

SENATE BILL REPORT

SB 5632

As Reported by Senate Committee On:
Law & Justice, February 13, 2025

Title: An act relating to protecting the confidentiality of records and information that may be relevant to another state's enforcement of its laws.

Brief Description: Protecting the confidentiality of records and information that may be relevant to another state's enforcement of its laws.

Sponsors: Senators Hansen, Hasegawa, Saldaña, Stanford, Trudeau and Valdez.

Brief History:

Committee Activity: Law & Justice: 2/10/25, 2/13/25 [DP, DNP, w/oRec].

Brief Summary of Bill

- Defines assistance as that term relates to the provision or receipt of protected health care services.
- Prohibits agents of state or local agencies, commissions, boards, or departments from cooperating with or providing information to other entities for the purpose of enforcing another state's law or an investigation related to another state's law that asserts criminal or civil liability related to the provision or receipt of protected health care services.
- Requires Washington businesses that provide electronic communication services to notify the Attorney General's Office if the entity receives legal process related to the provision or receipt of protected health care services when the required attestation is missing or contains an incomplete.

SENATE COMMITTEE ON LAW & JUSTICE

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: Do pass.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Lovick, Salomon and Valdez.

Minority Report: Do not pass.

Signed by Senators Holy, Ranking Member; Fortunato and Wagoner.

Minority Report: That it be referred without recommendation.

Signed by Senator Torres.

Staff: Joe McKittrick (786-7287)

Background: Shield Law. In 2023 the Legislature passed ESHB 1469 concerning access to reproductive health care service and gender-affirming treatment (protected health care services) in Washington, known as the Shield Law.

The Shield Law restricts the ability for courts to issue, and law enforcement to enforce, subpoenas, warrants, criminal process, extradition and other court orders for civil or criminal liability that is based on the provision or receipt of protected health care services. Washington businesses are prohibited from complying with records requests or subpoenas for information related to the provision or receipt of protected health care services, and any request for the issuance of a subpoena under the Uniform Interstate Depositions and Discovery Act must include an attestation, stating whether the subpoena seeks documents, information, or testimony related to the provision or receipt of such services.

The clerk of the court is prohibited from issuing a subpoena under the Shield Law if the party seeking information, documents, or testimony related to protected health care services that are legal in Washington and must present the subpoena to the court. After reviewing the subpoena, the court may not issue the subpoena and must quash any existing subpoena if it is related to such protected health care services. The court may issue a subpoena if the subpoena is related to a claim that would exist under Washington law and that is brought by a person seeking damages or loss of consortium or seeking the enforcement of a contractual relationship.

Any false attestation submitted in connection with interstate depositions and discovery, foreign witnesses, extradition proceedings, the interception of private communications, or criminal orders is subject to a \$10,000 penalty per violation and subjects the attester to the jurisdiction of the courts of Washington for any suit, penalty, or damages arising out of the false attestation. For the statutory penalty to be applicable to a request for a foreign subpoena or testimony in a foreign criminal prosecution or grand jury, the court must find that the false attestation was intentionally submitted and did seek information related to protected health care services.

Limits on Washington Businesses. Washington businesses that provide electronic communications services are prohibited from knowingly providing records, information,

facilities, or assistance in response to a civil or criminal process that relates to an investigation into, or the enforcement of, another state's laws asserting criminal or civil liability for the provision or receipt of protected health care services.

Washington businesses that provide these services are also prohibited from complying with any subpoena, warrant, or civil or criminal process unless it is accompanied by an attestation stating that the civil or criminal process does not seek documents, information, or testimony relating to an investigation into, or the enforcement of, another states law asserting criminal or civil liability for the provision or receipt of protected health care services. Such businesses may rely on the representations made in the attestation in determining whether the civil or criminal legal process relates to the provision or receipt of protected health care services.

Limits on Public Officers and Employees. A state or local agency, commission, board, or department, or any employee thereof, who is acting in their official capacity, may not cooperate with or provide information to any individual, agency, commission, board, or department from another state or, to the extent permitted by federal law, to a federal law enforcement agency, for the purpose of enforcing another state's law or an investigation related to another state's law that asserts criminal or civil liability for the provision, receipt, attempted provision or receipt, assistance in the provision or receipt or attempted assistance in the provision or receipt of protected health care services that are lawful in Washington.

Summary of Bill: "Assistance" as that term is used in the Shield Law is defined as any action to help, aid, or support the provision or receipt of protected health care services including, but not limited to, providing financial, logistical, information, or travel support to facilitate access to protected health care services.

The limits on public officers and employees related to cooperation with or the provision of information related to protected health care services are extended to agents of state or local agencies, commissions, boards, or departments.

Any Washington business that provides electronic communication services that is served with a subpoena, warrant, court order, or other civil or criminal legal process related to the provision or receipt of protected health care services must notify the Attorney General's Office of the receipt of such legal process if the required attestation is absent or incomplete unless the business is prohibited by law or court order from providing such notice.

Appropriation: None.

Fiscal Note: Requested on February 7, 2025.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Since passing the Shield Law a few years ago, stakeholders have identified some minor workability concerns that this bill addresses. This will allow the Office of the Attorney General to know if an attestation required by the Shield Law is missing or incomplete and to step in and protect people's health care information. Since the Dobbs decision people who come to Washington for reproductive health care services are nervous to share where they are from. With the new federal administration, the protections this bill provides are needed now more than ever. This bill strengthens protections for those who support individuals seeking reproductive health care and ensures their dignity throughout the process. As other states increase their prosecutions of those seeking this health care, Washington needs to act. While passing the Shield Law was a great step forward, things have not gotten easier for those who wish to help people seeking reproductive health care and gender-affirming care. This bill will help providers feel safe in doing their work and ensures the privacy and safety of those seeking care. Access to health care is a fundamental right, and patient confidentiality is its cornerstone. The requirement for businesses to notify the Office of the Attorney General when the required attestation is missing or incomplete will give the Attorney General the opportunity to become involved and enforce the Shield Law. This will also help ensure these businesses do not inadvertently share private health care information.

CON: This bill adds gender affirming care to the Shield Law. Washington is generally out of step with the country as a whole and out of touch with rational and ethical science. The state should not fund these non-scientific and non-necessary procedures. The radical general ideology that is rampant in Seattle and Olympia is akin to bloodletting, shock therapy, and lobotomies. Gender dysphoria is a mental disorder that no medical procedure can correct. The entire Shield Law should be abolished.

Persons Testifying: PRO: Senator Drew Hansen, Prime Sponsor; Elsie Elling; Chris Smith; Ashley Wilson; Mo West; Adam Eitmann, Washington State Office of the Attorney General.

CON: Matthew Jackmond, A concerned taxpayer and voter.

Persons Signed In To Testify But Not Testifying: No one.