

Senator Cindy F. Friedman

Floor Speech on Amendment 388 to S.4

May 25, 2022

Thank you, Madam President, and through you to the members. I rise in support of Amendment 388.

As you are aware, over the past several months, events have taken place across the county that have put access to reproductive and gender-affirming health care at risk. A significant number of states have or are seeking to limit access to, or altogether ban, reproductive and gender-affirming health care services and there is evidence that a decision by the United State Supreme Court will further threaten access to reproductive health care.

What is most concerning at this moment and which has created a sense of urgency is that some states are beginning to pass laws that seek to limit this critical care beyond their state borders. They are passing “bounty-style” provisions that allow a resident of a state – for example a resident of Texas or Oklahoma, where reproductive care is severely limited – to bring a civil suit or private right of action against someone in **our** state who provides, aids, or abets a resident of Texas or Oklahoma in receiving such care **in** Massachusetts, where that care is legal. And where such care – both reproductive and gender-affirming health care – has been embraced through our public policy, statutes, and ballot initiatives.

We are now faced with a situation where another state – through state laws enacted by **their** legislature – is threatening the rights of law-abiding residents in **our** Commonwealth for engaging in activities that are legal under **our** laws and were enacted by **our** duly elected legislature here in Massachusetts. This is an egregious and direct attack on a state’s ability to make their own laws and protect their own residents.

Amendment 388 seeks to block these extraterritorial laws from interfering with legally protected health care activity in Massachusetts. The amendment, to the extent possible, protects those who provide and assist in providing reproductive and gender-affirming health care services, along with patients who are seeking such critical care in the Commonwealth. It also ensures that Massachusetts – and its laws, regulations, agencies, and institutions – do not assist in the enforcement of draconian laws passed by other states that attempt to regulate healthcare services that are, again, legal in Massachusetts.

Specifically, Amendment 388:

- Directs the Department of Public Health to establish a statewide standing order that authorizes the dispensing of emergency contraception in Massachusetts by any licensed pharmacist;
- Insulates health care providers, including doctors, psychologists, nurses, physician assistants, pharmacists and social workers, from adverse consequences from their licensing boards for providing reproductive or gender-affirming health care, so long as the services as provided would have been lawful and consistent with the standards of professional practice and conduct if they occurred entirely in Massachusetts;
- Prevents Massachusetts law enforcement agencies from providing information or assisting federal or other state law enforcement agencies or private citizens or quasi-law enforcement agents with any investigation or inquiry into services constituting legally protected health care activity in Massachusetts;
- Prevents medical malpractice insurers from discriminating against or adjusting a healthcare provider's risk classification or premium charges as a result of providing reproductive or gender-affirming health care services here in Massachusetts;

- Requires judgment creditors to file an action to enforce a judgment issued in another state concerning legally protected health care activity, rather than simply file a copy of a foreign judgment to have it recognized within Massachusetts;
- Prevents Massachusetts courts from ordering a person within Massachusetts to give testimony or produce documents for use in connection with litigation concerning legally protected health care activity;
- Prevents judges from issuing a summons where pending prosecution concerning legally protected health care activity or where a grand jury investigation concerning legally protected health care activity has commenced or is about to commence for a criminal violation of a law of another state;
- Requires Massachusetts courts, in actions filed to enforce a judgment issued in connection with litigation concerning legally protected health care activity, to not give any force or effect to such judgement if it was issued without jurisdiction;
- Excludes cases brought concerning legally protected health care activity from Massachusetts' anti-SLAPP statute;
- Prevents the governor from extraditing a person to another state who was charged in another state as a result of engaging in this legally protected health care, except where required by federal law;
- And, finally, creates a new cause of action for interference with legally protected health care activities in the Commonwealth through abusive litigation filed or prosecuted in a state other than the Commonwealth.

This essentially means that anyone who faces abusive litigation in another state over legally protected reproductive and gender-affirming healthcare services can sue in Massachusetts courts

to obtain a judgment of, among other things, damages, including actual damages, expenses, costs and reasonable attorney's fees, against the person who sued them in the other state's court.

Now, to be clear, Amendment 388 *does not* and *cannot* insulate healthcare providers from criminal civil consequences in ***other*** states, nor does it authorize the delivery of health care services that would otherwise be illegal under Massachusetts law.

It is imperative that we as a legislature be proactive and do all we can to protect our citizens who engage in activities that are lawful under our state laws and statutes.

Amendment 388 seeks to provide that protection in the realm of health care, and I urge you to

SUPPORT this amendment. Thank you, Madam President. I hope that the amendment is

ADOPTED.