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HOUSE BILL NO. 1090

Offered January 13, 2016

Prefiled January 13, 2016

A *BILL to amend the Code of Virginia by adding in Article 3 of Chapter 1 of Title 32.1 a section numbered 32.1-23.2, relating to the Department of Health; expenditure of funds related to abortions and family planning services.*

Patrons—Cline, Miller, Adams, Anderson, Austin, Bell, Richard P., Byron, Campbell, Cole, Cox, Fariss, Farrell, Fowler, Freitas, Garrett, Gilbert, Greason, Head, Hodges, Hugo, Ingram, LaRock, Marshall, D.W., Marshall, R.G., Massie, Morris, O'Bannon, Orrock, Peace, Pogge, Poindexter, Taylor, Villanueva, Webert, Wilt and Wright

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 3 of Chapter 1 of Title 32.1 a section numbered 32.1-23.2 as follows:

§ 32.1-23.2. Expenditures for abortions and family planning services.

A. For the purposes of this section, unless the context requires a different meaning:

"Federally qualified abortion" means an abortion qualified for federal matching funds under the Medicaid program, 42 U.S.C.A. § 1396 et seq., as amended.

"Federally qualified health center" means a health care provider that is eligible to receive federal funds under 42 U.S.C. § 1396d(1)(2)(B).

"Hospital" has the same meaning as that term is defined in § 32.1-123.

"Public funds" means state funds from whatever source, including without limitation state general funds, nongeneral funds, state limited-purpose grants or loans, and federal funds administered by state agencies pursuant to Title X of the Public Health Service Act (42 U.S.C. § 300 et seq.), Title IV (42 U.S.C. § 601 et seq.), Title V (42 U.S.C. § 701 et seq.), and Title XX (42 U.S.C. § 1397 et seq.) of the Social Security Act and similar federal programs.

"Rural health clinic" means a health care provider that is eligible to receive federal funds under 42 U.S.C. § 1395x(aa)(2).

B. The Department shall not enter into a contract with, or make a grant to, any entity that performs abortions that are not federally qualified abortions or maintains or operates a facility where non-federally qualified abortions are performed, provided, however, that nothing in this subsection shall be construed to apply to the receipt or administration of funds pursuant to 42 U.S.C. § 1396 et seq.

C. Subject to any applicable requirements of federal statutes, rules, regulations, or guidelines, any expenditures or grants of public funds for family planning services by the Commonwealth by and through the Department shall be made in the following order of priority:

1. To public entities;

2. To nonpublic hospitals and federally qualified health centers;

3. To rural health clinics;

4. To nonpublic health providers that have as their primary purpose the provision of the primary health care services enumerated in 42 U.S.C. § 254b(a)(1);

5. To nonpublic health providers that do not have as their primary purpose the provision of the primary health care services enumerated in 42 U.S.C. § 254b(a)(1).

D. The Attorney General shall have authority to bring an action in law or equity to enforce the provisions of this section, and relief shall be available in appropriate circumstances, including recoupment and declaratory and injunctive relief.

E. Any entity eligible for the receipt of public funds shall possess standing to bring any action that the Attorney General has authority to bring pursuant to the provisions of subsection D, and shall in appropriate circumstances be entitled to the same relief, provided, however, that an expenditure or grant of public funds made in violation of this section has resulted in the reduction of public funds available to such entity, and that any award of monetary relief shall be made to an appropriate public officer for deposit into one or more accounts maintained by the state for public funds. In an action brought pursuant to this subsection, a prevailing plaintiff shall be entitled to an award of reasonable attorney fees and costs.

F. Either the House of Delegates or the Senate, through one or more delegates or through one or more senators duly appointed by resolution of their respective chamber, may intervene as a matter of

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HB1090

56 *right in any case in which the constitutionality of this section is challenged.*

57 *G. Any expenditure of public funds made by the Department that is prohibited by subsection B shall*

58 *be null and void and the funds so expended shall be reallocated to eligible entities.*