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SENATE BILL NO. 237

Offered January 10, 2024

Prefiled January 9, 2024

A *BILL to amend the Code of Virginia by adding in Title 32.1 a chapter numbered 21, consisting of sections numbered 32.1-376, 32.1-377, and 32.1-378, relating to contraception; right to contraception; applicability; enforcement.*

Patrons—Hashmi, Boysko and Williams Graves

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 32.1 a chapter numbered 21, consisting of sections numbered 32.1-376, 32.1-377, and 32.1-378, as follows:

**CHAPTER 21.
CONTRACEPTION.**

§ 32.1-376. Right to contraception.

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

"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.), including oral contraceptives, long-acting reversible contraceptives such as intrauterine devices and hormonal contraceptive implants, emergency contraceptives, internal and external condoms, injectables, vaginal barrier methods, transdermal patches, and vaginal rings.

"Health care provider" means the same as that term is defined in § 8.01-581.1.

B. A person shall have the right to obtain contraceptives and to engage in contraception. A health care provider shall have the corresponding right to provide contraceptives, contraception, and contraception-related information.

C. The rights specified in subsection B shall not be limited or otherwise infringed upon by any limitation or requirement that both:

1. Expressly, effectively, implicitly, or as implemented solely addresses the provision of contraceptives, contraception, or contraception-related information or health care providers that provide contraceptives, contraception, or contraception-related information; and

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

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

1. The limitation or requirement significantly advances the safety of contraceptives, contraception, and contraception-related information; and

2. The safety of contraceptives, contraception, and contraception-related information or the health of patients cannot be advanced by a less restrictive alternative measure or action.

§ 32.1-377. Applicability.

A. Neither the Commonwealth nor any locality may administer, implement, or enforce any law, rule, regulation, standard, or other provision having the force and effect of law in a manner that:

1. Prohibits or restricts the sale, provision, or use of any contraceptives that have been approved by the U.S. Food and Drug Administration for contraceptive purposes.

2. Prohibits or restricts any person from aiding another person in obtaining any contraceptives approved by the U.S. Food and Drug Administration or utilizing any contraceptive methods.

3. Exempts any contraceptives approved by the U.S. Food and Drug Administration from any other generally applicable law in a way that would make it more difficult to sell, provide, obtain, or use those contraceptives or contraceptive methods.

B. This chapter does not supersede or otherwise affect any provision relating to coverage under group health plans or group or individual health insurance coverage and may not be construed as requiring the provision of specific benefits under these plans or coverage.

C. An individual or entity that is subject to a limitation or requirement that violates this chapter may raise this section as a defense to any cause of action against the individual or entity.

D. This chapter shall apply notwithstanding any other provision of law, including § 57-2.02.

59 **§ 32.1-378. Enforcement.**

60 A. The attorney general may commence a civil action on behalf of the state against any person that
61 violates or enforces a limitation or requirement that violates the provisions of this chapter.

62 B. Any individual or entity, including any health care provider or patient, adversely affected by an
63 alleged violation of this chapter may commence a civil action against any person that violates or
64 implements or enforces a limitation or requirement that violates this chapter.

65 C. A health care provider may commence an action for relief on the provider's own behalf, on behalf
66 of the provider's staff, and on behalf of the provider's patients who are or may be adversely affected by
67 an alleged violation of this chapter.

68 D. If a court finds that there has been a violation of this chapter, the court shall hold unlawful and
69 set aside the limitation or requirement. In any action under this chapter, the court may award
70 appropriate equitable relief, including temporary, preliminary, or permanent injunctive relief.