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SENATE BILL NO. 1098

Offered January 8, 2025

Prefiled January 7, 2025

A BILL to amend and reenact §§ 8.01-412.10, 19.2-88, 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 32.1-384, relating to Virginia Reproductive and Gender-Affirming Health Care Protection Act established; prohibition on extradition for certain crimes; penalties.

Patron—Hashmi

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-412.10, 19.2-88, 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 32.1-384, as follows:

§ 8.01-412.10. Issuance of subpoena.

A. 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; and (iii) an attestation, made under penalty of perjury, stating whether the subpoena seeks documents, information, or testimony related to protected health care activity as defined in § 32.1-378. The submission of such attestation shall subject the attester to the jurisdiction of the courts of the Commonwealth for any suit, penalty, or damages arising out of 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 court of the Commonwealth that fails to include the attestation required by subsection A, the clerk shall not issue a subpoena for service and shall present the request to the court for further action. No subpoena shall be issued and the court shall quash any existing subpoena unless the court is able to determine that such subpoena does not seek documents, information, or testimony that relates to protected health care activity as defined in § 32.1-378. However, the court may issue the subpoena if the court determines that the foreign subpoena seeks documents, information, or testimony related to (i) an out-of-state action founded in tort, contract, or statute for which a similar claim would exist under the laws of the Commonwealth, if such out-of-state action 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 contract action 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 subject of the subpoena. The court may request additional evidence or arguments to make such a determination.

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

A. As used in this section, "protected health care activity" means the same as that term is defined in § 32.1-378.

B. Notwithstanding the provisions of this article, no demand for extradition of a person charged with a criminal violation of the laws of another state shall be recognized by the Governor if such alleged criminal violation involves a protected health care activity, unless the alleged criminal violation would also constitute

59 *a criminal offense under the laws of the Commonwealth. However, the Governor may request that the state*
60 *demanding extradition attest to the factual and legal basis of such alleged violation of the laws of another*
61 *state.*

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

70 *D. The Governor may act on a demand for extradition of a person charged with a criminal violation of the*
71 *laws of another state that involves a protected health care activity only if the demand for extradition is*
72 *accompanied with an attestation, made under penalty of perjury by a person with direct knowledge of the*
73 *facts, that includes specific and non-conclusory facts that the person subject to such demand for extradition*
74 *was physically present in the demanding state at the time of the commission of the alleged offense and*
75 *thereafter fled from such state. Such an attestation subjects the attester to the jurisdiction of the courts of the*
76 *Commonwealth for any suit, penalty, or damages arising out of a false attestation under this section. A*
77 *demand for extradition under this section that fails to comply with the provisions of this subsection shall be*
78 *facially invalid.*

79 **§ 19.2-88. Governor may investigate case.**

80 A. When a demand shall be made upon the Governor by the executive authority of another state for the
81 surrender of a person so charged with, or convicted of, crime, the Governor may call upon the Attorney
82 General or any other officer of this Commonwealth to investigate or assist in investigating the demand and to
83 report to him the situation and circumstances of the person so demanded and whether he ought to be
84 surrendered.

85 *B. Notwithstanding any other provision of law, when a demand for extradition is for a person charged*
86 *with a crime relating to protected health care activity as defined in § 32.1-378, the Governor shall take no*
87 *less than 365 calendar days to investigate the case as permitted under this section before acting on or*
88 *responding to the demand. Such 365-day period shall begin no earlier than the day after the Governor issues*
89 *an accurate and written acknowledgement of the receipt of all materials required to constitute a proper*
90 *demand in accordance with subsection C of § 19.2-87.1 and other relevant provisions of law.*

91 **§ 19.2-99. Arrest prior to requisition.**

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

108 *B. No warrant shall be issued under subsection A for a person charged with a criminal violation of the*
109 *laws of another state that involves a protected health care activity as defined in § 32.1-378 unless the*
110 *affidavit required by subsection A includes an attestation that complies fully with the provisions of subsection*
111 *C of § 19.2-87.1.*

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 a
114 warrant upon reasonable information that the accused stands charged in the courts of a state with a crime
115 punishable by imprisonment for a term exceeding one year. But when so arrested the accused shall be taken
116 before a judge, magistrate or other officer authorized to issue criminal warrants in the Commonwealth with
117 all practicable speed and complaint made against him under oath setting forth the ground for the arrest as in §
118 19.2-99, and thereafter his answer shall be heard as if he had been arrested on a warrant.

119 *B. The arrest of a person without a warrant is prohibited if the arrest is related to criminal liability that is*

120 based on protected health care activity as defined in § 32.1-378.

