HOUSE BILL 808

E2, J2, J5 CF SB 859

By: Delegates Williams and Hill Williams, Hill, Cardin, Conaway, Crutchfield, Embry, Kaufman, Moon, Pasteur, and Phillips

Introduced and read first time: February 8, 2023

Assigned to: Judiciary and Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 20, 2023

CHAPTER _____

1 AN ACT concerning

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Reproductive Health Protection Act

FOR the purpose of prohibiting a judge from requiring a person to give testimony or produce evidence in another state under certain circumstances and subject to certain exceptions; requiring that a request for the issuance of a foreign subpoena include a certain sworn statement; prohibiting an ex parte order to intercept certain communication for the purpose of investigating or recovering evidence related to legally protected health care, subject to a certain exception; prohibiting certain judgment creditors from filing a copy of certain foreign judgments; prohibiting the Governor from surrendering a person to the executive authority of another state for an alleged violation of the laws of the requesting state relating to legally protected health care if the violation would not be a crime in the State; prohibiting, subject to certain exceptions, a State agency or a political subdivision of the State, an agent or employee of the State or a political subdivision of the State, and certain private parties from assisting in an interstate investigation related to legally protected health care if the activity being investigated would not be subject to liability or sanction in the State; prohibiting health occupations boards from disciplining a health care practitioner or applicant because of certain actions relating to legally protected health care subject to certain exceptions; exempting certain high deductible insurance plans from covering certain abortion services; prohibiting insurers from taking certain adverse actions against certain health care practitioners; and generally relating to legally protected health care.

BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

<u>Underlining</u> indicates amendments to bill.

Strike out indicates matter stricken from the bill by amendment or deleted from the law by amendment.

1	Article – Courts and Judicial Proceedings
2	Section 9–302(a) and (b), 9–402(a), 10–408(c), and 11–802(a)
3	Annotated Code of Maryland
4	(2020 Replacement Volume and 2022 Supplement)
5	BY repealing and reenacting, with amendments,
6	Article – Criminal Procedure
7	Section 9–106
8	Annotated Code of Maryland
9	(2018 Replacement Volume and 2022 Supplement)
10	BY adding to
11	Article – Health Occupations
12	Section 1–227
13	Annotated Code of Maryland
14	(2021 Replacement Volume and 2022 Supplement)
15	BY repealing and reenacting, with amendments,
16	Article – Insurance
17	Section 15–857
18	Annotated Code of Maryland
19	(2017 Replacement Volume and 2022 Supplement)
20	BY adding to
21	Article – Insurance
22	Section 19–117
23	Annotated Code of Maryland
24	(2017 Replacement Volume and 2022 Supplement)
25	BY adding to
26	Article – State Personnel and Pensions
27	Section 2–312
28	Annotated Code of Maryland
29	(2015 Replacement Volume and 2022 Supplement)
30	SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND
31	That the Laws of Maryland read as follows:
32	Article - Courts and Judicial Proceedings
33	9–302.
34	(a) If a judge of a court of record in any state which by its laws has made provision

34 (a) If a judge of a court of record in any state which by its laws has made provision 35 for commanding persons within that state to attend and testify in the State certifies under 36 the seal of the court that there is a criminal prosecution pending in the court, or that a 37 grand jury investigation has commenced or is about to commence, that a person being 38 within the State is a material witness in the prosecution, or grand jury investigation, and

