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**SENATE BILL NO. 1098**

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the Senate Committee on Education and Health  
on January 23, 2025)

(Patron Prior to Substitute—Senator Hashmi)

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.*

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

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

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

77 **§ 19.2-88. Governor may investigate case.**

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

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

89 **§ 19.2-99. Arrest prior to requisition.**

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

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

110 **§ 19.2-100. Arrest without warrant.**

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

117 *B. The arrest of a person without a warrant is prohibited if the arrest is related to criminal liability that is*  
118 *based on protected health care activity as defined in § 32.1-378.*

119 **§ 19.2-273. Certificate that witness is needed in another state; hearing.**

120 *If a judge of a court of record in any state which by its laws has made provisions for commanding persons*

121 within that state to attend and testify in this Commonwealth certifies under the seal of such court ~~(4)~~ (i) that  
 122 there is a criminal prosecution pending in such court or that a grand jury investigation has commenced or is  
 123 about to commence, ~~(2)~~; (ii) that a person being within this Commonwealth is a material witness in such  
 124 prosecution or grand jury investigation, ~~and (3)~~; (iii) that his presence will be required for a specified number  
 125 of days; ~~upon~~; and (iv) that such prosecution or grand jury investigation is not related to protected health  
 126 care activity as defined in § 32.1-378. Upon presentation of such certificate to any judge of a court of record  
 127 in the county or city in which such person is, such judge shall fix a time and place for hearing and shall make  
 128 an order directing the witness to appear at a time and place certain for the hearing.

129 **§ 19.2-274. When court to order witness to attend.**

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

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

142 **CHAPTER 21.**

143 **VIRGINIA REPRODUCTIVE AND GENDER-AFFIRMING HEALTH CARE PROTECTION ACT.**

144 **§ 32.1-376. Short title.**

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

147 **§ 32.1-377. Policy.**

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

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

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

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

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

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

166 **§ 32.1-378. Definitions.**

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

168 "Abusive litigation" means:

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

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

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

180 "Gender-affirming health care" means all behavioral health, diagnostic, medical, mental health,  
 181 pharmaceutical, preventative, psychiatric, psychological, rehabilitative, supportive, surgical, and therapeutic

182 care services and supplies related to supporting a person's gender identity or to the treatment of gender  
 183 dysphoria and gender incongruence in accordance with the accepted standards of care as defined by major  
 184 medical professional organizations and agencies with expertise in the field of gender-affirming health care,  
 185 including the Standards of Care for the Health of Transgender and Gender Diverse People, Version 8, or  
 186 subsequent version, published by the World Professional Association for Transgender Health.

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

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

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

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

200 **§ 32.1-379. Abusive litigation; interference with protected health care activity.**

201 A. A person who sustains any injury, damages, or other harm resulting from an individual who, under the  
 202 laws of a jurisdiction other than the Commonwealth, engages or attempts to engage in abusive litigation may  
 203 bring an action against such individual in accordance with § 32.1-382. Each legal action that involves  
 204 abusive litigation constitutes a separate liable act.

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

209 **§ 32.1-380. Law-enforcement investigations; protected health care activity.**

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

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

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

224 **§ 32.1-381. Unlawful search, seizure, arrest, imprisonment, etc.**

225 Any search, seizure, arrest, detention, or imprisonment caused by or in which a violation of § 19.2-87.1,  
 226 19.2-99, 19.2-100, or 32.1-380 contributed is unlawful. The provisions of this section shall apply only to a  
 227 search, seizure, arrest, detention, or imprisonment that is based, in whole or in part, on the alleged protected  
 228 health care activity.

229 **§ 32.1-382. Individual actions; civil penalty.**

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

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

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

240 **§ 32.1-383. Attorney General; civil action; civil penalty.**

241 A. In addition to any other right or remedy allowed by law, the Attorney General may bring a civil action  
 242 against any person who violates the attestation requirements provided in subsection A of § 8.01-412.10,

243 subsection C of § 19.2-87.1, or subsection B of § 19.2-99 or who engages in abusive litigation in violation of  
244 § 32.1-379. Such person shall be subject to a civil penalty of not more than \$10,000 for each violation as well  
245 as reasonable attorney fees and costs.

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

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

249 **§ 32.1-384. Waiver of immunity.**

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

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

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