

23100152D

HOUSE BILL NO. 1999

Offered January 11, 2023

Prefiled January 10, 2023

A *BILL to amend the Code of Virginia by adding in Chapter 5 of Title 32.1 an article numbered 9, consisting of sections numbered 32.1-162.15:12 through 32.1-162.15:17, relating to Right to Contraception Act.*

Patrons—Kory and Guzman

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 5 of Title 32.1 an article numbered 9, consisting of sections numbered 32.1-162.15:12 through 32.1-162.15:16, as follows:

*Article 9.**Right to Contraception Act.***§ 32.1-162.15:12. Definitions.**

As used in this article, unless the context requires a different meaning:

"Birth control" means contraceptive methods that are approved by the U.S. Food and Drug Administration. "Birth control" shall not be considered abortion for the purposes of Title 18.2.

"Contraception" means an action taken to prevent pregnancy, including the use of contraceptives or fertility-awareness based methods and sterilization procedures.

"Contraceptive" means any drug, device, or biological product intended for use in the prevention of pregnancy, whether specifically intended to prevent pregnancy or for other health needs, that is legally marketed under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et seq.), such as oral contraceptives, long-acting reversible contraceptives, emergency contraceptives, internal and external condoms, injectables, vaginal barrier methods, transdermal patches, and vaginal rings, or other contraceptives.

"Government" means each branch, department, agency, instrumentality, and official of the United States or the Commonwealth of Virginia.

"Health care provider" means (i) a person, a corporation, a facility, or an institution licensed by the Commonwealth to provide health care or professional services as a physician or hospital, a dentist, a pharmacist, a registered nurse or licensed practical nurse or person who holds a multistate privilege to practice such nursing under the Nurse Licensure Compact (§ 54.1-3040.1 et seq.), a nurse practitioner, an optometrist, a podiatrist, a physician assistant, a chiropractor, a physical therapist, a physical therapy assistant, a clinical psychologist, a clinical social worker, a professional counselor, a licensed marriage and family therapist, a licensed dental hygienist, a health maintenance organization, or an emergency medical services personnel who provides services on a fee basis; (ii) a professional corporation, all of whose shareholders or members are so licensed; (iii) a partnership, all of whose partners are so licensed; (iv) a nursing home as defined in § 54.1-3100, except those nursing institutions conducted by and for those who rely upon treatment by spiritual means alone through prayer in accordance with a recognized church or religious denomination; (v) a professional limited liability company composed of members as described in subdivision 2 of the definition of professional services in subsection A of § 13.1-1102; (vi) a corporation, a partnership, a limited liability company, or any other entity, except a state-operated facility, that employs or engages a licensed health care provider and primarily renders health care services; or (vii) a director, an officer, an employee, an independent contractor, or an agent of a person or an entity referenced in this definition, acting within the course and scope of his employment or engagement as related to health care or professional services.

§ 32.1-162.15:13. Permitted services; exception.

A. A person has a statutory right under this article to obtain contraceptives and to engage in contraception, and a health care provider has a corresponding right to provide contraceptives, contraception, and information related to contraception.

B. The statutory rights specified in subsection A shall not be limited or otherwise infringed through any limitation or requirement that:

1. Expressly, effectively, implicitly, or as implemented singles out the provision of contraceptives, contraception, or information related to contraception, health care providers who provide contraceptives, contraception, or information related to contraception, or facilities in which contraceptives, contraception, or information related to contraception is provided; and

2. Impedes access to contraceptives, contraception, or information related to contraception.

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59 C. To defend against a claim that a limitation or requirement violates a health care provider's or
60 patient's statutory rights under subsection B, a party must establish by clear and convincing evidence
61 that:

62 1. The limitation or requirement significantly advances access to contraceptives, contraception, and
63 information related to contraception; and

64 2. Access to contraceptives, contraception, and information related to contraception or the health of
65 patients cannot be advanced by a less restrictive alternative measure or action.