- 1 that [his] THE presence OF THAT PERSON will be required for a specified number of days,
- 2 upon presentation of the certificate to any judge of a court of record, in the county in which
- 3 the person is, the judge shall fix a time and place for a hearing, and shall make an order
- 4 directing the witness to appear at a time and place certain for the hearing.
 - (b) (1) (I) [If] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, IF at [the] A hearing UNDER THIS SUBSECTION the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence, and of any other state through which the witness may be required to pass by ordinary course of travel, will give to [him] THE WITNESS protection from arrest and the service of civil and criminal process, [he] THE JUDGE shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons.
- 17 (II) In [the] A hearing UNDER THIS SUBSECTION, the certificate shall be prima facie evidence of all the facts stated therein.
- 19 (2) (I) IN THIS PARAGRAPH, "LEGALLY PROTECTED HEALTH 20 CARE" HAS THE MEANING STATED IN § 2–312 OF THE STATE PERSONNEL AND 21 PENSIONS ARTICLE.
- 22(II) A JUDGE MAY NOT ORDER A PERSON WITHIN THE STATE TO 23GIVE TESTIMONY OR A STATEMENT, OR PRODUCE DOCUMENTS, ELECTRONICALLY 24STORED INFORMATION, OR OTHER TANGIBLE THINGS UNDER THIS SUBSECTION, IN A CASE WHERE PROSECUTION IS PENDING, OR WHERE A GRAND JURY 2526 INVESTIGATION HAS COMMENCED OR IS ABOUT TO COMMENCE, FOR A VIOLATION 27 OF A CRIMINAL LAW OF ANOTHER STATE INVOLVING THE PROVISION OF, RECEIPT OF, OR ASSISTANCE WITH LEGALLY PROTECTED HEALTH CARE IN THE STATE, 28UNLESS THE ACTS FORMING THE BASIS OF THE PROSECUTION OR INVESTIGATION 29 30 WOULD CONSTITUTE A CRIME IN THIS STATE.
- 31 9-402.

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- 32 (a) (1) In this subsection, "legally protected health care" has 33 the meaning stated in § 2–312 of the State Personnel and Pensions 34 Article.
- 35 **(2) (I)** To request issuance of a subpoena under this section, a party 36 shall submit a foreign subpoena to a clerk of the circuit court for the county in which 37 discovery is sought to be conducted in this State.

- 1 THE REQUEST UNDER SUBPARAGRAPH (I) OF THIS (II)2 PARAGRAPH SHALL INCLUDE A SWORN, WRITTEN STATEMENT SIGNED UNDER 3 PENALTY OF PERJURY BY THE PARTY SEEKING ENFORCEMENT, OR THE PARTY'S 4 COUNSEL, THAT NO PORTION OF THE SUBPOENA IS INTENDED OR ANTICIPATED TO 5 FURTHER ANY INVESTIGATION OR PROCEEDING RELATED TO LEGALLY PROTECTED 6 HEALTH CARE, UNLESS THE OUT-OF-STATE PROCEEDING IS: 7 1. BASED IN TORT, CONTRACT, OR STATUTE; 8 A CLAIM FOR WHICH A SIMILAR OR EQUIVALENT 9 CLAIM WOULD EXIST IN THE STATE; AND 3. 10 Α. BROUGHT BY THE PATIENT WHO RECEIVED 11 LEGALLY PROTECTED HEALTH CARE, OR THE PATIENT'S LEGAL REPRESENTATIVE; 12 OR В. 13 BASED ON CONDUCT THAT WOULD BE PROHIBITED 14 UNDER THE LAWS OF THIS STATE. A request for the issuance of a subpoena under this subtitle does 15 [(2)] **(3)** not constitute an appearance in the courts of this State. 16 17 10-408. 18 [Upon the] EXCEPT AS PROVIDED IN PARAGRAPH (5) OF THIS SUBSECTION, ON application, the judge may enter an ex parte order, as requested or as 19 modified, authorizing interception of wire, oral, or electronic communications within the 20 territorial jurisdiction permitted under paragraphs (2) and (3) of this subsection, if the 2122 judge determines on the basis of the facts submitted by the applicant that: 23 There is probable cause for belief that an individual is 24committing, has committed, or is about to commit a particular offense enumerated in § 25 10–406 of this subtitle: 26 There is probable cause for belief that particular communications concerning that offense will be obtained through the interception; 27 28(iii) Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous; and 29 30 (iv) There is probable cause for belief:
- 31 That the facilities from which, or the place where, the 1. 32 wire, oral, or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of the offense, or are leased to, listed in the 33

