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HOUSE BILL NO. 1326

Offered January 21, 2016

A BILL to amend and reenact § 18.2-76 of the Code of Virginia, relating to abortion; informed written consent; civil penalty.

Patron—Marshall, R.G.

Referred to Committee for Courts of Justice

Whereas, the abortion industry has consistently endeavored to deny women fully informed consent by depriving them of the full spectrum of biomedical scientific research pertaining to the procedures they provide in violation of the principle of transparency and a woman's right to know the truth about medical complications of abortion; and

Whereas, the abortion industry has denied women patient autonomy by denying them fully informed consent; and

Whereas, the abortion industry has harmed both the physical and mental health and well-being of women and children for decades in pursuit of profits and to advance a political agenda; and

Whereas, the abortion industry has been adequately informed and warned of its deliberate and widespread policies of medical misinformation; and

Whereas, the abortion industry has been repeatedly violating the ideal of informed consent regarding extremely important medical risks; and

Whereas, induced surgical abortions dramatically increase a woman's risk of giving birth preterm and extremely preterm in future births, and those risks increase with the number of induced surgical abortions a woman undergoes; and

Whereas, the rate of preterm births has doubled in the United States since 1970; and

Whereas, induced surgical abortions cause scarring on the uterine wall, often compromise the cervix, and may lead to uterine infections; and

Whereas, preterm births and extremely preterm births have caused needless developmental disabilities in innocent children and a host of other birth defects such as cerebral palsy; and

Whereas, occurrences of placenta previa and placenta accreta, extremely serious pregnancy complications, increase with abortion; and

Whereas, very often placenta previa occurs at a premature gestational age, increasing the risk that the infant will suffer an unfavorable outcome; and

Whereas, placenta previa itself is a risk factor for placenta accreta, placenta increta, and placenta percreta, all related pregnancy complications that can cause great harm to the health and well-being of mothers and children; and

Whereas, it is imperative that all medical practitioners in the Commonwealth of Virginia adhere to the highest standard of respecting both women's and children's human rights and women's patient autonomy by providing fully informed consent and scientific honesty as confirmed in the Nuremberg Protocol, the Nuremberg Code, the Universal Declaration of Human Rights, the Declaration of Geneva, the Declaration of Helsinki, and the United Nations Declaration of the Rights of the Child; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-76 of the Code of Virginia is amended and reenacted 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. At least 24 hours before the performance of an abortion, a qualified medical professional trained in sonography and working under the supervision of a physician licensed in the Commonwealth shall perform fetal transabdominal ultrasound imaging on the patient undergoing the abortion for the purpose of determining gestational age. If the pregnant woman lives at least 100 miles from the facility where the abortion is to be performed, the fetal ultrasound imaging shall be performed at least two hours before the abortion. The ultrasound image shall contain the dimensions of the fetus and accurately portray the presence of external members and internal organs of the fetus, if present or viewable.

Determination of gestational age shall be based upon measurement of the fetus in a manner consistent with standard medical practice in the community for determining gestational age. When only the gestational sac is visible during ultrasound imaging, gestational age may be based upon measurement of the gestational sac. If gestational age cannot be determined by a transabdominal ultrasound, then the patient undergoing the abortion shall be verbally offered other ultrasound imaging to determine gestational age, which she may refuse. A print of the ultrasound image shall be made to document the measurements that have been taken to determine the gestational age of the fetus.

The provisions of this subsection shall not apply if the woman seeking an abortion is the victim of rape or incest, if the incident was reported to law-enforcement authorities. Nothing herein shall preclude the physician from using any ultrasound imaging that he considers to be medically appropriate pursuant to the standard medical practice in the community.

C. The qualified medical professional performing fetal ultrasound imaging pursuant to subsection B shall verbally offer the woman an opportunity to view the ultrasound image, receive a printed copy of the ultrasound image and hear the fetal heart tones pursuant to standard medical practice in the community, and shall obtain from the woman written certification that this opportunity was offered and whether or not it was accepted and, if applicable, verification that the pregnant woman lives at least 100 miles from the facility where the abortion is to be performed. A printed copy of the ultrasound image shall be maintained in the woman's medical record at the facility where the abortion is to be performed for the longer of (i) seven years or (ii) the extent required by applicable federal or state law.

D. 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. *Such written consent shall be in the form set forth in subsection E.* 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 that fetal ultrasound imaging shall be performed prior to the abortion to confirm the gestational age; and

5. An offer to review the printed materials described in subsection ~~F~~ *G*. 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; (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; and (v) a statewide list of public and private agencies and services that provide ultrasound imaging and auscultation of fetal heart tone services free of charge. Where the woman has advised that the pregnancy is the result of a rape, the information in clause (iii) may be omitted.

The information required by this subsection may be provided by telephone or in person.

