

By Senator Osgood

32-01390-24

20241446__

1 A bill to be entitled
2 An act relating to access to contraception; creating
3 s. 381.998, F.S.; providing a short title; providing
4 definitions; authorizing a person to obtain
5 contraceptives and engage in contraception;
6 authorizing a health care provider to provide
7 contraceptives, contraception, and contraception-
8 related information; providing requirements for a
9 defense to certain violations; authorizing the
10 Attorney General, a person, or an entity to bring
11 enforcement actions under certain circumstances;
12 authorizing civil penalties; providing applicability
13 and construction; providing an effective date.

14
15 WHEREAS, the right to contraception is a fundamental right,
16 central to a person's privacy, health, well-being, dignity,
17 liberty, equality, and ability to participate in the social and
18 economic life of this state, and

19 WHEREAS, the United States Supreme Court has repeatedly
20 recognized the constitutional right to contraception, and

21 WHEREAS, in *Griswold v. Connecticut*, 381 U.S. 479 (1965),
22 the United States Supreme Court first recognized the
23 constitutional right of married people to use contraceptives,
24 and

25 WHEREAS, in *Eisenstadt v. Baird*, 405 U.S. 438 (1972), the
26 United States Supreme Court confirmed the constitutional right
27 of all people to legally access contraceptives regardless of
28 marital status, and

29 WHEREAS, in *Carey v. Population Services International*, 431

32-01390-24

20241446__

30 U.S. 678 (1977), the United States Supreme Court affirmed the
31 constitutional right to contraceptives for minors, and

32 WHEREAS, the right to contraception has been repeatedly
33 recognized internationally as a human right, and

34 WHEREAS, the United Nations Population Fund has published
35 several reports outlining family planning as a basic human right
36 that advances women's health, economic empowerment, and
37 equality, and

38 WHEREAS, access to contraceptives is internationally
39 recognized by the World Health Organization as advancing other
40 human rights, such as the rights to life, liberty, expression,
41 health, work, and education, and

42 WHEREAS, contraception is safe, essential health care, and
43 access to contraceptive products and services is central to
44 people's ability to participate equally in economic and social
45 life, allowing people to make decisions about their families and
46 their lives, and

47 WHEREAS, contraception is key to sexual and reproductive
48 health and is critical to preventing unintended pregnancy, and
49 many contraceptives are highly effective in preventing and
50 treating a wide array of often severe medical conditions and
51 decrease the risk of certain cancers, and

52 WHEREAS, family planning improves health outcomes for
53 women, their families, and their communities and reduces rates
54 of maternal and infant mortality and morbidity, and

55 WHEREAS, the United States has a long history of
56 reproductive coercion, including the childbearing forced upon
57 enslaved women, as well as the forced sterilization of Black
58 women, Puerto Rican women, indigenous women, immigrant women,

32-01390-24

20241446__

59 and disabled women, and reproductive coercion continues to
60 occur, and

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

68 WHEREAS, many people who are part of these marginalized
69 groups already face barriers, exacerbated by social, political,
70 economic, and environmental inequities, to comprehensive health
71 care, including reproductive health care, which reduce their
72 ability to make decisions about their health, families, and
73 lives, and

74 WHEREAS, policies governing pharmaceutical and insurance
75 policies affect the accessibility of contraceptives and the
76 settings in which contraception services are delivered, and

77 WHEREAS, despite the clearly established constitutional
78 right to contraception, access to contraceptives, including
79 emergency contraceptives and long-acting reversible
80 contraceptives, has been obstructed in various ways, and

81 WHEREAS, as of June 2023, at least four states had tried to
82 ban access to some or all contraceptives by restricting access
83 to public funding for these products and services, and

84 WHEREAS, health care providers' refusals to offer
85 contraceptives and contraception-related information on the
86 basis of their own personal beliefs impede patients from
87 obtaining their preferred method of contraception, and

32-01390-24

20241446__

88 WHEREAS, states have attempted to define abortion
89 expansively so as to include contraceptives in state bans on
90 abortion and have also restricted access to emergency
91 contraception, and

92 WHEREAS, in June 2022, Justice Thomas, in his concurring
93 opinion in *Dobbs v. Jackson Women's Health Organization*, 142 S.
94 Ct. 2228 (2022), stated that the United States Supreme Court
95 "should reconsider all of this Court's substantive due process
96 precedents, including *Griswold*, *Lawrence*, and *Obergefell*" and
97 that the court has "a duty to correct the error established in
98 those precedents" by overruling them, and

99 WHEREAS, in order to further public health and to combat
100 efforts to restrict access to reproductive health care, action
101 is necessary to protect access to contraceptives, contraception,
102 and contraception-related information for everyone, regardless
103 of actual or perceived race, ethnicity, sex, including gender
104 identity and sexual orientation, income, disability, national
105 origin, immigration status, or geography, NOW, THEREFORE,

106
107 Be It Enacted by the Legislature of the State of Florida:
108

109 Section 1. Section 381.998, Florida Statutes, is created to
110 read:

111 381.998 Right to contraception.—

112 (1) This section may be cited as the "Right to
113 Contraception Act."