121 **§ 19.2-273. Certificate that witness is needed in another state; hearing.**

122 If a judge of a court of record in any state which by its laws has made provisions for commanding persons
123 within that state to attend and testify in this Commonwealth certifies under the seal of such court (~~1~~) (i) that
124 there is a criminal prosecution pending in such court or that a grand jury investigation has commenced or is
125 about to commence, ~~(2)~~; (ii) that a person being within this Commonwealth is a material witness in such
126 prosecution or grand jury investigation, ~~and (3)~~; (iii) that his presence will be required for a specified number
127 of days; ~~upon~~; and (iv) that such prosecution or grand jury investigation is not related to protected health
128 care activity as defined in § 32.1-378. Upon presentation of such certificate to any judge of a court of record
129 in the county or city in which such person is, such judge shall fix a time and place for hearing and shall make
130 an order directing the witness to appear at a time and place certain for the hearing.

131 **§ 19.2-274. When court to order witness to attend.**

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

142 B. However, no court shall issue a summons if such prosecution or grand jury investigation is related to
143 protected health care activity as defined in § 32.1-378.

144 CHAPTER 21.

145 VIRGINIA REPRODUCTIVE AND GENDER-AFFIRMING HEALTH CARE PROTECTION ACT.

146 **§ 32.1-376. Short title.**

147 This chapter may be cited as the Virginia Reproductive and Gender-Affirming Health Care Protection
148 Act.

149 **§ 32.1-377. Policy.**

150 A. It is the policy of the Commonwealth to ensure that its sovereign authority to permit reproductive and
151 gender-affirming health care services within its territory or jurisdiction is not diminished or otherwise
152 infringed.

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

157 C. It is the policy of the Commonwealth that its borders be open to all persons who seek to provide,
158 receive, or help others to provide or receive reproductive health care and gender-affirming health care
159 services not prohibited under the laws of the Commonwealth.

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

163 E. The provisions of this chapter shall be construed liberally to promote the policy stated in this section.

164 F. Any criminal investigation, proceeding, or conviction in any jurisdiction other than the Commonwealth
165 based on the alleged provision or receipt of reproductive health care or gender-affirming care by a health
166 care provider physically present in the Commonwealth and not otherwise prohibited under the laws of the
167 Commonwealth is contrary to the public policy of the Commonwealth.

168 **§ 32.1-378. Definitions.**

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

170 "Abusive litigation" means:

171 1. Litigation or other legal action intended to deter, prevent, sanction, or punish any person engaging in
172 protected health care activity by prosecuting any action in any jurisdiction other than the Commonwealth
173 where liability, in whole or part, directly or indirectly, is based on protected health care activity that
174 occurred in the Commonwealth, including any action in which liability is based on any theory of vicarious or
175 joint and several liability derived therefrom. A lawsuit shall be considered to be based on conduct that
176 occurred in the Commonwealth if any part of any act or omission involved in the course of conduct that forms
177 the basis for liability in the lawsuit occurs or is initiated in the Commonwealth, whether or not such act or
178 omission is alleged or included in any pleading or other filing in the lawsuit; or

179 2. Any attempt to enforce any order or judgment issued in connection with any such action by any party to
180 an action described in subdivision 1 or any person acting on behalf of a party to the action.

181 "Criminal justice agency" means the same as that term is defined in § 9.1-101.

182 *"Gender-affirming health care" means all behavioral health, diagnostic, medical, mental health,*
 183 *pharmaceutical, preventative, psychiatric, psychological, rehabilitative, supportive, surgical, and therapeutic*
 184 *care services and supplies related to supporting a person's gender identity or to the treatment of gender*
 185 *dysphoria and gender incongruence in accordance with the accepted standards of care as defined by major*
 186 *medical professional organizations and agencies with expertise in the field of gender-affirming health care,*
 187 *including the Standards of Care for the Health of Transgender and Gender Diverse People, Version 8, or*
 188 *subsequent version, published by the World Professional Association for Transgender Health.*

189 *"Law-enforcement officer" means those persons identified in the definitions of "law-enforcement officer"*
 190 *in § 9.1-101 and subsection G of § 18.2-57.*

191 *"Protected health care activity" means the provision or receipt, attempted provision or receipt, or*
 192 *assistance or attempted assistance in the provision or receipt of reproductive health care and*
 193 *gender-affirming health care that is lawful in the Commonwealth by a health care provider licensed under*
 194 *the laws of the Commonwealth and physically present in the Commonwealth.*

195 *"Provision" and "receipt" of reproductive and gender-affirming health care mean the providing of such*
 196 *care, the receiving of such care, assisting in the providing or receiving of such care, or materially supporting*
 197 *the providing or receiving of such care.*