- name of, or commonly used by this person in accordance with subsection (a)(1) of this section; or
- 3 2. That the actions of the individual whose communications 4 are to be intercepted could have the effect of thwarting an interception from a specified 5 facility in accordance with subsection (a)(2) of this section.
 - (2) Except as provided in paragraphs (3) and (4) of this subsection, an ex parte order issued under paragraph (1) of this subsection may authorize the interception of wire, oral, or electronic communications only within the territorial jurisdiction of the court in which the application was filed.
 - (3) If an application for an ex parte order is made by the Attorney General, the State Prosecutor, or a State's Attorney, an order issued under paragraph (1) of this subsection may authorize the interception of communications received or sent by a communication device anywhere within the State so as to permit the interception of the communications regardless of whether the communication device is physically located within the jurisdiction of the court in which the application was filed at the time of the interception. The application must allege that the offense being investigated may transpire in the jurisdiction of the court in which the application is filed.
- 18 (4) In accordance with this subsection, a judge of competent jurisdiction 19 may authorize continued interception within the State, both within and outside the judge's 20 jurisdiction, if the original interception occurred within the judge's jurisdiction.
- 21 (5) (I) IN THIS PARAGRAPH, "LEGALLY PROTECTED HEALTH 22 CARE" HAS THE MEANING STATED IN § 2–312 OF THE STATE PERSONNEL AND 23 PENSIONS ARTICLE.
- 24 (II) A JUDGE MAY NOT ISSUE AN EX PARTE ORDER UNDER THIS
 25 SECTION FOR THE PURPOSE OF INVESTIGATING OR RECOVERING EVIDENCE OF
 26 ACTIONS RELATED TO LEGALLY PROTECTED HEALTH CARE, UNLESS THE ACTS
 27 FORMING THE BASIS FOR THE INVESTIGATION OR RECOVERY OF EVIDENCE WOULD
 28 CONSTITUTE A CRIME IN THIS STATE.
- 29 11–802.

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- 30 (a) (1) In this subsection, "legally protected health care" has 31 the meaning stated under § 2–312 of the State Personnel and Pensions 32 Article.
- 33 **(2)** (i) Except as provided in subparagraphs (ii) [and], (iii), AND (IV) of 34 this paragraph, a copy of any foreign judgment authenticated in accordance with an act of 35 Congress or statutes of this State may be filed in the office of the clerk of a circuit court.

- 1 If the face amount of the judgment is \$2,500 or less, the copy 2 shall be filed with the clerk of the District Court. 3 If the face amount of the judgment is not more than a jurisdictional amount described in § 4–401 of this article, but more than \$2,500, the copy 4 may be filed either with the clerk of the District Court or in the office of the clerk of a circuit 5 court. 6 7 (IV) EXCEPT AS REQUIRED BY FEDERAL LAW, A JUDGMENT 8 CREDITOR MAY NOT FILE A COPY OF ANY FOREIGN JUDGMENT UNDER THIS SECTION 9 IF THE JUDGMENT WAS ISSUED IN CONNECTION WITH ANY LITIGATION CONCERNING 10 LEGALLY PROTECTED HEALTH CARE, UNLESS THE UNDERLYING CAUSE OF ACTION 11 IS:
- 12 BASED IN TORT, CONTRACT, OR STATUTE;
- 2. A CLAIM FOR WHICH A SIMILAR OR EQUIVALENT
 CLAIM WOULD EXIST IN THE STATE; AND
- 3. A. BROUGHT BY THE PATIENT WHO RECEIVED LEGALLY PROTECTED HEALTH CARE, OR THE PATIENT'S LEGAL REPRESENTATIVE; OR
- B. BASED ON CONDUCT THAT WOULD BE PROHIBITED UNDER THE LAWS OF THIS STATE.
- 20 **[(2)] (3)** The clerk shall treat the foreign judgment in the same manner as a judgment of the court in which the foreign judgment is filed.
- 22 Article Criminal Procedure
- 23 9–106.
- (a) (1) [The] EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION,
 THE Governor of this State may also surrender, on demand of the executive authority of
 any other state, any person in this State charged in the other state in the manner provided
 in § 9–103 of this title with committing an act in this State or in a third state that
 intentionally results in a crime in the state whose executive authority is making the
 demand.
- [(b)] (2) The provisions of this title that are not otherwise inconsistent shall apply to [those] cases **DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION**, even though the accused was not in that state at the time of the commission of the crime and has not fled therefrom.

