VIRGINIA ACTS OF ASSEMBLY -- 2021 SPECIAL SESSION I

CHAPTER 465

An Act to amend and reenact §§ 18.2-52.1, 18.2-67.4:1, 18.2-346.1, 32.1-291.16, 54.1-2982, 54.1-2983, and 57-48 of the Code of Virginia and to repeal §§ 18.2-62 and 32.1-289.2 of the Code of Virginia, relating to sexually transmitted infections, infected sexual battery.

[S 1138]

Approved March 31, 2021

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-52.1, 18.2-67.4:1, 18.2-346.1, 32.1-291.16, 54.1-2982, 54.1-2983, and 57-48 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-52.1. Possession of infectious biological substances or radiological agents; penalties.

A. Any person who possesses, with the intent thereby to injure another, an infectious biological substance or radiological agent is guilty of a Class 5 felony.

B. Any person who (i) destroys or damages, or attempts to destroy or damage, any facility, equipment or material involved in the sale, manufacturing, storage or distribution of an infectious biological substance or radiological agent, with the intent to injure another by releasing the substance, or (ii) manufactures, sells, gives, distributes or uses an infectious biological substance or radiological agent with the intent to injure another is guilty of a Class 4 felony.

C. Any person who maliciously and intentionally causes any other person bodily injury by means of an infectious biological substance or radiological agent is guilty of a felony and shall be punished by confinement in a state correctional facility for a period of not less than five years nor more than 30 years.

D. For purposes of this section:

An "infectious biological substance" includes any bacteria, viruses, fungi, protozoa, or rickettsiae capable of causing death or serious bodily injury. ~~This definition shall~~ *"Infectious biological substance" does* not include *the human immunodeficiency virus (*HIV ~~as defined in § 18.2-67.4:1~~*) or any other related virus that causes acquired immunodeficiency syndrome (AIDS),* syphilis, or hepatitis B.

A "radiological agent" includes any substance able to release radiation at levels that are capable of causing death or serious bodily injury.

§ 18.2-67.4:1. Infected sexual battery; penalty.

A. Any person who~~, knowing he is infected with HIV, syphilis, or hepatitis B, has sexual intercourse, cunnilingus, fellatio, anilingus or anal intercourse~~ *is diagnosed with a sexually transmitted infection and engages in sexual behavior that poses a substantial risk of transmission to another person* with the intent to transmit the infection to ~~another~~ *that* person *and transmits such infection to that person* is guilty of a Class 6 felony.

B. ~~Any person who, knowing he is infected with HIV, syphilis, or hepatitis B, has sexual intercourse, cunnilingus, fellatio, anilingus or anal intercourse with another person without having previously disclosed the existence of his infection to the other person is guilty of a Class 1 misdemeanor.~~

~~C. "HIV" means the human immunodeficiency virus or any other related virus that causes acquired immunodeficiency syndrome (AIDS).~~

Nothing in this section shall prevent the prosecution of any other crime against persons under Chapter 4 (§ 18.2-30 et seq.) ~~of this title. Any person charged with a violation of this section alleging he is infected with HIV shall be subject to the testing provisions of § 18.2-62.~~

§ 18.2-346.1. Testing of convicted prostitutes and injection drug users for sexually transmitted infection.

A. As soon as practicable following conviction of any person for violation of § 18.2-346 or 18.2-361, ~~or~~ any violation of Article 1 (§ 18.2-247 et seq.) or 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 involving the possession, sale, or use of a controlled substance in a form amenable to intravenous use~~;~~, or the possession, sale, or use of hypodermic syringes, needles, or other objects designed or intended for use in parenterally injecting controlled substances into the human body, such person shall be ~~required~~ *provided the option* to submit to testing for ~~infection with human immunodeficiency viruses and hepatitis C~~ *a sexually transmitted infection*. The convicted person shall receive counseling from personnel of the Department of Health concerning (i) the meaning of the test, (ii) ~~acquired immunodeficiency syndrome and hepatitis C~~ *sexually transmitted infections,* and (iii) the transmission and prevention of ~~infection with human immunodeficiency viruses and hepatitis C~~ *sexually transmitted infections*.

