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HOUSE BILL NO. 1524

Offered January 12, 2005

Prefiled November 23, 2004

A BILL to amend and reenact § 18.2-76 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-73.1, relating to anesthesia for fetal pain.

Patrons—Black, Albo, Carrico, Cosgrove, Cox, Dudley, Frederick, Hugo, Keister, Marrs, Marshall, R.G., McDonnell, Nixon, Oder, Weatherholtz and Welch; Senators: Bolling and Ruff

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-76 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-73.1 as follows:

§ 18.2-76. Informed written consent required; civil penalty.

A. Before performing any abortion or inducing any miscarriage or terminating a pregnancy as provided in §§ 18.2-72, 18.2-73 or § 18.2-74, the physician shall obtain the informed written consent of the pregnant woman. However, if the woman has been adjudicated incapacitated by any court of competent jurisdiction or if the physician knows or has good reason to believe that such woman is incapacitated as adjudicated by a court of competent jurisdiction, then only after permission is given in writing by a parent, guardian, committee, or other person standing in loco parentis to the woman, may the physician perform the abortion or otherwise terminate the pregnancy.

B. For purposes of this section:

"Informed written consent" means the knowing and voluntary written consent to abortion by a pregnant woman of any age, without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion by the physician who is to perform the abortion or his agent. The basic information to effect such consent, as required by this subsection, shall be provided by telephone or in person to the woman at least 24 hours before the abortion by the physician who is to perform the abortion, by a referring physician, or by a licensed professional or practical nurse working under the direct supervision of either the physician who is to perform the abortion or the referring physician; however, the information in subdivision 5 may be provided instead by a licensed health-care professional working under the direct supervision of either the physician who is to perform the abortion or the referring physician. This basic information shall include:

1. A full, reasonable and comprehensible medical explanation of the nature, benefits, and risks of and alternatives to the proposed procedures or protocols to be followed in her particular case;

2. An instruction that the woman may withdraw her consent at any time prior to the performance of the procedure;

3. An offer for the woman to speak with the physician who is to perform the abortion so that he may answer any questions that the woman may have and provide further information concerning the procedures and protocols;

4. A statement of the probable gestational age of the fetus at the time the abortion is to be performed; and

5. An offer to review the printed materials described in subsection D. If the woman chooses to review such materials, they shall be provided to her in a respectful and understandable manner, without prejudice and intended to give the woman the opportunity to make an informed choice and shall be provided to her at least 24 hours before the abortion or mailed to her at least 72 hours before the abortion by first-class mail or, if the woman requests, by certified mail, restricted delivery. This offer for the woman to review the material shall advise her of the following: (i) the Department of Health publishes printed materials that describe the unborn child and list agencies that offer alternatives to abortion; (ii) medical assistance benefits may be available for prenatal care, childbirth and neonatal care, and that more detailed information on the availability of such assistance is contained in the printed materials published by the Department; (iii) the father of the unborn child is liable to assist in the support of her child, even in instances where he has offered to pay for the abortion, that assistance in the collection of such support is available, and that more detailed information on the availability of such assistance is contained in the printed materials published by the Department; and (iv) she has the right to review the materials printed by the Department and that copies will be provided to her free of charge if she chooses to review them. Where the woman has advised that the pregnancy is the result of a rape, the information in clause (iii) above may be omitted.

The information required by this subsection may be provided by telephone without conducting a

58 physical examination of or tests upon the woman, in which case the information required to be provided
59 may be based on facts supplied by the woman and whatever other relevant information is reasonably
60 available to the physician. If a physical examination, tests or the availability of other information to the
61 physician or the nurse subsequently indicates, in the medical judgment of the physician or the nurse, a
62 revision of the information previously supplied to the woman, that revised information may be
63 communicated to the woman at any time prior to the performance of the abortion.

64 C. The physician need not obtain the informed written consent of the woman when the abortion is to
65 be performed pursuant to a medical emergency. "Medical emergency" means any condition which, on
66 the basis of the physician's good faith clinical judgment, so complicates the medical condition of a
67 pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for
68 which a delay will create a serious risk of substantial and irreversible impairment of a major bodily
69 function.

