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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 Health Professions

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

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

59 A. As used in this section, "protected health care activity" means the same as that term is defined in §  
60 32.1-377.

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

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

75 **§ 19.2-99. Arrest prior to requisition.**

76 A. Whenever: (1) (i) any person within ~~this~~ the Commonwealth shall be charged on the oath of any  
77 credible person before any judge, magistrate, or other officer authorized to issue criminal warrants in ~~this~~ the  
78 Commonwealth with the commission of any crime in any other state and, except in cases arising under §  
79 19.2-91, (a) with having fled from justice, (b) with having been convicted of a crime in that state and of  
80 having escaped from confinement, or (c) of having broken the terms of his bail, probation, or parole; or (2)  
81 (ii) complaint shall have been made before any such judge, magistrate, or other officer in ~~this~~ the  
82 Commonwealth setting forth on the affidavit of any credible person in another state that a crime has been  
83 committed in such other state and that the accused has been charged in such state with the commission of the  
84 crime, and, except in cases arising under § 19.2-91, (a) has fled from justice, (b) having been convicted of a  
85 crime in that state has escaped from confinement, or (c) broken the terms of his bail, probation, or parole, and  
86 that the accused is believed to be in ~~this~~ the Commonwealth, such judge, magistrate, or other officer shall  
87 issue a warrant directed to any sheriff or to any peace officer commanding him to apprehend the person  
88 named therein, wherever he may be found in ~~this~~ the Commonwealth, and to bring him before any judge who  
89 may be available in or convenient of access to the place where the arrest may be made, to answer the charge  
90 of complaint and affidavit. A certified copy of the sworn charge or complaint and affidavit upon which the  
91 warrant is issued shall be attached to the warrant.

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

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

105 **§ 19.2-100. Arrest without warrant.**

106 A. The arrest of a person may be lawfully made also by any peace officer or private person without a  
107 warrant upon reasonable information that the accused stands charged in the courts of a state with a crime  
108 punishable by imprisonment for a term exceeding one year. But when so arrested the accused shall be taken  
109 before a judge, magistrate, or other officer authorized to issue criminal warrants in the Commonwealth with  
110 all practicable speed and complaint made against him under oath setting forth the ground for the arrest as in §  
111 19.2-99, and thereafter his answer shall be heard as if he had been arrested on a warrant.

112 B. The arrest of a person is prohibited if the arrest is related to criminal liability that is based on the  
113 provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted  
114 assistance in the provision or receipt of protected health care activity as defined in § 32.1-377.

115 **§ 19.2-273. Certificate that witness is needed in another state; hearing.**

116 A. If a judge of a court of record in any state which by its laws has made provisions for commanding  
117 persons within that state to attend and testify in ~~this~~ the Commonwealth certifies under the seal of such court  
118 (1) (i) that there is a criminal prosecution pending in such court or that a grand jury investigation has  
119 commenced or is about to commence, (2) (ii) that a person being within ~~this~~ the Commonwealth is a material

120 witness in such prosecution or grand jury investigation and ~~(3)~~ (iii) that his presence will be required for a  
 121 specified number of days, upon presentation of such certificate, *accompanied with an attestation made under*  
 122 *penalty of perjury stating whether such prosecution or grand jury investigation is related to the provision,*  
 123 *receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the*  
 124 *provision or receipt of protected health care activity as defined in § 32.1-377, to any judge of a court of*  
 125 *record in the county or city in which such person is, such judge shall fix a time and place for hearing and*  
 126 *shall make an order directing the witness to appear at a time and place certain for the hearing.*

127 *B. If a court finds that a false attestation was intentionally submitted and the prosecution or grand jury*  
 128 *investigation is related to the provision, receipt, attempted provision or receipt, assistance in the provision or*  
 129 *receipt, or attempted assistance in the provision or receipt of protected health care activity as defined in §*  
 130 *32.1-377, a civil penalty of \$10,000 per violation will apply, in addition to any other penalty as provided by*  
 131 *law. Submission of such attestation subjects the attester to the jurisdiction of the courts of the Commonwealth*  
 132 *for any suit, penalty, or damages arising out of a false attestation under this section.*

133 **§ 19.2-274. When court to order witness to attend.**

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

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

148 **CHAPTER 21.**

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

150 **§ 32.1-376. Short title; policy permitting abortion care and gender-affirming health care services.**

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

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

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

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

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

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

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

172 **§ 32.1-377. Definitions.**

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

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

177 *"Abusive litigation" means (i) litigation or other legal action intended to deter, prevent, sanction, or*  
 178 *punish any person engaging in protected health care activity by prosecuting any action in any jurisdiction*  
 179 *other than the Commonwealth where liability, in whole or part, directly or indirectly, is based on protected*  
 180 *health care activity that occurred in the Commonwealth, including any action in which liability is based on*

181 any theory of vicarious, joint, or several liability derived therefrom. A lawsuit shall be considered to be based  
 182 on conduct that occurred in the Commonwealth if any part of any act or omission involved in the course of  
 183 conduct that forms the basis for liability in the lawsuit occurs or is initiated in the Commonwealth, whether  
 184 or not such act or omission is alleged or included in any pleading or other filing in the lawsuit, or (ii)  
 185 attempting to enforce any order or judgment issued in connection with any such action by any party to an  
 186 action described in clause (i) or any person acting on behalf of a party to the action.

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

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

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

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

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

201 **§ 32.1-378. Abusive litigation; interference with protected health care activity.**

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

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

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

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

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

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

219 **§ 32.1-379. Law-enforcement investigations related to abortion care, gender-affirming care, and  
 220 menstrual health data.**

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

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

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

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

239 **§ 32.1-380. Waiver of immunity.**

240 A. The Commonwealth, its agencies, localities, and political subdivisions, and all officers, employees, and  
 241 agents of the Commonwealth, its agencies, its localities, and its political subdivisions, waives immunity as to

242 *the imposition of declaratory, injunctive, or other equitable relief for any action brought pursuant to this*  
243 *chapter.*

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

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

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

INTRODUCED

SB278