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HOUSE BILL NO. 1403**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee for Courts of Justice)

on February 13, 2004)

(Patron Prior to Substitute—Delegate Byron)

A BILL to amend and reenact § 54.1-2969 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 54.1-2969.1, relating to the morning-after pill; penalty.

Be it enacted by the General Assembly of Virginia:

1. That § 54.1-2969 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding a sections numbered 54.1-2969.1 as follows:

§ 54.1-2969. Authority to consent to surgical and medical treatment of certain minors.

A. Whenever any minor who has been separated from the custody of his parent or guardian is in need of surgical or medical treatment, authority commensurate with that of a parent in like cases is conferred, for the purpose of giving consent to such surgical or medical treatment, as follows:

1. Upon judges with respect to minors whose custody is within the control of their respective courts.

2. Upon local directors of social services or their designees with respect to (i) minors who are committed to the care and custody of the local board by courts of competent jurisdiction, (ii) minors who are taken into custody pursuant to § 63.2-1517, and (iii) minors who are entrusted to the local board by the parent, parents or guardian, when the consent of the parent or guardian cannot be obtained immediately and, in the absence of such consent, a court order for such treatment cannot be obtained immediately.

3. Upon the Director of the Department of Corrections or the Director of the Department of Juvenile Justice or his designees with respect to any minor who is sentenced or committed to his custody.

4. Upon the principal executive officers of state institutions with respect to the wards of such institutions.

5. Upon the principal executive officer of any other institution or agency legally qualified to receive minors for care and maintenance separated from their parents or guardians, with respect to any minor whose custody is within the control of such institution or agency.

6. Upon any person standing in loco parentis, or upon a conservator or custodian for his ward or other charge under disability.

B. Whenever the consent of the parent or guardian of any minor who is in need of surgical or medical treatment is unobtainable because such parent or guardian is not a resident of this Commonwealth or his whereabouts is unknown or he cannot be consulted with promptness reasonable under the circumstances, authority commensurate with that of a parent in like cases is conferred, for the purpose of giving consent to such surgical or medical treatment, upon judges of juvenile and domestic relations district courts.

C. Whenever delay in providing medical or surgical treatment to a minor may adversely affect such minor's recovery and no person authorized in this section to consent to such treatment for such minor is available within a reasonable time under the circumstances, no liability shall be imposed upon qualified emergency medical services personnel as defined in § 32.1-111.1 at the scene of an accident, fire or other emergency, a licensed health professional, or a licensed hospital by reason of lack of consent to such medical or surgical treatment. However, in the case of a minor fourteen years of age or older who is physically capable of giving consent, such consent shall be obtained first.

D. Whenever delay in providing transportation to a minor from the scene of an accident, fire or other emergency prior to hospital admission may adversely affect such minor's recovery and no person authorized in this section to consent to such transportation for such minor is available within a reasonable time under the circumstances, no liability shall be imposed upon emergency medical services personnel as defined in § 32.1-111.1, by reason of lack of consent to such transportation. However, in the case of a minor fourteen years of age or older who is physically capable of giving consent, such consent shall be obtained first.

E. A minor shall be deemed an adult for the purpose of consenting to:

1. Medical or health services needed to determine the presence of or to treat venereal disease or any infectious or contagious disease that the State Board of Health requires to be reported;

2. Medical or health services required in case of birth control, pregnancy or family planning except for the purposes of sexual sterilization *or obtaining any hormonal medication or combination of medications administered only after intercourse for the post-coital control of fertility, commonly known as "Plan B" or "the morning-after pill";*

3. Medical or health services needed in the case of outpatient care, treatment or rehabilitation for substance abuse as defined in § 37.1-203;

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60 4. Medical or health services needed in the case of outpatient care, treatment or rehabilitation for
61 mental illness or emotional disturbance; or

62 5. The release of medical records related to subdivisions 1 and 2.

63 F. Except for the purposes of sexual sterilization, any minor who is or has been married shall be
64 deemed an adult for the purpose of giving consent to surgical and medical treatment.

65 G. A pregnant minor shall be deemed an adult for the sole purpose of giving consent for herself and
66 her child to surgical and medical treatment relating to the delivery of her child when such surgical or
67 medical treatment is provided during the delivery of the child or the duration of the hospital admission
68 for such delivery; thereafter, the minor mother of such child shall also be deemed an adult for the
69 purpose of giving consent to surgical and medical treatment for her child.