B. ~~Tests for human immunodeficiency viruses shall be conducted to confirm any initial positive test results before any test result shall be determined to be positive for infection.~~ *Any tests performed pursuant to this section shall be consistent with current Centers for Disease Control and Prevention recommendations.* The results of such test *for a sexually transmitted infection* shall be confidential as

provided in § 32.1-36.1 and shall be disclosed to the person who is the subject of the test and to the Department of Health as required by § 32.1-36. The Department shall conduct surveillance and investigation in accordance with the requirements of § 32.1-39.

C. Upon receiving a report of a positive test for hepatitis C, the State Health Commissioner may share protected health information relating to such positive test with relevant sheriffs' offices, the state police, local police departments, adult or youth correctional facilities, salaried or volunteer firefighters, paramedics or emergency medical technicians, officers of the court, and regional or local jails (i) to the extent necessary to advise exposed individuals of the risk of infection and to enable exposed individuals to seek appropriate testing and treatment~~,~~ and (ii) as may be needed to prevent and control disease and is deemed necessary to prevent serious harm and serious threats to the health and safety of individuals and the public.

The disclosed protected health information shall be held confidential; no person to whom such information is disclosed shall redisclose or otherwise reveal the protected health information without first obtaining the specific authorization from the individual who was the subject of the test for such redisclosure.

Such protected health information shall only be used to protect the health and safety of individuals and the public in conformance with the regulations concerning patient privacy promulgated by the federal Department of Health and Human Services, as such regulations may be amended.

D. The results of the tests shall not be admissible in any criminal proceeding ~~related to prostitution or drug use~~.

The cost of the tests shall be paid by the Commonwealth and taxed as part of the cost of such criminal proceedings.

§ 32.1-291.16. Sale or purchase of parts prohibited; penalty.

A. With the exception of hair, ova, blood, and other self-replicating body fluids, it shall be unlawful for any person to sell, to offer to sell, to buy, to offer to buy, or to procure through purchase any natural body part for any reason including, but not limited to, medical and scientific uses such as transplantation, implantation, infusion, or injection. Any person engaging in any of these prohibited activities shall be guilty of a Class 4 felony.

B. Nothing in this section shall prohibit the reimbursement of reasonable expenses associated with the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.

C. This section shall not be construed to prohibit the donation of any organs, tissues, or any natural body part, knowing that the donor is, or was, infected with a sexually transmitted infection, for use in medical or scientific research.

D. Notwithstanding the provisions of subsection A, this section shall not prohibit the donation or acquisition of organs for transplantation, provided that (i) the recipient of such organ is informed that such organ is infected with human immunodeficiency virus and, following such notice, consents to the receipt of such organ and (ii) acquisition and transplantation of such organ is in compliance with the provisions of the federal HIV Organ Policy Equity Act, 42 U.S.C. § 274f-5.

§ 54.1-2982. Definitions.

As used in this article:

"Advance directive" means (i) a witnessed written document, voluntarily executed by the declarant in accordance with the requirements of § 54.1-2983 or (ii) a witnessed oral statement, made by the declarant subsequent to the time he is diagnosed as suffering from a terminal condition and in accordance with the provisions of § 54.1-2983.

"Agent" means an adult appointed by the declarant under an advance directive, executed or made in accordance with the provisions of § 54.1-2983, to make health care decisions for him. The declarant may also appoint an adult to make, after the declarant's death, an anatomical gift of all or any part of his body pursuant to Article 2 (§ ~~32.1-289.2~~ *32.1-291.1* et seq.) of Chapter 8 of Title 32.1.

"Attending physician" means the primary physician who has responsibility for the health care of the patient.

"Capacity reviewer" means a licensed physician or clinical psychologist who is qualified by training or experience to assess whether a person is capable or incapable of making an informed decision.

"Declarant" means an adult who makes an advance directive, as defined in this article, while capable of making and communicating an informed decision.

"Durable Do Not Resuscitate Order" means a written physician's order issued pursuant to § 54.1-2987.1 to withhold cardiopulmonary resuscitation from a particular patient in the event of cardiac or respiratory arrest. For purposes of this article, cardiopulmonary resuscitation shall include cardiac compression, endotracheal intubation and other advanced airway management, artificial ventilation, and defibrillation and related procedures. As the terms "advance directive" and "Durable Do Not Resuscitate Order" are used in this article, a Durable Do Not Resuscitate Order is not and shall not be construed as an advance directive.

