

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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PRINCIPAL CLERK

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SENATE BILL DRS15430-NJa-79

Short Title: Right to Use Contraception Act. (Public)

Sponsors: Senators Smith, Grafstein, and Garrett (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT PROTECTING THE RIGHT TO USE CONTRACEPTION AND APPROPRIATING
3 FUNDS TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO SUPPORT
4 THE MEDICAID FAMILY PLANNING PROGRAM.

5 The General Assembly of North Carolina enacts:

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7 **PART I. RIGHT TO USE CONTRACEPTION**

8 **SECTION 1.** Chapter 90 of the General Statutes is amended by adding a new Article
9 to read:

10 "Article 10.

11 "Right to Use Contraception.

12 "**§ 90-160. Title.**

13 This Article may be cited as the "Right to Use Contraception Act."

14 "**§ 90-161. Legislative declaration.**

15 The right to use contraception implicates the fundamental liberty to prevent pregnancy. It is
16 the policy of the State of North Carolina that this State has no legitimate governmental interest
17 in limiting the freedom to use contraception to prevent pregnancy.

18 "**§ 90-162. Definitions.**

19 The following definitions apply in this Article:

20 (1) Contraception. – An action taken to prevent pregnancy, including the use of
21 contraceptives or sterilization procedures.

22 (2) Contraceptive. – Any drug, device, or biological product intended for use in
23 the prevention of pregnancy, whether specifically intended to prevent
24 pregnancy or for other health needs, that is legally marketed under the Federal
25 Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et seq.), including oral
26 contraceptives, long-acting reversible contraceptives such as intrauterine
27 devices and hormonal contraceptive implants, emergency contraceptives,
28 internal and external condoms, injectables, vaginal barrier methods,
29 transdermal patches, and vaginal rings.

30 (3) Health care provider. – As defined in G.S. 90-410.

31 "**§ 90-163. Right to contraception.**

32 (a) A person shall have the right to obtain contraceptives and to engage in contraception.
33 A health care provider shall have the right to provide contraceptives and contraception-related
34 information.



1 **(b)** The rights specified in subsection (a) of this section shall not be infringed upon by
2 any law, regulation, or policy that expressly or effectively limits, delays, or impedes access to
3 contraceptives or information related to contraception.

4 **(c)** To defend against a claim that a law, regulation, or policy violates a health care
5 provider's or patient's statutory rights under subsection (a) of this section, a party must establish,
6 by clear and convincing evidence, either of the following:

7 **(1)** The law, regulation, or policy significantly advances the safety of
8 contraceptives, contraception, and contraception-related information and the
9 safety of contraceptives, contraception, and contraception-related information
10 or the health of patients cannot be advanced by a less restrictive alternative
11 measure or action.

12 **(2)** The law, regulation, or policy that is being applied to contraception is also
13 being applied to other medically similar drugs, devices, or biological products.

14 **"§ 90-164. Applicability.**

15 **(a)** Neither the State nor any city or county may administer, implement, or enforce any
16 law, rule, regulation, standard, or other provision having the force and effect of law in a manner
17 that:

18 **(1)** Prohibits or restricts the sale, provision, or use of any contraceptives that have
19 been approved by the U.S. Food and Drug Administration for contraceptive
20 purposes.

21 **(2)** Prohibits or restricts any person from aiding another person in obtaining any
22 contraceptives approved by the U.S. Food and Drug Administration or
23 utilizing any contraceptive methods.

24 **(3)** Exempts any contraceptives approved by the U.S. Food and Drug
25 Administration from any other generally applicable law in a way that would
26 make it more difficult to sell, provide, obtain, or use those contraceptives or
27 contraceptive methods.

28 **(b)** An individual or entity that is subject to a law, rule, regulation, standard, or other
29 provision having the force and effect of law that violates this Article may raise this section as a
30 defense to any cause of action against the individual or entity.

31 **"§ 90-165. Enforcement.**

32 **(a)** The Attorney General may commence a civil action on behalf of the State against any
33 person that violates or enforces a law, rule, regulation, standard, or other provision having the
34 force and effect of law that violates the provisions of this Article.

35 **(b)** Any individual or entity, including any health care provider or patient, adversely
36 affected by an alleged violation of this Article may commence a civil action against any person
37 that violates or implements or enforces a law, rule, regulation, standard, or other provision having
38 the force and effect of law in violation of this Article.

39 **(c)** A health care provider may commence an action for relief on the provider's own
40 behalf, on behalf of the provider's staff, and on behalf of the provider's patients who are or may
41 be adversely affected by an alleged violation of this Article.

42 **(d)** If a court finds that there has been a violation of this Article, the court shall hold
43 unlawful and set aside the law, rule, regulation, standard, or other provision having the force and
44 effect of law that violates this Article. In any action under this Article, the court may award
45 appropriate equitable relief, including temporary, preliminary, or permanent injunctive relief."

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47 **PART II. APPROPRIATION**

48 **SECTION 2.** Effective July 1, 2024, there is appropriated from the General Fund to
49 the Department of Health and Human Services, Division of Health Benefits, the sum of three
50 million dollars (\$3,000,000) in nonrecurring funds for the 2024-2025 fiscal year to be used to
51 expand education programs related to the NC Medicaid Family Planning Program, also known

1 as the "Be Smart" program. These funds shall provide a State match for three million dollars
2 (\$3,000,000) in nonrecurring federal funds for the 2024-2025 fiscal year, and those federal funds
3 are appropriated to the Division of Health Benefits to be used for this same purpose.
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5 **PART III. EFFECTIVE DATE**

6 **SECTION 3.** Except as otherwise provided, this act is effective when it becomes
7 law.