HB279

IT95666-1

By Representatives Daniels, Rafferty, Hollis, Clarke, Drummond, Warren, Moore (M), Hall

RFD: Judiciary

First Read: 05-Mar-24

SYNOPSIS:

Under existing Alabama law, there is no explicit recognition of the right to distribute and use contraceptives.

This bill would recognize that individuals have the right to engage in contraception and that health care providers have the right to both dispense contraceptive devices and provide information about their use.

This bill would further provide for enforcement of these rights by permitting the Attorney General, health care providers, and individuals to bring a civil suit to enjoin the enforcement of any law, rule, or policy that prohibits or interferes with the distribution and use of contraceptives. This bill would also provide for defenses to those claims.

A BILL

TO BE ENTITLED

AN ACT

Relating to contraception; to provide that individuals have the right to use contraception and that health care providers have the right to dispense contraceptive devices

that have been approved by the federal Food and Drug Administration; to prohibit the state and political subdivisions from enforcing any law that would interfere with the distribution and use of contraceptives; and to further provide for a civil cause of action by the Attorney General, health care providers, and consumers to enforce this act.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. For the purposes of this act, the following terms have the following meanings:

(1) CONTRACEPTION. Any action taken to prevent pregnancy, including the use of contraceptives or sterilization procedures.

(2) CONTRACEPTIVE. Any drug, device, biological product, or method that is intended for use in the prevention of pregnancy, whether specifically intended to prevent pregnancy or for other health needs, that is legally marketed under the federal Food, Drug, and Cosmetic Act, including oral contraceptives, long-acting reversible contraceptives such as intrauterine devices and hormonal contraceptive implants, emergency contraceptives, internal and external condoms, injectables, vaginal barrier methods, transdermal patches, and vaginal rings.

(3) HEALTH CARE PROVIDER. A person engaged in providing health care which dispenses legally marketed contraceptives to individuals. The term includes:

a. A physician, physician assistant, certified nurse practitioner, or a pharmacist licensed pursuant to Title 34, Code of Alabama 1975.

b. A hospital, clinic, emergency center, reproductive health service, or other health care institution or service licensed pursuant to Title 22, Code of Alabama 1975, or a pharmacy.

Section 2. (a) An individual who resides in the State of Alabama shall have the right to obtain contraceptives and to engage in contraception. A health care provider shall have the right to dispense contraceptives and provide information about contraception.

(b) The rights provided for in subsection (a) may not be infringed upon by any law, rule, or policy that expressly limits, delays, or impedes access to contraceptives or information about contraception.

Section 3. (a) The state, any department, agency, or instrumentality of the same, or any political subdivision of the state, may not implement, administer, or enforce any law, rule, or policy that has the effect of any of the following:

(1) Prohibiting or restricting the sale, provision, or use of any contraceptive that has been approved by the U.S. Food and Drug Administration for contraception.

(2) Prohibiting or restricting any health care provider from aiding an individual in obtaining or using any contraceptive approved by the U.S. Food and Drug Administration.

(3) Exempting any contraceptive approved by the U.S. Food and Drug Administration from any other generally applicable law in a way that would make it more difficult to sell, dispense, obtain, or use the contraceptive.

(b) Any individual or entity that is subject to a law, rule, or policy that violates this act may assert this section as a defense in any action to enforce the law, rule, or policy against the individual or entity.

Section 4. (a) The Attorney General may commence a civil action in the circuit court for injunctive relief against any person that implements, administers, or enforces any law, rule, or policy that violates, or that has the effect of violating, this act.

(b)(1) Any health care provider or individual adversely affected by a violation of this act may commence a civil action in circuit court for injunctive relief against any person that implements, administers, or enforces any law, rule, or policy that violates, or that has the effect of violating, this act.

(2) A health care provider may commence a civil action on the health care provider's behalf, or on behalf of the health care provider's patients or customers who are or who may be adversely affected by a violation of this act.

(c)(1) In any action commenced under this section, a party alleged to implement, administer, or enforce a law, rule, or policy in violation of this act may assert one of the following defenses:

a. The law, rule, or policy significantly advances the safety of contraceptives, contraception, or the quality of information about contraceptives, or the health of users, in a way that cannot be advanced by an alternative measure or action that is less restrictive.

b. The law, rule, or policy that is being applied to a contraceptive or contraception is also being applied to other medically similar drugs, devices, biological products, or methods.

(2) A defense asserted under subdivision (1) must be established by clear and convincing evidence in order to bar a a claim brought under this section.

Section 5. This act shall become effective on October 1, 2024.