

24102762D

SENATE BILL NO. 278

Offered January 10, 2024

Prefiled January 9, 2024

A BILL to amend and reenact §§ 8.01-412.10, 19.2-99, 19.2-100, 19.2-273, and 19.2-274 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-87.1 and by adding in Title 32.1 a chapter numbered 21, consisting of sections numbered 32.1-376 through 32.1-380, relating to the Virginia Abortion Care and Gender-Affirming Health Care Protection Act; reproductive and gender-affirming health care services; prohibitions on extradition for certain crimes; penalties.

Patrons—Hashmi and Boysko

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-412.10, 19.2-99, 19.2-100, 19.2-273, and 19.2-274 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-87.1 and by adding in Title 32.1 a chapter numbered 21, consisting of sections numbered 32.1-376 through 32.1-380, as follows:

§ 8.01-412.10. Issuance of subpoena.

A. 1. To request the issuance of a subpoena under this article, a party shall submit to the clerk of court in the circuit in which discovery is sought to be conducted in the Commonwealth (i) a foreign subpoena and (ii) a written statement that the law of the foreign jurisdiction grants reciprocal privileges to citizens of the Commonwealth for taking discovery in the jurisdiction that issued the foreign subpoena.

2. A request for issuance of any subpoena pursuant to this section shall include an attestation, made under penalty of perjury, stating whether the subpoena seeks documents, information, or testimony related to the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care activity as defined in § 32.1-377. If a court finds that a false attestation was intentionally submitted and the subpoena did seek documents, information, or testimony related to the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care activity as defined in § 32.1-377, a civil penalty of \$10,000 per violation shall apply, in addition to any other penalty as provided by law. Submission of such attestation subjects the attester to the jurisdiction of the courts of the Commonwealth for any suit, penalty, or damages arising out of a false attestation under this section.

B. ~~When~~ Except as provided in subsection F, when a party submits a foreign subpoena to a clerk of court in the Commonwealth, the clerk, in accordance with that court's procedure, shall promptly issue a subpoena for service upon the person to which the foreign subpoena is directed.

C. A subpoena under subsection B shall:

1. Incorporate the terms used in the foreign subpoena; and
 2. Contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

D. A request for the issuance of a subpoena under this article does not constitute an appearance in the courts of the Commonwealth, and no civil action need be filed in the circuit court of the Commonwealth.

E. The provisions of this article shall be in addition to other procedures authorized in the Code of Virginia and the rules of court for obtaining discovery, except that no subpoena issued in the Commonwealth pursuant to this article may be issued by any person other than the applicable circuit court clerk of court in the Commonwealth, in accordance with subsections A and B.

F. If a party submits a foreign subpoena to a clerk of the court that seeks documents, information, or testimony that relate to protected health care activity as defined in § 32.1-377, the clerk shall not issue a subpoena for service and shall present the request to the court for action. The court shall review the foreign subpoena and shall not issue a subpoena for service and shall quash any existing subpoena issued by the court if the subpoena is for documents, information, or testimony that relates to protected health care activity as defined in § 32.1-377, unless the subpoena seeks documents, information, or testimony related to (i) an out-of-state action that is founded in tort, contract, or statute, for which a similar claim would exist under the laws of the Commonwealth, that is brought by a person or the person's authorized legal representative, for damages suffered by the person or damages derived from

INTRODUCED

SB278

59 *an individual's loss of consortium of the person or (ii) an out-of-state action that is founded in contract,*
60 *and for which a similar claim would exist under the laws of the Commonwealth, that is brought or*
61 *sought to be enforced by a party with a contractual relationship with the person that is the subject of*
62 *the subpoena.*

63 **§ 19.2-87.1. Extradition of persons charged with certain criminal violations; prohibition.**

64 A. As used in this section, "protected health care activity" means the same as that term is defined in
65 § 32.1-377.

66 B. Notwithstanding the provisions of this article, no demand for extradition of a person charged with
67 a criminal violation of law of another state shall be recognized by the Governor if such alleged criminal
68 violation involves the receipt of or assistance with a protected health care activity unless the alleged
69 criminal violation would also constitute a criminal offense under the laws of the Commonwealth;
70 however, the Governor may request that the state demanding extradition attest to the factual and legal
71 basis of such alleged violation of the law of another state.

