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SENATE BILL NO. 237

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the Senate Committee on Education and Health  
on February 8, 2024)

(Patron Prior to Substitute—Senator Hashmi)

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.

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 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 right to provide contraceptives and contraception-related information.

C. The rights specified in subsection B shall not be infringed upon by any law, regulation, or policy that expressly or effectively limits, delays, or impedes access to contraceptives or information related to contraception.

D. To defend against a claim that a law, regulation, or policy 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 law, regulation, or policy significantly advances the safety of contraceptives, contraception, and contraception-related information; and 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; or

2. The law, regulation, or policy that is being applied to contraception is also being applied to other medically similar drugs, devices, or biological products.

§ 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. An individual or entity that is subject to a law, regulation, or policy that violates this chapter may raise this section as a defense to any cause of action against the individual or entity.

§ 32.1-378. Enforcement.

A. The attorney general may commence a civil action on behalf of the state against any person that violates or enforces a law, regulation, or policy that violates the provisions of this chapter.

B. Any individual or entity, including any health care provider or patient, adversely affected by an alleged violation of this chapter may commence a civil action against any person that violates or implements or enforces a law, regulation, or policy in violation of this chapter.

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

**60** *D. If a court finds that there has been a violation of this chapter, the court shall hold unlawful and*  
**61** *set aside the law, regulation, or policy. In any action under this chapter, the court may award*  
**62** *appropriate equitable relief, including temporary, preliminary, or permanent injunctive relief.*