

SENATE BILL 1804

By Oliver

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 8; Title 53; Title 56; Title 63; Title 68 and Title
71, relative to contraceptives.

WHEREAS, the legislature declares that freedom to access, use, or refuse a contraceptive method of choice is a fundamental right, central to a person's liberty, privacy, health, well-being, dignity, equality, and ability to participate in the social and economic life of this State; and

WHEREAS, the legislature finds that contraception is safe and essential health care, and access to contraceptive products and services are necessary for the prevention of unintended pregnancy and sexually transmitted diseases, as well as for a person's ability to participate equally in economic and social life, and make decisions about their families and their lives; and

WHEREAS, the legislature finds that the right to make personal decisions about contraceptive use is important for all people, and is especially critical for historically marginalized groups, including Black, indigenous, and other people of color; immigrants; lesbian, gay, bisexual, transgender, and queer people; people with disabilities; people with low incomes; and people living in rural and underserved areas; and

WHEREAS, the legislature finds that broad access to contraceptives is internationally recognized by the World Health Organization as advancing other human rights, such as the right to life, liberty, expression, health, work, and education; and

WHEREAS, the legislature determines that readily and practically available contraceptive procedures, supplies, and information regardless of sex, race, age, gender, income, number of children, marital status, citizenship, or motive is in the best interest of the people of this State; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 1, is amended by adding the following as a new part:

68-1-2501. Short title and definitions.

(a) This part may be cited as the "Tennessee Contraceptive Freedom Act."

(b) As used in this part:

(1) "Contraception" means an action taken to prevent pregnancy, including the use of contraceptives, emergency contraceptives, fertility-awareness based methods, and sterilization procedures. Contraception does not mean, and is distinct from, abortion;

(2) "Contraceptive" means a device, medication, biological product, or procedure that is intended for use in the prevention of pregnancy, whether specifically intended to prevent pregnancy or for other health needs, legally marketed under the Federal Food, Drug, and Cosmetic Act, compiled in 21 U.S.C. § 301 et seq.;

(3) "Family planning" includes all forms of contraception;

(4) "Healthcare provider" means:

(A) A healthcare practitioner, person, or facility licensed, authorized, certified, registered, or regulated under title 33, title 63, title 68, federal law or order, or an executive order of the governor;

(B) Employees, agents, or contractors of practitioners, persons, or facilities described in subdivision (4)(A); and

(C) The department of health and any agency, board, council, or committee attached to the department of health;

(5) "Health insurance carrier" means an entity subject to the insurance laws of this state, or subject to the jurisdiction of the commissioner of the department of commerce and insurance, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse the costs of healthcare services, including an insurance company, a health maintenance organization, a health service corporation, a nonprofit hospital, or another entity providing a plan of health insurance, health benefits, or health services;

(6) "Political subdivision" means a local governmental entity, including a city, town, municipality, metropolitan government, county, utility district, school district, public building authority, housing authority, emergency communications district, county board of health, and development district created and existing pursuant to the laws of this state, or an instrumentality of government created by one (1) or more local governmental entities; and

(7) "Public health agency":

(A) Means any public provider of local health services under title 68, chapter 2; and

(B) Includes the department of health, a county health department, and a district health department.

68-1-2502. Permitted services.

(a) A person has a right to obtain contraceptives and engage in family planning and contraception.

(b) A healthcare provider shall:

(1) Provide contraceptives, contraception, and information related to contraception and family planning to consenting patients; or

(2) Refer consenting patients to a healthcare provider that can provide contraceptives, contraception, and information related to contraception and family planning.

(c) The rights set forth in subsection (a) must not be limited or otherwise infringed through a limitation or requirement that:

(1) Expressly, effectively, implicitly, or as implemented singles out the provision of contraceptives, contraception, or contraception-related information; healthcare providers who provide contraceptives, contraception, or contraception-related information; or facilities in which contraceptives, contraception, or contraception-related information is provided; or

(2) Impedes access to contraceptives, contraception, or contraception-related information.

(d) To defend against a claim that a limitation or requirement infringes on a healthcare provider's or patient's rights in violation of subsection (c), a party must establish, by clear and convincing evidence, that:

(1) The limitation or requirement significantly advances the safety of contraceptives, contraception, and contraception-related information; and

(2) The safety of contraceptives, contraception, and contraception-related information or the health of patients cannot be advanced by a less restrictive alternative.

68-1-2503. Access.

(a) On or after July 1, 2024, health insurance carriers and public health agencies shall ensure affordable access to a wide range of contraceptive methods for all consenting persons.

(b) Affordable access must include:

(1) For a health insurance carrier that issues or renews a health insurance policy, plan, or contract of accident or health insurance providing benefits for medical or hospital expenses, providing full coverage for the expenses of the contraceptive method of choice for a person covered by the health insurance carrier; and

(2) For a public health agency that serves the people of a municipality, providing full coverage for the expenses of the contraceptive method of choice for an uninsured person residing in this state.

(c) Access to contraceptives shall not be limited by a person's sex, race, age, gender, income, ability to pay, number of children, marital status, citizenship, or motive.

68-1-2504. Applicability.

(a) This state, and any political subdivision of this state, shall not administer, implement, or enforce any law, rule, or other provision having the force and effect of law that:

(1) Prohibits or restricts the sale, provision, or use of any contraceptives that have been approved by the federal food and drug administration for contraceptive purposes.

(2) Prohibits or restricts any person from aiding another person in obtaining any contraceptives approved by the federal food and drug administration or other contraceptive methods.

(3) Exempts any contraceptives approved by the federal food and drug administration from any other generally applicable law in a way that would make it more difficult to sell, provide, obtain, or use those contraceptives or contraceptive methods.

(b) An individual or entity who is subject to a limitation or requirement that violates this section may raise this section as a defense to any cause of action against the individual or entity.

68-1-2505. Construction.

(a) This part must be liberally construed to effectuate its purposes.

(b) This part does not:

(1) Authorize a government or political subdivision to interfere with a healthcare provider's ability to provide contraceptives or contraception-related information or a person's freedom to obtain contraceptives or to engage in contraception;

(2) Authorize a healthcare provider, women's resource center, or pregnancy care center to interfere with a person's freedom to obtain contraceptives, to engage in contraception, or to obtain medically supported information related to contraception and family planning to consenting patients;

(3) Permit or sanction the conduct of any sterilization procedure or contraception use without the patient's voluntary and informed consent; or

(4) Violate title 39, chapter 15, part 2.

SECTION 2. The headings in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 3. This act takes effect upon becoming a law, the public welfare requiring it, and, as applicable, applies to contracts or policies of insurance issued, entered into, or amended on or after July 1, 2024.