72 C. The provisions of this section shall not apply when the person who is subject to such demand for
73 extradition by another state was physically present in the demanding state at the time of the commission
74 of the alleged offense and thereafter fled from such state, except that an affirmation under oath by such
75 person that he was present in the Commonwealth at the time of the commission of the alleged offense
76 shall create a presumption that he was not present in the demanding state at the time of the commission
77 of such alleged offense. Such presumption may be rebutted by clear and convincing evidence by the
78 demanding state in the circuit court of the jurisdiction where such person subject to such demand is a
79 resident or is being held pending extradition.

80 **§ 19.2-99. Arrest prior to requisition.**

81 A. Whenever: ~~(1)~~ (i) any person within ~~this the~~ the Commonwealth shall be charged on the oath of any
82 credible person before any judge, magistrate, or other officer authorized to issue criminal warrants in
83 ~~this the~~ the Commonwealth with the commission of any crime in any other state and, except in cases arising
84 under § 19.2-91, (a) with having fled from justice, (b) with having been convicted of a crime in that
85 state and of having escaped from confinement, or (c) of having broken the terms of his bail, probation,
86 or parole; or ~~(2)~~ (ii) complaint shall have been made before any such judge, magistrate, or other officer
87 in ~~this the~~ the Commonwealth setting forth on the affidavit of any credible person in another state that a
88 crime has been committed in such other state and that the accused has been charged in such state with
89 the commission of the crime, and, except in cases arising under § 19.2-91, (a) has fled from justice, (b)
90 having been convicted of a crime in that state has escaped from confinement, or (c) broken the terms of
91 his bail, probation. or parole, and that the accused is believed to be in ~~this the~~ the Commonwealth, such
92 judge, magistrate, or other officer shall issue a warrant directed to any sheriff or to any peace officer
93 commanding him to apprehend the person named therein, wherever he may be found in ~~this the~~ the
94 Commonwealth, and to bring him before any judge who may be available in or convenient of access to
95 the place where the arrest may be made, to answer the charge of complaint and affidavit. A certified
96 copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached
97 to the warrant.

98 B. Any person making such charge or complaint and affidavit under this section has an affirmative
99 duty to disclose to the court or magistrate any knowledge or belief that the charge for the commission
100 of the crime in another state is based on the provision, receipt, attempted provision or receipt,
101 assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected
102 health care as defined in § 32.1-377. This disclosure shall be made through an attestation stating
103 whether such charge or complaint relates to criminal liability that is based on such protected health
104 care services. Any false attestation submitted under this subsection is subject to a civil penalty of
105 \$10,000 per violation, in addition to any other penalty as provided by law. Submission of such
106 attestation subjects the attester to the jurisdiction of the courts of the Commonwealth for any suit,
107 penalty, or damages arising out of a false attestation under this section.

108 C. Except in cases arising under § 19.2-87, the issuance of a warrant is prohibited for a charge or
109 complaint that is related to criminal liability that is based on the provision, receipt, attempted provision
110 or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of
111 protected health care activity as defined in § 32.1-377.

112 **§ 19.2-100. Arrest without warrant.**

113 A. The arrest of a person may be lawfully made also by any peace officer or private person without
114 a warrant upon reasonable information that the accused stands charged in the courts of a state with a
115 crime punishable by imprisonment for a term exceeding one year. But when so arrested the accused
116 shall be taken before a judge, magistrate, or other officer authorized to issue criminal warrants in the
117 Commonwealth with all practicable speed and complaint made against him under oath setting forth the
118 ground for the arrest as in § 19.2-99, and thereafter his answer shall be heard as if he had been arrested
119 on a warrant.

120 B. The arrest of a person is prohibited if the arrest is related to criminal liability that is based on

the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care activity as defined in § 32.1-377.

§ 19.2-273. Certificate that witness is needed in another state; hearing.

A. If a judge of a court of record in any state which by its laws has made provisions for commanding persons within that state to attend and testify in ~~this~~ the Commonwealth certifies under the seal of such court ~~(1)~~ (i) that there is a criminal prosecution pending in such court or that a grand jury investigation has commenced or is about to commence, ~~(2)~~ (ii) that a person being within ~~this~~ the Commonwealth is a material witness in such prosecution or grand jury investigation and ~~(3)~~ (iii) that his presence will be required for a specified number of days, upon presentation of such certificate, accompanied with an attestation made under penalty of perjury stating whether such prosecution or grand jury investigation is related to the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care activity as defined in § 32.1-377, to any judge of a court of record in the county or city in which such person is, such judge shall fix a time and place for hearing and shall make an order directing the witness to appear at a time and place certain for the hearing.

