, and to make autonomous decisions about
13 how to exercise that right.

14 (c) A fertilized egg, embryo, or fetus does not have
15 independent rights under the laws of this State.

16 (d) Every individual has a fundamental right to make
17 autonomous decisions regarding the individual's use of
18 assisted reproductive technology, and the individuals who use
19 assisted reproductive technology have a fundamental right to
20 make autonomous decisions regarding the human oocytes, sperm,
21 and embryos used or created by those individuals during their
22 use of that technology.

23 (Source: P.A. 101-13, eff. 6-12-19.)

24 (775 ILCS 55/1-20)

1 Sec. 1-20. Prohibited State actions; causes of action.

2 (a) The State shall not:

3 (1) deny, restrict, interfere with, or discriminate
4 against an individual's exercise of the fundamental rights
5 set forth in this Act, including individuals under State
6 custody, control, or supervision; ~~or~~

7 (2) prosecute, punish, or otherwise deprive any
8 individual of the individual's rights for any act or
9 failure to act during the individual's own pregnancy, if
10 the predominant basis for such prosecution, punishment, or
11 deprivation of rights is the potential, actual, or
12 perceived impact on the pregnancy or its outcomes or on
13 the pregnant individual's own health; ~~-~~

14 (3) restrict or interfere with an individual's right
15 to use assisted reproductive technology, including, but
16 not limited to, the individual's right to create, store,
17 or potentially destroy an embryo as part of that
18 individual's use of that technology;

19 (4) restrict or interfere with an individual's
20 decision to donate oocytes or sperm to an individual who
21 is undergoing treatment with assisted reproductive
22 technology;

23 (5) restrict or interfere with the quantity of oocytes
24 or sperm that may be retrieved or collected for an
25 individual as part of that individual's treatment with
26 assisted reproductive technology;

1 (6) restrict or interfere with the number of embryos
2 that may be created for an individual as part of that
3 individual's treatment with assisted reproductive
4 technology;

5 (7) restrict or interfere with an individual's
6 decision to submit an embryo, oocyte, or sperm for
7 testing;

8 (8) restrict or interfere with an individual's
9 decision regarding the number of embryos to be transferred
10 as a part of that individual's treatment with assisted
11 reproductive technology; or

12 (9) restrict or interfere with an individual's
13 decision regarding the use of untransferred embryos
14 created as a part of the individual's treatment with
15 assisted reproductive technology, including, but not
16 limited to, any decision concerning the transfer of the
17 embryo to another individual, the donation of the embryo
18 to a laboratory for research, the destruction of the
19 embryo, or the cryopreservation of the embryo.

20 (b) Any party aggrieved by conduct or regulation in
21 violation of this Act may bring a civil lawsuit, in a federal
22 district court or State circuit court, against the offending
23 unit of government. Any State claim brought in federal
24 district court shall be a supplemental claim to a federal
25 claim.

26 (c) Upon motion, a court shall award reasonable attorney's

1 fees and costs, including expert witness fees and other
2 litigation expenses, to a plaintiff who is a prevailing party
3 in any action brought pursuant to this Section. In awarding
4 reasonable attorney's fees, the court shall consider the
5 degree to which the relief obtained relates to the relief
6 sought.

7 (Source: P.A. 101-13, eff. 6-12-19.)