E. *Each woman shall be provided a written consent form at least 24 hours before the abortion. Such form shall contain the following information in 16-point or larger bold type on the first page of such*

form:

FOR SURGICAL ABORTIONS:

THE SURGICAL ABORTION PROCEDURE THAT YOU ARE CONSIDERING CAN INCREASE YOUR CHANCES OF GIVING BIRTH FAR TOO EARLY IN A SUBSEQUENT PREGNANCY.

PRETERM AND EXTREMELY PRETERM BIRTHS HAVE DOUBLED SINCE 1970 IN THE UNITED STATES. A PRETERM BIRTH IS ONE OF THE CAUSES OF DEVELOPMENTAL DISABILITIES AND OTHER BIRTH DEFECTS IN CHILDREN AND OFTEN RESULTS IN LOW BIRTH WEIGHT FOR YOUR CHILD AND AN INCREASED CHANCE OF INFANT DEATH.

THE MOST COMMON BIRTH DEFECT THAT RESULTS FROM PRETERM BIRTHS IS CEREBRAL PALSY. CEREBRAL PALSY IS A VERY SERIOUS AND PERMANENT DISABILITY THAT LESSENS THE AVERAGE LIFESPAN OF A CHILD AND CAUSES DIFFICULTIES IN DAILY LIVING TASKS.

A NORMAL, HEALTHY PREGNANCY NORMALLY LASTS 40 WEEKS. A PRETERM BIRTH OCCURS BEFORE 37 WEEKS AND AN EXTREMELY PRETERM BIRTH OCCURS BEFORE 32 WEEKS HAVE ELAPSED. THE ABORTION YOU ARE CONSIDERING HAS BEEN SHOWN TO DRAMATICALLY INCREASE THE LIKELIHOOD FOR BOTH OF THESE CONDITIONS AND ADDITIONAL ABORTIONS INCREASE RISKS. NOT HAVING THIS ABORTION CAN REDUCE MORBIDITY AND MORTALITY ASSOCIATED WITH PRETERM DELIVERIES.

PEER-REVIEWED MEDICAL RESEARCH HAS DOCUMENTED THAT THE ABORTION YOU ARE CONSIDERING INCREASES YOUR RISK IN A FUTURE PREGNANCY OF DEVELOPING A CONDITION CALLED "PLACENTA PREVIA," A VERY DANGEROUS CONDITION IN WHICH THE PLACENTA HAS IMPLANTED ABNORMALLY LOW IN THE UTERINE CAVITY. PLACENTA PREVIA CAN BE POTENTIALLY CATASTROPHIC TO BOTH MOTHER AND BABY AS IT CARRIES THE RISK OF UNPREDICTABLE, SUDDEN, SEVERE HEMORRHAGE NECESSITATING AN EMERGENCY CESAREAN SECTION OPERATION AS LIFESAVING TREATMENT. VERY OFTEN THIS EMERGENCY OCCURS AT A PREMATURE GESTATIONAL AGE, INCREASING THE RISK THAT YOUR BABY WILL NOT SURVIVE OR WILL SURVIVE WITH SERIOUS PROBLEMS. PLACENTA PREVIA IS A MAJOR CAUSE OF MATERNAL HEMORRHAGE, WHICH IS A MAJOR CAUSE OF MATERNAL DEATH. NOT HAVING AN INDUCED ABORTION REDUCES THESE RISK FACTORS IN FUTURE PREGNANCIES.

PLACENTA PREVIA IS ALSO A CAUSE AND RISK FACTOR FOR DEVELOPING "PLACENTA ACCRETA," WHEREIN THE PLACENTA ATTACHES TOO DEEP THROUGH THE ENDOMETRIUM AND INTO THE MYOMETRIUM AND CAN EVEN EXTEND TO NEARBY ORGANS. PLACENTA ACCRETA OFTEN CAUSES SEVERE HEMORRHAGING, WHICH OFTEN REQUIRES SURGERY TO STEM THE BLEEDING AND FULLY REMOVE THE PLACENTA AND, IN SEVERE CASES, REQUIRES A HYSTERECTOMY AND CAN BE FATAL.

YOUR DECISION TO TERMINATE THIS PREGNANCY AND THE LIFE OF YOUR OWN CHILD COULD HAVE LIFE-THREATENING EFFECTS ON THE HEALTH AND WELL-BEING OF YOURSELF AND YOUR FUTURE CHILDREN.

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

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

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

2. Materials designed to inform the woman of the probable anatomical and physiological characteristics of the human fetus at two-week gestational increments from the time when a woman can

be known to be pregnant to full term, including any relevant information on the possibility of the fetus's survival and pictures or drawings representing the development of the human fetus at two-week gestational increments. Such pictures or drawings shall contain the dimensions of the fetus and shall be realistic and appropriate for the stage of pregnancy depicted. The materials shall be objective, nonjudgmental and designed to convey only accurate scientific information about the human fetus at the various gestational ages; and

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

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

~~G.~~ *H.* Any physician who fails to comply with the provisions of this section shall be subject to a ~~$2,500~~ *$5,000* civil penalty.