"Health care" means the furnishing of services to any individual for the purpose of preventing, alleviating, curing, or healing human illness, injury or physical disability, including but not limited to,

medications; surgery; blood transfusions; chemotherapy; radiation therapy; admission to a hospital, nursing home, assisted living facility, or other health care facility; psychiatric or other mental health treatment; and life-prolonging procedures and palliative care.

"Health care provider" shall have the same meaning as provided in § 8.01-581.1.

"Incapable of making an informed decision" means the inability of an adult patient, because of mental illness, intellectual disability, or any other mental or physical disorder that precludes communication or impairs judgment, to make an informed decision about providing, continuing, withholding or withdrawing a specific health care treatment or course of treatment because he is unable to understand the nature, extent or probable consequences of the proposed health care decision, or to make a rational evaluation of the risks and benefits of alternatives to that decision. For purposes of this article, persons who are deaf, dysphasic or have other communication disorders, who are otherwise mentally competent and able to communicate by means other than speech, shall not be considered incapable of making an informed decision.

"Life-prolonging procedure" means any medical procedure, treatment or intervention which (i) utilizes mechanical or other artificial means to sustain, restore or supplant a spontaneous vital function, or is otherwise of such a nature as to afford a patient no reasonable expectation of recovery from a terminal condition and (ii) when applied to a patient in a terminal condition, would serve only to prolong the dying process. The term includes artificially administered hydration and nutrition. However, nothing in this act shall prohibit the administration of medication or the performance of any medical procedure deemed necessary to provide comfort care or to alleviate pain, including the administration of pain relieving medications in excess of recommended dosages in accordance with §§ 54.1-2971.01 and 54.1-3408.1. For purposes of §§ 54.1-2988, 54.1-2989, and 54.1-2991, the term also shall include cardiopulmonary resuscitation.

"Patient care consulting committee" means a committee duly organized by a facility licensed to provide health care under Title 32.1 or Title 37.2, or a hospital or nursing home as defined in § 32.1-123 owned or operated by an agency of the Commonwealth that is exempt from licensure pursuant to § 32.1-124, to consult on health care issues only as authorized in this article. Each patient care consulting committee shall consist of five individuals, including at least one physician, one person licensed or holding a multistate licensure privilege under Chapter 30 (§ 54.1-3000 et seq.) to practice professional nursing, and one individual responsible for the provision of social services to patients of the facility. At least one committee member shall have experience in clinical ethics and at least two committee members shall have no employment or contractual relationship with the facility or any involvement in the management, operations, or governance of the facility, other than serving on the patient care consulting committee. A patient care consulting committee may be organized as a subcommittee of a standing ethics or other committee established by the facility or may be a separate and distinct committee. Four members of the patient care consulting committee shall constitute a quorum of the patient care consulting committee.

"Persistent vegetative state" means a condition caused by injury, disease or illness in which a patient has suffered a loss of consciousness, with no behavioral evidence of self-awareness or awareness of surroundings in a learned manner, other than reflex activity of muscles and nerves for low level conditioned response, and from which, to a reasonable degree of medical probability, there can be no recovery.

"Physician" means a person licensed to practice medicine in the Commonwealth of Virginia or in the jurisdiction where the health care is to be rendered or withheld.

"Qualified advance directive facilitator" means a person who has successfully completed a training program approved by the Department of Health for providing assistance in completing and executing a written advance directive, including successful demonstration of competence in assisting a person in completing and executing a valid advance directive and successful passage of a written examination.

"Terminal condition" means a condition caused by injury, disease or illness from which, to a reasonable degree of medical probability a patient cannot recover and (i) the patient's death is imminent or (ii) the patient is in a persistent vegetative state.

"Witness" means any person over the age of 18, including a spouse or blood relative of the declarant. Employees of health care facilities and physician's offices, who act in good faith, shall be permitted to serve as witnesses for purposes of this article.

§ 54.1-2983. Procedure for making advance directive; notice to physician.