70 H. Any minor seventeen years of age may, with the consent of a parent or legal guardian, consent to
71 donate blood and may donate blood if such minor meets donor eligibility requirements. However,
72 parental consent to donate blood by any minor seventeen years of age shall not be required if such
73 minor receives no consideration for his blood donation and the procurer of the blood is a nonprofit,
74 voluntary organization.

75 I. Any judge, local director of social services, Director of the Department of Corrections, Director of
76 the Department of Juvenile Justice, or principal executive officer of any state or other institution or
77 agency who consents to surgical or medical treatment of a minor in accordance with this section shall
78 make a reasonable effort to notify the minor's parent or guardian of such action as soon as practicable.

79 J. Nothing in subsection G shall be construed to permit a minor to consent to an abortion without
80 complying with § 16.1-241.

81 K. Nothing in subdivision 3 of subsection E shall prevent a parent, legal guardian or person standing
82 in loco parentis from obtaining the results of a minor's nondiagnostic drug test when the minor is not
83 receiving care, treatment or rehabilitation for substance abuse as defined in § 37.1-203.

84 § 54.1-2969.1. Parental consent for Plan B or any other form of the morning-after pill for minors
85 required.

86 A. For purposes of this section:

87 "Authorization" means the minor has delivered to the prescriber a notarized, written statement signed
88 by an authorized person that the authorized person knows of the minor's intent to take Plan B or any
89 other form of the morning-after pill and consents to the prescriber prescribing Plan B or any other form
90 of the morning-after pill for the minor.

91 "Authorized person" means (i) a parent or duly appointed legal guardian or custodian of the minor
92 or (ii) a person standing in loco parentis, including, but not limited to, a grandparent or adult sibling
93 with whom the minor regularly and customarily resides and who has care and control of the minor.

94 "Consent" means that (i) the prescriber has given notice of intent to prescribe Plan B or any other
95 form of the morning-after pill and has received authorization from an authorized person, or (ii) at least
96 one authorized person is present with the minor seeking the prescription for Plan B or any other form
97 of the morning-after pill, which shall be witnessed by the prescriber or an agent thereof. In either case,
98 the written authorization shall be incorporated into the minor's medical record and maintained as a part
99 thereof for a period of not less than seven years.

100 "Notice of intent to prescribe Plan B or any other form of the morning-after pill" means that (i) the
101 prescriber or his agent has given actual notice of his intent to prescribe Plan B or any other form of
102 the morning-after pill using the product name, indicating that it "may inhibit implantation of a live
103 human embryo," and provided a complete description of all health risks including, but not limited to,
104 complications such as blood clots, heart attacks and unknown risks from repeated usage to an
105 authorized person, either in person or by telephone, at least four hours prior to prescribing Plan B or
106 any other form of the morning-after pill; or (ii) the prescriber, after a reasonable effort to notify an
107 authorized person has failed, has mailed such notice to an authorized person by mail addressed to such
108 person at his usual place of abode at least 48 hours prior to prescribing Plan B or any other form of
109 the morning-after pill.

110 "Plan B" or "the morning-after pill" means any hormonal medication or combination of medications
111 administered only after intercourse for the post-coital control of fertility.

112 "Prescriber" means a licensed physician, a licensed nurse practitioner with prescriptive authority in
113 compliance with the provisions of § 54.1-2957.01 or a licensed physician assistant with prescriptive
114 authority in compliance with the provisions of § 54.1-2952.1.

115 "Unemancipated minor" means a minor who has not been emancipated by entry of an order of
116 emancipation pursuant to Article 15 (§ 16.1-331 et seq.) of Chapter 11 of Title 16.1.

117 B. A prescriber shall not knowingly prescribe Plan B or any other form of the morning-after pill for
118 an unemancipated minor unless consent has been obtained. This section shall not apply where, in the
119 reasonable clinical judgment of the prescriber (i) obtaining consent would cause significant risk to the
120 life of the minor, (ii) obtaining consent would cause a serious risk of substantial and irreversible
121 impairment of a major bodily function of the minor, (iii) obtaining consent would subject the minor to

122 *the risk of physical harm or (iv) the time period to obtain consent would be beyond the time period for*
123 *the effective use of Plan B or the morning-after pill. Any prescriber who prescribes Plan B or any other*
124 *form of the morning-after pill in violation of this subsection is guilty of a Class 1 misdemeanor.*
125 *C. Any person who knows he is not an authorized person and who knowingly and willfully signs an*
126 *authorization statement consenting to the prescriber prescribing Plan B or any other form of the*
127 *morning-after pill for a minor is guilty of a Class 1 misdemeanor.*