66 **§ 32.1-162.15:14. General application; limitations; defenses.**

67 A. Except as stated under subsection B, this article supersedes and applies to the laws of the
68 Commonwealth, and the implementation of such law, whether statutory, common law, or otherwise, and
69 whether adopted before or after July 1, 2023. The Commonwealth or its localities shall not administer,
70 implement, or enforce any law, rule, regulation, standard, or other provision having the force and effect
71 of law that conflicts with any provision of this article, notwithstanding any provision of federal law,
72 including the Religious Freedom Restoration Act of 1993 (42 U.S.C. § 2000bb et seq.).

73 B. Laws of the Commonwealth adopted after July 1, 2023 are subject to this article unless such laws
74 explicitly exclude such application by reference to this article.

75 C. The provisions of this article shall not supersede or otherwise affect any provision of federal law
76 relating to coverage under, and shall not be construed as requiring the provision of specific benefits
77 under, group health plans or group or individual health insurance coverage or coverage under a federal
78 health care program, as defined in § 1128B(f) of the Social Security Act (42 U.S.C. § 1320a-7b(f)),
79 including coverage provided under § 1905(a)(4)(C) of the Social Security Act (42 U.S.C.
80 § 1396d(a)(4)(C)) and § 2713 of the Public Health Service Act (42 U.S.C. § 300gg-13).

81 D. In any cause of action against an individual or entity that is subject to a limitation or
82 requirement that violates this article, in addition to the remedies specified in § 32.1-162.15:16, this
83 article shall also apply to, and may be raised as a defense by, such an individual or entity.

84 **§ 32.1-162.15:15. Rules of construction.**

85 A. In interpreting the provisions of this article, a court shall liberally construe such provisions to
86 effectuate the purposes of this article.

87 B. Nothing in this article shall be construed:

88 1. To authorize any government to interfere with a health care provider's ability to provide
89 contraceptives or information related to contraception or a patient's ability to obtain contraceptives or
90 to engage in contraception; or

91 2. To permit or sanction the conduct of any sterilization procedure without the patient's voluntary
92 and informed consent.

93 C. Any person who by operation of a provision of federal or state law is permitted to implement or
94 enforce a limitation or requirement that violates § 32.1-162.15:13 shall be considered a government
95 official for purposes of this article.

96 **§ 32.1-162.15:16. Enforcement.**

97 A. The Office of the Attorney General may commence a civil action on behalf of the Commonwealth
98 against any locality that implements or enforces any limitation or requirement that violates
99 § 32.1-162.15:13, or against any government official, including a person described in subsection C of
100 § 32.1-162.15:15, who implements or enforces any limitation or requirement that violates
101 § 32.1-162.15:13. The court shall hold unlawful and set aside the limitation or requirement if it is in
102 violation of this article.

103 B. The following private right of action are available under this article:

104 1. Any individual or entity, including any health care provider or patient, adversely affected by an
105 alleged violation of this article may commence a civil action against the Commonwealth or any locality
106 that implements or enforces any limitation or requirement that violates § 32.1-162.15:13 or against any
107 government official, including a person described in subsection C of § 32.1-162.15:15, who implements
108 or enforces any limitation or requirement that violates § 32.1-162.15:13. The court shall hold unlawful
109 and set aside the limitation or requirement if it is in violation of this article.

110 2. A health care provider may commence an action for relief on its own behalf, on behalf of the
111 provider's staff, and on behalf of the provider's patients who are or may be adversely affected by an
112 alleged violation of this article.

113 C. In any action under this section, the court may award appropriate equitable relief, including
114 temporary, preliminary, or permanent injunctive relief.

115 D. In any action under this section, the court shall award costs of litigation, as well as reasonable
116 attorney fees, to any prevailing plaintiff. A plaintiff shall not be liable to a defendant for costs or
117 attorney fees in any nonfrivolous action under this section.

118 E. The circuit courts shall have jurisdiction over proceedings under this article and shall exercise the
119 same without regard to whether the party aggrieved shall have exhausted any administrative or other
120 remedies that may be provided for by law.

121 *F. Neither a locality that enforces or maintains any limitation or requirement that violates*
122 *§ 32.1-162.15:13, nor a government official, including a person described in subsection C of*
123 *§ 32.1-162.15:15, who is permitted to implement or enforce any limitation or requirement that violates*
124 *§ 32.1-162.15:13, shall be immune from an action challenging that limitation or requirement.*

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