- 1 (B) (1) IN THIS SUBSECTION, "LEGALLY PROTECTED HEALTH CARE 2 SERVICES" HAS THE MEANING STATED IN § 20–211 OF THE HEALTH GENERAL 3 2–312 OF THE STATE PERSONNEL AND PENSIONS ARTICLE.
- 4 (2) UNLESS COMPELLED BY A WRIT OF MANDAMUS ISSUED BY A 5 FEDERAL COURT, THE GOVERNOR MAY NOT SURRENDER A PERSON ON DEMAND OF 6 THE EXECUTIVE AUTHORITY OF ANY OTHER STATE IF THE ALLEGED ACT FOR WHICH 5 SURRENDER IS BEING DEMANDED RELATES TO PROVIDING, PROCURING, OR AIDING 8 ANOTHER IN PROVIDING OR PROCURING LEGALLY PROTECTED HEALTH CARE 9 SERVICES AND THE ACT WOULD NOT BE A CRIME IN THE STATE.

Article - Health Occupations

11 **1–227.**

- 12 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS 13 INDICATED.
- 14 (2) "HEALTH CARE PRACTITIONER" MEANS AN INDIVIDUAL WHO IS A
 15 LICENSED, CERTIFIED, OR OTHERWISE AUTHORIZED BY LAW TO PROVIDE HEALTH
 16 CARE SERVICES UNDER THIS ARTICLE.
- 17 (3) "LEGALLY PROTECTED HEALTH CARE" HAS THE MEANING 18 STATED IN § 2–312 OF THE STATE PERSONNEL AND PENSIONS ARTICLE.
- 19 A HEALTH OCCUPATIONS BOARD MAY NOT REVOKE, SUSPEND, 20 DISCIPLINE, TAKE AN ADVERSE ACTION AGAINST, OR REFUSE TO ISSUE OR RENEW A LICENSE, CERTIFICATION, OR OTHER AUTHORIZATION TO PRACTICE FOR ANY 21 22HEALTH CARE PRACTITIONER IN WHOLE OR IN PART BECAUSE OF THE PROVISION 23 OR SUPPORT OF THE PROVISION OF LEGALLY PROTECTED HEALTH CARE IF THE LEGALLY PROTECTED HEALTH CARE WAS PROVIDED IN ACCORDANCE WITH THE 24STANDARD OF CARE AS DETERMINED BY THE RELEVANT HEALTH OCCUPATIONS 2526 BOARD ESTABLISHED UNDER THIS ARTICLE AND IN ACCORDANCE WITH THE LAWS OF THIS STATE. 27
- 28 A HEALTH OCCUPATIONS BOARD MAY NOT REVOKE, SUSPEND, DISCIPLINE, TAKE AN ADVERSE ACTION AGAINST, OR REFUSE TO ISSUE OR RENEW A 29 LICENSE, CERTIFICATION, OR OTHER AUTHORIZATION TO PRACTICE FOR ANY 30 31 HEALTH CARE PRACTITIONER IF THE HEALTH CARE PRACTITIONER IS DISCIPLINED 32 BY A LICENSURE BOARD IN ANOTHER STATE IN WHOLE OR IN PART BECAUSE OF THE 33 PROVISION OR SUPPORT OF THE PROVISION OF LEGALLY PROTECTED HEALTH CARE 34 IF THE LEGALLY PROTECTED HEALTH CARE WAS PROVIDED IN ACCORDANCE WITH 35 THE STANDARD OF CARE AS DETERMINED BY THE RELEVANT HEALTH OCCUPATIONS

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1 BOARD ESTABLISHED UNDER THIS ARTICLE AND IN ACCORDANCE WITH THE LAWS OF THIS STATE.