70 D. On or before October 1, 2001, the Department of Health shall publish, in English and in each
71 language which is the primary language of two percent or more of the population of the
72 Commonwealth, the following printed materials in such a way as to ensure that the information is easily
73 comprehensible:

74 1. Geographically indexed materials designed to inform the woman of public and private agencies
75 and services available to assist a woman through pregnancy, upon childbirth and while the child is
76 dependent, including, but not limited to, information on services relating to (i) adoption as a positive
77 alternative, (ii) information relative to counseling services, benefits, financial assistance, medical care
78 and contact persons or groups, (iii) paternity establishment and child support enforcement, (iv) child
79 development, (v) child rearing and stress management, and (vi) pediatric and maternal health care. The
80 materials shall include a comprehensive list of the names and telephone numbers of the agencies, or, at
81 the option of the Department of Health, printed materials including a toll-free, 24-hour-a-day telephone
82 number which may be called to obtain, orally, such a list and description of agencies in the locality of
83 the caller and of the services they offer;

84 2. Materials designed to inform the woman of the probable anatomical and physiological
85 characteristics of the human fetus at two-week gestational increments from the time when a woman can
86 be known to be pregnant to full term, including any relevant information on the possibility of the fetus's
87 survival and pictures or drawings representing the development of the human fetus at two-week
88 gestational increments. Such pictures or drawings shall contain the dimensions of the fetus and shall be
89 realistic and appropriate for the stage of pregnancy depicted. *The materials shall contain the following*
90 *statement: "By 20 weeks gestation, the unborn child has the physical structures necessary to experience*
91 *pain. There is evidence that by 20 weeks gestation unborn children seek to evade certain stimuli in a*
92 *manner which in an infant or an adult would be interpreted to be a response to pain. Anesthesia is*
93 *routinely administered to unborn children who are 20 weeks gestational age or older who undergo*
94 *prenatal surgery."* The materials shall be objective, nonjudgmental and designed to convey only accurate
95 scientific information about the human fetus at the various gestational ages; and

96 3. Materials containing objective information describing the methods of abortion procedures
97 commonly employed, the medical risks commonly associated with each such procedure, the possible
98 detrimental psychological effects of abortion, and the medical risks commonly associated with carrying a
99 child to term.

100 The Department of Health shall make these materials available at each local health department and,
101 upon request, to any person or entity, in reasonable numbers and without cost to the requesting party.

102 E. Any physician who fails to comply with the provisions of this section shall be subject to a \$2,500
103 civil penalty.

104 § 18.2-73.1. Anesthesia to prevent fetal pain; penalty.

105 A. For the purpose of this section a fetus is a member of the species homo sapiens from fertilization
106 until birth and the term "reasonable clinical judgment" means a medical judgment that would be made
107 by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with
108 respect to the medical condition involved.

109 B. For the purpose of preventing fetal pain, no physician shall perform an abortion unless he
110 anesthetizes the fetus in a manner consistent with that commonly provided for a human undergoing
111 amputation, except in the following circumstances: (i) in the reasonable clinical judgment of the
112 physician, such administration of anesthesia to the fetus would cause serious risk to the life of the
113 mother, (ii) in the reasonable clinical judgment of the physician, such administration of anesthesia to
114 the fetus would cause serious risk of substantial and irreversible impairment of a major bodily function
115 of the mother, (iii) in the reasonable clinical judgment of the physician, the pregnancy has not yet
116 reached 20 weeks gestation, or (iv) the mother directs that anesthesia not be administered to the fetus,
117 having been provided information prepared by the Department of Health that there is evidence that by
118 20 weeks gestation, the fetus has the physical structures necessary to experience pain, that there is
119 evidence that by 20 weeks gestation unborn children seek to evade certain stimuli in a manner which in

120 *an infant or an adult would be interpreted to be a response to pain, and that anesthesia is routinely*
121 *administered to fetuses who are 20 weeks gestational age or older who undergo prenatal surgery. Such*
122 *information need not be provided to the mother if, in the reasonable clinical judgment of the physician,*
123 *the delay caused by providing the information would cause a serious risk to the life of the mother or*
124 *serious risk of substantial and irreversible impairment of a major bodily function of the mother.*
125 *C. A violation of this section is a Class 1 misdemeanor. #*