B. If a court finds that a false attestation was intentionally submitted and the prosecution or grand jury investigation is related to the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care activity as defined in § 32.1-377, a civil penalty of \$10,000 per violation will apply, in addition to any other penalty as provided by law. Submission of such attestation subjects the attester to the jurisdiction of the courts of the Commonwealth for any suit, penalty, or damages arising out of a false attestation under this section.

§ 19.2-274. When court to order witness to attend.

~~If~~ A. Except as provided in subsection B, if at such hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or grand jury investigation in the other state and that the laws of the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence (and of any other state through which the witness may be required to pass by ordinary course of travel) will give to him protection from arrest and the service of civil and criminal process, the judge shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In any such hearing, the certificate shall be prima facie evidence of all the facts stated therein.

B. The summons of a witness to testify in the prosecution or a grand jury investigation in another state is prohibited if such prosecution or grand jury investigation is related to the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care activity as defined in § 32.1-377.

CHAPTER 21.

VIRGINIA ABORTION CARE AND GENDER-AFFIRMING HEALTH CARE PROTECTION ACT.

§ 32.1-376. Short title; policy permitting abortion care and gender-affirming health care services.

A. This chapter may be cited as the "Virginia Abortion Care and Gender-Affirming Health Care Protection Act."

B. 1. It is the policy of the Commonwealth to ensure that its sovereign authority to permit abortion care and gender-affirming health care services within its territory or jurisdiction is not diminished or otherwise infringed.

2. It is the policy of the Commonwealth that all persons are entitled to provide, receive, and help others provide or receive abortion care and gender-affirming health care services not prohibited under the laws of the Commonwealth, and that such provision, receipt, and assistance is not diminished, chilled, or infringed by public or private actors.

3. It is the policy of the Commonwealth that its borders are open to all persons who seek to provide, receive, or help others provide or receive abortion care and gender-affirming health care services not prohibited under the laws of the Commonwealth.

4. It is the policy of the Commonwealth that persons within its territory or jurisdiction shall be able to discuss, in any medium, abortion care and gender-affirming health care services not prohibited under the laws of the Commonwealth.

C. This chapter shall be construed liberally to promote the policy stated in this section and throughout this chapter.

D. Any criminal investigation, proceeding, or conviction in any jurisdiction other than the Commonwealth, when guilt is based on the alleged provision or receipt of abortion care or gender-affirming care not prohibited under the laws of the Commonwealth, is contrary to the public policy of the Commonwealth.

§ 32.1-377. Definitions.

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

"Abortion care" means all behavioral health, diagnostic, medical, mental health, pharmaceutical, preventative, psychiatric, psychological, rehabilitative, supportive, surgical, and therapeutic care, services, and supplies related to the termination of a pregnancy, except for the purpose of producing a live birth.

"Abusive litigation" means (i) litigation or other legal action intended to deter, prevent, sanction, or punish any person engaging in protected health care activity by prosecuting any action in any jurisdiction other than the Commonwealth where liability, in whole or part, directly or indirectly, is based on protected health care activity that occurred in the Commonwealth, including any action in which liability is based on any theory of vicarious, joint, or several liability derived therefrom. A lawsuit shall be considered to be based on conduct that occurred in the Commonwealth if any part of any act or omission involved in the course of conduct that forms the basis for liability in the lawsuit occurs or is initiated in the Commonwealth, whether or not such act or omission is alleged or included in any pleading or other filing in the lawsuit, or (ii) attempting to enforce any order or judgment issued in connection with any such action by any party to an action described in clause (i) or any person acting on behalf of a party to the action.

"Gender-affirming care" means all behavioral health, diagnostic, medical, mental health, pharmaceutical, preventative, psychiatric, psychological, rehabilitative, supportive, surgical, and therapeutic care, services, and supplies related to supporting a person's gender identity or to the treatment of gender dysphoria.