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3	Article – Insurance
4	15–857.
5	(a) (1) This section applies to:
6 7 8	(i) insurers and nonprofit health service plans that provide labor and delivery coverage to individuals or groups on an expense—incurred basis under health insurance policies or contracts that are issued or delivered in the State; and
9 10 11	(ii) health maintenance organizations that provide labor and delivery coverage to individuals or groups under contracts that are issued or delivered in the State.
12	(2) This section does not apply to [:
13 14	(i)] a multistate plan that does not provide coverage for abortions in accordance with 42 U.S.C. § 18054(a)(6)[; or
15 16 17 18	(ii) a high-deductible plan, as defined in 26 U.S.C. § 223(c)(2)(C) of the Internal Revenue Code, unless the Commissioner determines that abortion care is not excluded from the safe harbor provisions for preventive care under § 223(c)(2)(C) of the Internal Revenue Code].
19 20 21 22	(3) An organization that is eligible to obtain an exclusion from the coverage requirements under § 15–826 of this subtitle may obtain from an entity subject to this section an exclusion from the coverage and notice requirements of this section if the requirements conflict with the organization's bona fide religious beliefs and practices.
23 24	(b) Except as provided in subsection (c) OR (D) of this section, an entity subject to this section shall:
25	(1) cover abortion care services without:
26 27	(i) a deductible, coinsurance, copayment, or any other cost—sharing requirement; and
28 29	(ii) restrictions that are inconsistent with the protected rights under Title 20, Subtitle 2 of the Health – General Article; and
30	(2) provide information to consumers about abortion care coverage using

the terminology "abortion care" to describe coverage.

- 1 (c) If the Commissioner determines that enforcement of this section may 2 adversely affect the allocation of federal funds to the State, the Commissioner may grant 3 an exemption to the requirements of this section to the minimum extent necessary to 4 ensure the continued receipt of federal funds.
- (D) A HIGH-DEDUCTIBLE PLAN, AS DEFINED IN 26 U.S.C. § 223(C)(2)(C) OF THE INTERNAL REVENUE CODE, IS EXEMPT FROM THE REQUIREMENTS OF THIS SECTION IF THE COMMISSIONER DETERMINES THAT ABORTION CARE SERVICES ARE EXCLUDED FROM THE SAFE HARBOR PROVISIONS FOR PREVENTIVE CARE UNDER § 223(C)(2)(C) OF THE INTERNAL REVENUE CODE.
- 10 **19–117.**
- 11 (A) (1) IN THIS SECTION, "ADVERSE ACTION" INCLUDES:
- 12 (1) REFUSING TO RENEW OR EXECUTE A CONTRACT OR 13 AGREEMENT WITH A HEALTH CARE PRACTITIONER;
- 14 (2) (II) MAKING A REPORT OR COMMENTING TO AN APPROPRIATE
 15 PRIVATE OR GOVERNMENTAL ENTITY REGARDING PRACTICES OF
 16 LEGALLY PROTECTED HEALTH CARE AS DEFINED IN § 2–312 OF THE STATE
 17 PERSONNEL AND PENSIONS ARTICLE; AND
- 18 (3) (III) INCREASING A PREMIUM FOR OR MAKING ANOTHER TYPE
 19 OF UNFAVORABLE CHANGE REGARDING TERMS OF COVERAGE UNDER A MEDICAL
 20 PROFESSIONAL LIABILITY INSURANCE CONTRACT AGREEMENT WITH A HEALTH
 21 CARE PRACTITIONER.
- 22 (2) "ADVERSE ACTION" DOES NOT INCLUDE MAKING A RATE FILING
 23 IN ACCORDANCE WITH § 11–206 OF THIS ARTICLE.
- (B) AN INSURER THAT ISSUES TO, DELIVERS TO, OR RENEWS MEDICAL PROFESSIONAL LIABILITY INSURANCE FOR A HEALTH CARE PRACTITIONER LICENSED, CERTIFIED, OR OTHERWISE AUTHORIZED BY LAW TO PRACTICE IN THE STATE MAY NOT TAKE ADVERSE ACTION AGAINST A HEALTH CARE PRACTITIONER IN WHOLE OR IN PART BECAUSE THE HEALTH CARE PRACTITIONER PROVIDES LEGALLY PROTECTED HEALTH CARE OR MAKES A REFERRAL FOR LEGALLY PROTECTED HEALTH CARE.
- 31 (C) THIS SECTION DOES NOT PROHIBIT THE MEDICAL PROFESSIONAL 32 LIABILITY INSURER FROM TAKING ADVERSE ACTION AGAINST A HEALTH CARE 33 PRACTITIONER FOR CONDUCT THAT WOULD OTHERWISE CONSTITUTE 34 PROFESSIONAL MISCONDUCT.