114 (2) As used in this section, the term:

115 (a) "Contraception" means an action taken to prevent
116 pregnancy, including the use of contraceptives or fertility

32-01390-24

20241446__

117 awareness-based methods and sterilization procedures.

118 (b) "Contraceptive" means any drug, device, or biological
119 product intended for use in the prevention of pregnancy, whether
120 specifically intended to prevent pregnancy or for other health
121 needs, which is legally marketed under the Federal Food, Drug,
122 and Cosmetic Act, such as oral contraceptives, long-acting
123 reversible contraceptives, emergency contraceptives, internal
124 and external condoms, injectables, vaginal barrier methods,
125 transdermal patches, and vaginal rings or other contraceptives.

126 (c) "Health care provider" has the same meaning as in s.
127 381.00321(1).

128 (d) "Political subdivision" has the same meaning as in s.
129 1.01(8).

130 (3) (a) A person may obtain contraceptives and engage in
131 contraception, and a health care provider may provide
132 contraceptives, contraception, and contraception-related
133 information.

134 (b) This subsection does not limit any of the following:

135 1. Expressly, effectively, implicitly, or as implemented,
136 the provision of contraceptives, contraception, or
137 contraception-related information; health care providers who
138 provide contraceptives, contraception, or contraception-related
139 information; or facilities in which contraceptives,
140 contraception, or contraception-related information is provided.

141 2. Access to contraceptives, contraception, or
142 contraception-related information.

143 (c) For a defense against a claim that a limitation or
144 requirement violates a health care provider's or patient's
145 rights under paragraph (b), a party must establish, by clear and

32-01390-24

20241446__

146 convincing evidence, all of the following:

147 1. The limitation or requirement significantly advances the
148 safety of contraceptives, contraception, and contraception-
149 related information.

150 2. The safety of contraceptives, contraception, and
151 contraception-related information or the health of patients
152 cannot be advanced by a less restrictive alternative measure or
153 action.

154 (4) (a) The state or any political subdivision may not
155 administer, implement, or enforce any law, rule, regulation,
156 standard, or other provision having the force and effect of law
157 in a manner that:

158 1. Prohibits or restricts the sale, provision, or use of
159 any contraceptives that have been approved by the federal Food
160 and Drug Administration for contraceptive purposes.

161 2. Prohibits or restricts any person from obtaining or
162 aiding another person in obtaining any contraceptives approved
163 by the federal Food and Drug Administration or using any
164 contraceptive method.

165 3. Exempts any contraceptives approved by the federal Food
166 and Drug Administration from any other general law in a way that
167 would make it more difficult to sell, provide, obtain, or use
168 those contraceptives or contraceptive methods.

169 (b) This section does not supersede or otherwise affect any
170 provision relating to coverage under group health plans or group
171 or individual health insurance coverage and may not be construed
172 as requiring the provision of specific benefits under these
173 plans or coverage.

174 (c) An individual or entity who is subject to a limitation

32-01390-24

20241446__

175 or requirement that violates this section has an affirmative
176 defense to any cause of action brought under this section
177 against the individual or entity.

178 (5) (a) This section must be liberally construed to
179 effectuate its purposes.

180 (b) This section does not:

181 1. Authorize the state or a political subdivision to
182 interfere with a health care provider's ability to provide
183 contraceptives or contraception-related information or a
184 person's ability to obtain contraceptives or to engage in
185 contraception.

186 2. Authorize or sanction the conduct of any sterilization
187 procedure without the patient's voluntary and informed consent.

188 (6) (a) The Attorney General may commence a civil action on
189 behalf of the state against any person that violates or enforces
190 a limitation or requirement that violates this section. In any
191 civil action brought under this paragraph, the Attorney General
192 may compromise and settle the action as he or she determines is
193 in the best interest of the state.

194 (b) Any person or entity, including a health care provider
195 or patient, adversely affected by an alleged violation of this
196 section may commence a civil action against any person that
197 violates, implements, or enforces a limitation or a requirement
198 that violates this section.

199 (c) A health care provider may commence an action for
200 relief on its own behalf, on behalf of the health care
201 provider's staff, and on behalf of the health care provider's
202 patients who are or may be adversely affected by an alleged
203 violation of this section.

32-01390-24

20241446__

204 (d) If a court finds that there has been a violation of
205 this section, the court must hold unlawful and set aside the
206 limitation or requirement. In any action under this section, the
207 court may award appropriate equitable relief, including
208 temporary, preliminary, or permanent injunctive relief.

209 (e) The court shall award to any prevailing plaintiff
210 attorney fees and costs. Unless a court determines an action is
211 frivolous, the court may not hold a plaintiff liable to a
212 defendant for attorney fees and costs in an action under this
213 section.

214 Section 2. This act shall take effect July 1, 2024.