



SPONSOR: Rep. K. Johnson & Sen. Poore & Rep. Longhurst &
Rep. Morrison & Rep. Minor-Brown &
Rep. Dorsey Walker & Rep. Griffith & Sen. Townsend
Reps. Baumbach, Bolden, Neal, Romer; Sens. Gay,
Hansen, Sokola

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 374

AN ACT TO AMEND TITLES 10 AND 24 OF THE DELAWARE CODE RELATING TO FERTILITY TREATMENT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 1702, Title 24 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 1702. Definitions.

4 The following definitions apply to this chapter unless otherwise expressly stated or implied by the context:

5 () “Fertility treatment” means any test, procedure, medication, surgery, or service to address or enhance an
6 individual’s ability to reproduce or get pregnant, including:

7 1. In vitro fertilization.

8 2. Intrauterine insemination.

9 3. Ovulation induction.

10 4. Embryo biopsy.

11 4. Cryopreservation and thawing of eggs, sperm, and embryos.

12 6. Cryopreservation of testicular or ovarian tissue.

13 7. Storage or disposal of oocytes, sperm, embryos, or tissue.

14 (15) “Reproductive health services” includes all of the following:

15 a. “Abortion” as defined in § 1782 of this title.

16 b. “Termination of pregnancy” as authorized in § 1790 of this title.

17 c. Emergency contraception that is approved by the Federal Drug Administration and available over-the-
18 counter, with a prescription, or dispensed consistent with the requirements of Chapter 25 of this title.

19 d. Services relating to pregnancy or the termination of pregnancy including medical, surgical, counseling,
20 or referral services.

21 e. Fertility treatment.

22 Section 2. Amend § 3928, Title 10 of the Delaware Code by making deletions as shown by strike through and
23 insertions as shown by underline as follows:

24 § 3928. Limitations and protections against actions relating to ~~the termination of pregnancy.~~ reproductive health
25 services.

26 (a) A law of another state that authorizes a person to bring a civil action against a person that does any of the
27 following is contrary to the public policy of this State:

28 (1) Terminates or seeks to terminate a pregnancy.

29 (2) Performs or induces the termination of pregnancy.

30 (3) Knowingly engages in conduct that aids or abets the performance or inducement of the termination of
31 pregnancy.

32 (4) Attempts or intends to engage in the conduct described in paragraphs (a)(1) through (3) of this section.

33 (5) Provides fertility treatment as defined by § 1702 of Title 24.

34 (6) Attempts or intends to engage in conduct described in paragraph (a)(5) of this section.

35 (b) The State shall not do any of the following:

36 (1) Apply any law described in subsection (a) of this section to any case or controversy heard in any court.

37 (2) Issue a summons in a case where prosecution is pending, or where a grand jury investigation has
38 commenced, or is about to commence, for a criminal violation of a law described in subsection (a) of this section
39 unless the acts forming the basis of the prosecution or investigation would constitute a crime in this State.

40 (3) Issue or enforce a subpoena for information or testimony issued by another state or government relating to
41 a civil action described in subsection (a) of this section.

SYNOPSIS

This Act updates House Bill 455 from the 151st General Assembly by providing the same legal protections afforded providers of contraceptive and abortion services to providers of fertility treatment. In summary, this Act does the following:

(1) Clarifies that medical professionals who provide fertility treatment care cannot be disciplined for such services even if such services are illegal or considered to be unprofessional conduct or the unauthorized practice of medicine in another state, so long as such services are lawful in this State;

(2) Prohibits health care providers from disclosing communications and records concerning fertility treatment without the patient's authorization in any civil action or proceeding, with some exceptions;

(3) Protects health care providers from out-of-state civil actions relating to fertility treatment that is legal in Delaware, including the issuance of a summons or the enforcement of subpoenas relating to such cases;

(4) Creates a cause of action for recouperation of out-of-state judgments relating to fertility treatment that is lawful in Delaware; and

(5) Prohibits insurance companies from taking any adverse action against health care professionals who provide fertility treatment and services.