"Law-enforcement officer" means those persons identified in the definitions of this term in § 9.1-101 and subsection G of § 18.2-57.

"Menstrual health data" means any information, recorded in any form or medium, that is created or received by an entity that relates to or is used to determine, predict, or estimate the past, present, or future menstrual health or menstrual status of an individual.

"Protected health care activity" means abortion care and gender-affirming health care services that are lawful in the Commonwealth.

"Provision" and "receipt" of abortion care and gender-affirming care mean the providing of such care, the receiving of such care, the assisting in the providing or receiving of such care, or materially supporting the providing or receiving of such care.

§ 32.1-378. Abusive litigation; interference with protected health care activity.

A. Any person who sustains any injury, damages, or other harm resulting from another person who, under the law of a jurisdiction other than the Commonwealth of Virginia, engages or attempts to engage in abusive litigation may bring a civil action against any person who engages or attempts to engage in such abusive litigation.

Each legal action that involves abusive litigation constitutes a separate liable act.

B. Any person who is found to be liable for engaging or attempting to engage in abusive litigation shall be liable for the actual damages suffered or \$2,500 per act, whichever is greater.

Actual damages may include (i) all costs, expenses, reasonable fees for retained experts, and reasonable attorney fees incurred as a result of abusive litigation, as incurred by the person filing the civil action, and (ii) the reasonable value of any emotional, physical, societal, financial, and business harm suffered as a result of abusive litigation, as suffered by the person filing the civil action.

C. Notwithstanding any other provision of law, a civil action under this section may be brought within two years from the discovery of any violation of subsection A.

D. This section shall not apply to a lawsuit or judgment entered in another jurisdiction that is based on conduct for which a cause of action exists under the laws of the Commonwealth if the course of conduct that forms the basis for liability had occurred entirely in the Commonwealth, including any contract, tort, common law, or statutory claims.

§ 32.1-379. Law-enforcement investigations related to abortion care, gender-affirming care, and menstrual health data.

A. Notwithstanding any other provision of law, no law-enforcement officer acting in the Commonwealth or employed by the Commonwealth or any of its localities or political subdivisions may investigate, arrest, or detain any person, seek the issuance of a warrant, or otherwise assist in or provide support for any investigation regarding either the provision or receipt of abortion care or gender-affirming care not prohibited under the laws of the Commonwealth or any person's menstrual health data.

B. Notwithstanding any other provision of law, no law-enforcement officer acting in the Commonwealth or employed by the Commonwealth or any of its localities or political subdivisions may provide information to any law-enforcement officer of any other jurisdiction or any private citizen, relating to either abortion care or gender-affirming care not prohibited under the laws of the Commonwealth or any person's menstrual health data.

C. Any person who is the subject of any investigation subject to subsection A or who is the subject of any information subject to subsection B may bring a civil action to enforce the terms of this section. The only relief that may be awarded in a civil action brought under this subsection is declaratory, injunctive, or other equitable relief. No monetary damages, penalties, costs, expenses, expert fees, or attorney fees may be awarded in any such action.

D. Notwithstanding any other provision of law, a civil action under this section may be filed in the court for the city or county where the person filing suit resides, has their principal place of business, or in the courts for the City of Richmond.

§ 32.1-380. Waiver of immunity.

A. The Commonwealth, its agencies, localities, and political subdivisions, and all officers, employees, and agents of the Commonwealth, its agencies, its localities, and its political subdivisions, waives immunity as to the imposition of declaratory, injunctive, or other equitable relief for any action brought pursuant to this chapter.

B. If an officer, employee, or agent of a government or governmental entity engages in conduct prohibited or made unlawful under this chapter, in the course of their employment, under the color of law, or pursuant to their duties on behalf of the government or governmental entity, that officer, employee, or agent may be held liable or otherwise subject to court order as authorized in this chapter, in their individual capacity, as if they had not been acting in the course of their employment, under the color of law, or pursuant to their duties on behalf of the government or governmental entity.

C. The provisions of this section shall not be construed to waive any immunity regarding the imposition of damages, costs, expenses, expert fees, attorney fees, or other monetary relief for the Commonwealth, its agencies, localities, and political subdivisions, and all officers, employees, and agents of the Commonwealth, its agencies, its localities, and its political subdivisions.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 1 of the Acts of Assembly of 2023, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.