Article - State Personnel and Pensions

2 **2–312.**

- 3 (A) IN THIS SECTION, "LEGALLY PROTECTED HEALTH CARE" MEANS ALL
- 4 REPRODUCTIVE HEALTH SERVICES, MEDICATIONS, AND SUPPLIES RELATED TO THE
- 5 DIRECT PROVISION OR SUPPORT OF THE PROVISION OF CARE RELATED TO
- 6 PREGNANCY, CONTRACEPTION, ASSISTED REPRODUCTION, AND ABORTION THAT IS
- 7 LAWFUL IN THE STATE.
- 8 (B) THIS SECTION DOES NOT APPLY TO AN INTERSTATE INVESTIGATION OR
- 9 PROCEEDING DESCRIBED UNDER SUBSECTION (C) OF THIS SECTION IF:
- 10 (1) THE INTERSTATE INVESTIGATION OR PROCEEDING CONCERNS
- 11 CONDUCT THAT WOULD BE SUBJECT TO CIVIL LIABILITY, CRIMINAL LIABILITY, OR
- 12 ADMINISTRATIVE SANCTION IF COMMITTED IN THE STATE; OR
- 13 (2) THE SUBJECT OF THE INTERSTATE INVESTIGATION OR
- 14 PROCEEDING SUBMITS A WRITTEN REQUEST TO PROVIDE INFORMATION OR
- 15 ASSISTANCE TO THE INVESTIGATION OR PROCEEDING.
- 16 (C) AN AGENCY OF THE STATE OR A POLITICAL SUBDIVISION OF THE STATE,
- 17 AN AGENT OR EMPLOYEE OF THE STATE OR A POLITICAL SUBDIVISION OF THE
- 18 STATE ACTING IN THE AGENT'S OR EMPLOYEE'S OFFICIAL CAPACITY, OR A PRIVATE
- 19 PARTY PROVIDING SERVICES ON BEHALF OF THE STATE OR A POLITICAL
- 20 SUBDIVISION OF THE STATE, MAY NOT PROVIDE INFORMATION, EXPEND TIME OR
- 21 MONEY, OR USE STATE FACILITIES, STATE PROPERTY, STATE EQUIPMENT, STATE
- 22 PERSONNEL, OR OTHER STATE RESOURCES IN FURTHERANCE OF ANY INTERSTATE
- 22 TEMOONNEE, OR OTHER STREET RESOURCES IN TOUTHERMORE OF THAT INTERESTREE
- 23 INVESTIGATION OR PROCEEDING SEEKING TO IMPOSE CIVIL OR CRIMINAL
- 24 LIABILITY ON, OR ADMINISTRATIVE SANCTION AGAINST, A PERSON FOR ANY
- 25 ACTIVITY RELATING TO LEGALLY PROTECTED HEALTH CARE IF THE ACTIVITY
- 26 WOULD NOT BE SUBJECT TO CIVIL OR CRIMINAL LIABILITY OR PROFESSIONAL
- 27 SANCTION IN THE STATE.
- SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
- 29 October June 1, 2023.