198 *"Reproductive health care" means all behavioral health, diagnostic, medical, mental health,*
 199 *pharmaceutical, preventative, psychiatric, psychological, rehabilitative, supportive, surgical, and therapeutic*
 200 *care, services, and supplies related to the human reproductive system, including services related to*
 201 *pregnancy, fertility, contraception, or the termination of a pregnancy.*

202 **§ 32.1-379. Abusive litigation; interference with protected health care activity.**

203 *A. A person who sustains any injury, damages, or other harm resulting from an individual who, under the*
 204 *laws of a jurisdiction other than the Commonwealth, engages or attempts to engage in abusive litigation may*
 205 *bring an action against such individual in accordance with § 32.1-381. Each legal action that involves*
 206 *abusive litigation constitutes a separate liable act.*

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

211 **§ 32.1-380. Law-enforcement investigations; protected health care activity.**

212 *A. Notwithstanding any other provision of law, no law-enforcement officer acting within the*
 213 *Commonwealth or employed by a criminal justice agency of the Commonwealth or any of its localities or*
 214 *political subdivisions who is acting in relation to an investigation or inquiry into services constituting*
 215 *protected health care activity, if such services would be lawful if provided entirely within the Commonwealth,*
 216 *shall (i) investigate, arrest, or detain any person, seek the issuance of a warrant, or otherwise assist in or*
 217 *provide support for any investigation or (ii) provide information to any law-enforcement officer outside of the*
 218 *Commonwealth, including in any other federal, state, or local jurisdictions, or to any private citizen.*

219 *B. Any person who is the subject of an investigation, a warrant, an arrest, detention, or provision of*
 220 *information in violation of subsection A may bring a civil action for declaratory, injunctive, or other*
 221 *equitable relief to enforce the terms of this section. However, the provisions of this subsection shall not limit*
 222 *a person from seeking other remedies available by applicable law.*

223 *C. Notwithstanding any other provision of law, a civil action brought pursuant to this section may be filed*
 224 *in the court for the city or county where the person filing the action resides or has his principal place of*
 225 *business, where any act giving rise to the action occurred, or in the City of Richmond.*

226 **§ 32.1-381. Unlawful search, seizure, arrest, imprisonment, etc.**

227 *Any search, seizure, arrest, detention, or imprisonment caused by or in which a violation of § 19.2-87.1,*
 228 *19.2-99, 19.2-100, or 32.1-380 contributed is unlawful. The provisions of this section shall apply only to a*
 229 *search, seizure, arrest, detention, or imprisonment that is based, in whole or in part, on the alleged protected*
 230 *health care activity.*

231 **§ 32.1-382. Individual actions; civil penalty.**

232 *A. In addition to any other right or remedy, any person aggrieved by any other person's (i) failure to*
 233 *comply with the attestation requirements provided in subsection A of § 8.01-412.10, subsection C of §*
 234 *19.2-87.1, or subsection B of § 19.2-99 or (ii) abusive litigation pursuant to § 32.1-379 may bring a civil*
 235 *action against such other person and may be awarded nominal, compensatory, and punitive damages or*
 236 *equitable relief in addition to attorney fees and costs. An award of compensatory damages shall be in the*
 237 *amount of actual damages or \$5,000, whichever is greater.*

238 *B. No action shall be commenced under this section more than three years after an aggrieved person's*
 239 *discovery that a violation pursuant to subsection A has occurred.*

240 *C. In addition to any venue otherwise allowed by law, proper venue for an action brought pursuant to this*
 241 *section may be laid in the County of Fairfax or the City of Richmond.*

242 **§ 32.1-383. Attorney General; civil action; civil penalty.**

243 *A. In addition to any other right or remedy allowed by law, the Attorney General may bring a civil action*

244 against any person who violates the attestation requirements provided in subsection A of § 8.01-412.10,
245 subsection C of § 19.2-87.1, or subsection B of § 19.2-99 or who engages in abusive litigation in violation of
246 § 32.1-379. Such person shall be subject to a civil penalty of not more than \$10,000 for each violation as well
247 as reasonable attorney fees and costs.

248 B. No action shall be commenced under this section more than three years after a violation of subsection
249 A has occurred.

250 C. All penalties, fees, and costs shall be paid into the general fund of the Commonwealth.

251 **§ 32.1-384. Waiver of immunity.**

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

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

262 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
263 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**
264 **appropriation cannot be determined for periods of imprisonment in state adult correctional facilities;**
265 **therefore, Chapter 2 of the Acts of Assembly of 2024, Special Session I, requires the Virginia Criminal**
266 **Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the**
267 **Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for**
268 **periods of commitment to the custody of the Department of Juvenile Justice.**