Any adult capable of making an informed decision may, at any time, make a written advance directive to address any or all forms of health care in the event the declarant is later determined to be incapable of making an informed decision. A written advance directive shall be signed by the declarant in the presence of two subscribing witnesses and may (i) specify the health care the declarant does or does not authorize; (ii) appoint an agent to make health care decisions for the declarant; and (iii) specify an anatomical gift, after the declarant's death, of all of the declarant's body or an organ, tissue or eye donation pursuant to Article 2 (§ ~~32.1-289.2~~ *32.1-291.1* et seq.) of Chapter 8 of Title 32.1. A written advance directive may be submitted to the Advance Health Care Directive Registry, pursuant to Article 9 (§ 54.1-2994 et seq.).

Further, any adult capable of making an informed decision who has been diagnosed by his attending physician as being in a terminal condition may make an oral advance directive (i) directing the specific health care the declarant does or does not authorize in the event the declarant is incapable of making an informed decision, and (ii) appointing an agent to make health care decisions for the declarant under the circumstances stated in the advance directive if the declarant should be determined to be incapable of making an informed decision. An oral advance directive shall be made in the presence of the attending physician and two witnesses.

An advance directive may authorize an agent to take any lawful actions necessary to carry out the declarant's decisions, including, but not limited to, granting releases of liability to medical providers, releasing medical records, and making decisions regarding who may visit the patient.

It shall be the responsibility of the declarant to provide for notification to his attending physician that an advance directive has been made. If an advance directive has been submitted to the Advance Health Care Directive Registry pursuant to Article 9 (§ 54.1-2994 et seq.), it shall be the responsibility of the declarant to provide his attending physician, legal representative, or other person with the information necessary to access the advance directive. In the event the declarant is comatose, incapacitated or otherwise mentally or physically incapable of communication, any other person may notify the physician of the existence of an advance directive and, if applicable, the fact that it has been submitted to the Advance Health Care Directive Registry. An attending physician who is so notified shall promptly make the advance directive or a copy of the advance directive, if written, or the fact of the advance directive, if oral, a part of the declarant's medical records.

In the event that any portion of an advance directive is invalid or illegal, such invalidity or illegality shall not affect the remaining provisions of the advance directive.

§ 57-48. Definitions.

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

"Board" means the Board of Agriculture and Consumer Services.

"Charitable organization" means any person that is or holds itself out to be organized or operated for any charitable purpose, or any person that solicits or obtains contributions solicited from the public. "Charitable organization" does not include (i) any church or convention or association of churches, primarily operated for nonsecular purposes and no part of the net income of which inures to the direct benefit of any individual; (ii) any political party as defined in § 24.2-101 or any political campaign committee or political action committee or other political committee required by state or federal law to file a report or statement of contributions and expenditures; or (iii) any authorized individual who solicits, by authority of such organization, solely on behalf of a registered or exempt charitable organization or on behalf of an organization excluded from the definition of charitable organization.

"Charitable purpose" means any charitable, benevolent, humane, philanthropic, patriotic, or eleemosynary purpose and the purposes of influencing legislation or influencing the actions of any public official or instigating, prosecuting, or intervening in litigation.

"Charitable sales promotion" means advertised sales that feature the names of both the commercial co-venturer and the charitable or civic organization and that state that the purchase or use of the goods, services, entertainment, or any other thing of value that the commercial co-venturer normally sells will benefit the charitable or civic organization or its purposes. To qualify as a charitable sales promotion, the consumer must pay the same price for the thing of value as the commercial co-venturer usually charges without the charitable sales promotion and the consumer retains the thing of value.

"Civic organization" means any local service club, veterans post, fraternal society or association, volunteer fire or rescue group, or local civic league or association of 10 or more persons not organized for profit but operated exclusively for educational or charitable purposes as defined in this section, including the promotion of community welfare, and the net earnings of which are devoted exclusively to charitable, educational, recreational, or social welfare purposes.

"Commercial co-venturer" means any person who (i) is organized for profit, (ii) is regularly and primarily engaged in trade or commerce, other than in connection with soliciting for charitable or civic organizations or charitable purposes, and (iii) conducts an advertised charitable sales promotion for a specified limited period of time.

"Commissioner" means the Commissioner of Agriculture and Consumer Services or a member of his staff to whom he may delegate his duties under this chapter.

"Contribution" means any gift, bequest, devise, or other grant of any money, credit, financial assistance, or property of any kind or value, including the promise to contribute, except payments by the membership of an organization for membership fees, dues, fines, or assessments, or for services rendered to individual members, and except money, credit, financial assistance, or property received from any governmental authority. "Contribution" does not include any donation of blood or any gift made pursuant to Article 2 (§ ~~32.1-289.2~~ *32.1-291.1* et seq.) of Chapter 8 of Title 32.1.

"Department" means the Department of Agriculture and Consumer Services.

"Federated fund-raising organization" means any federation of independent charitable organizations that have voluntarily joined together, including but not limited to a United Fund or Community Chest, for purposes of raising and distributing money for and among themselves and where membership does

not confer operating authority and control of the individual agencies upon the federated group organization.

"File with the Commissioner" means depositing the originals of the documents required to be filed, along with the payment of the appropriate fee and all supporting documents with the Department or submitting the required documents and any appropriate attachments and fees by utilizing an online filing system approved by the Commissioner.

"Fund-raising expenses" means the expenses of all activities that constitute or are an integral and inseparable part of a solicitation.

"Membership" means those persons to whom, for payment of fees, dues, assessments, etc., an organization provides services and confers a bona fide right, privilege, professional standing, honor, or other direct benefit, in addition to the right to vote, elect officers, or hold offices. "Membership" does not include those persons who are granted a membership upon making a contribution as the result of solicitation.

"Parent organization" means that part of a charitable organization that coordinates, supervises, or exercises control over policy, fund raising, and expenditures or assists or advises one or more chapters, branches, or affiliates.

"Person" means any individual, organization, trust, foundation, association, partnership, corporation, society, or other group or combination acting as a unit.

"Professional fund-raising counsel" means any person who for a flat fixed fee under a written agreement plans, conducts, manages, carries on, advises, or acts as a consultant, whether directly or indirectly, in connection with soliciting contributions for, or on behalf of, any charitable or civic organization, but who actually solicits no contributions as a part of such services. A bona fide salaried officer or employee of a registered or exempt charitable organization or the bona fide salaried officer or employee of a registered parent organization shall not be deemed to be a professional fund-raising counsel.

"Professional solicitor" means any person who, for a financial or other consideration, solicits contributions for, or on behalf of, a charitable or civic organization, whether such solicitation is performed personally or through his agents, servants, or employees or through agents, servants, or employees who are specially employed by or for a charitable or civic organization and are engaged in the solicitation of contributions under the direction of such person or any person who, for a financial or other consideration, plans, conducts, manages, carries on, advises, or acts as a consultant to a charitable or civic organization in connection with the solicitation of contributions but does not qualify as a professional fund-raising counsel. A bona fide salaried officer or employee of a registered or exempt charitable organization or a bona fide salaried officer or employee of a registered parent organization shall not be deemed to be a professional solicitor.

"Sale," "sell," and "sold" mean the transfer of any property or the rendition of any service to any person in exchange for consideration, including any purported contribution without which such property would not have been transferred or such services would not have been rendered.

"Solicit" and "solicitation" mean the request or appeal, directly or indirectly, for any contribution on the plea or representation that such contribution will be used for a charitable purpose, including, without limitation, the following methods of requesting such contribution:

1. Any oral or written request;

2. Any announcement to the press, over the radio or television, or by telephone or telegraph concerning an appeal or campaign to which the public is requested to make a contribution for any charitable purpose connected therewith;

3. The distribution, circulation, posting, or publishing of any handbill, written advertisement, or other publication that directly or by implication seeks to obtain public support; or

4. The sale of, offer, or attempt to sell, any advertisement, advertising space, subscription, ticket, or any service or tangible item in connection with which any appeal is made for any charitable purpose or where the name of any charitable or civic organization is used or referred to in any such appeal as an inducement or reason for making any such sale, or when or where in connection with any such sale, any statement is made that the whole or any part of the proceeds from any such sale will be donated to any charitable purpose.

"Solicitation," as defined in this section, shall be deemed to occur when the request is made, at the place the request is received, whether or not the person making the same actually receives any contribution.

"Terrorists and terrorist organizations" means any person, organization, group, or conspiracy who assists or has assisted terrorist organizations, as provided in 18 U.S.C. § 2339B, or who commits or attempts to commit acts of terrorism, as defined in § 18.2-46.4.

2. That §§ 18.2-62 and 32.1-289.2 of the Code of Virginia are repealed.