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HOUSE BILL NO. 1231

Offered January 10, 2018

Prefiled January 10, 2018

A *BILL to amend and reenact §§ 16.1-77, 16.1-241, 32.1-127, and 38.2-3451 of the Code of Virginia; to amend the Code of Virginia by adding sections numbered 2.2-3900.1 and 54.1-2400.01:3; and to repeal § 18.2-71 and §§ 18.2-72 through 18.2-76 of the Code of Virginia, relating to provision of abortion.*

Patrons—Boysko, Hope, Kory, Krizek, Levine, Plum, Rasoul and Simon

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-77, 16.1-241, 32.1-127, and 38.2-3451 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 2.2-3900.1 and 54.1-2400.01:3 as follows:

§ 2.2-3900.1. Right to abortion.

A. A pregnant person has a fundamental right to obtain an abortion as defined in § 54.1-2400.01:3. No statute or regulation of the Commonwealth shall be construed to prohibit a pregnant person from obtaining an abortion (i) prior to viability or (ii) at any time if, in the professional judgment of a physician, the abortion is necessary to protect the life or health of the pregnant person.

B. Any statute or regulation of the Commonwealth that places a burden on a pregnant person's access to abortion that is disproportionate to the evidence-based health benefit of the statute or regulation is unenforceable.

C. A statute or regulation of the Commonwealth shall be deemed to place a burden on a pregnant person's access to abortion if such statute or regulation (i) imposes medically unnecessary restrictions or requirements on medical facilities in which abortions are provided, (ii) increases the time it takes a pregnant person to obtain an abortion, (iii) requires a meaningful increase in the distance a pregnant person would have to travel to access an abortion, (iv) requires medically unnecessary visits to health care providers, (v) requires a health care provider to perform a medical service that such provider would not otherwise perform, (vi) increases risk to the pregnant person's life or health, (vii) causes a meaningful increase in the cost of an abortion, (viii) has no purpose other than to stigmatize patients and abortion providers, or (ix) has no purpose or effect other than to decrease or eliminate access to abortion.

D. A statute or regulation of the Commonwealth shall be deemed to confer a legitimate health benefit if such statute or regulation (i) expands a pregnant person's access to health care services or (ii) on the basis of evidence-based research, increases patient safety.

§ 16.1-77. Civil jurisdiction of general district courts.

Except as provided in Article 5 (§ 16.1-122.1 et seq.), each general district court shall have, within the limits of the territory it serves, civil jurisdiction as follows:

(1) Exclusive original jurisdiction of any claim to specific personal property or to any debt, fine or other money, or to damages for breach of contract or for injury done to property, real or personal, or for any injury to the person that would be recoverable by action at law or suit in equity, when the amount of such claim does not exceed \$4,500 exclusive of interest and any attorney fees, and concurrent jurisdiction with the circuit courts having jurisdiction in such territory of any such claim when the amount thereof exceeds \$4,500 but does not exceed \$25,000, exclusive of interest and any attorney fees. However, this \$25,000 limit shall not apply with respect to distress warrants under the provisions of § 55-230, cases involving liquidated damages for violations of vehicle weight limits pursuant to § 46.2-1135, nor cases involving forfeiture of a bond pursuant to § 19.2-143.

(2) Jurisdiction to try and decide attachment cases when the amount of the plaintiff's claim does not exceed \$25,000 exclusive of interest and any attorney fees.

(3) Jurisdiction of actions of unlawful entry or detainer as provided in Article 13 (§ 8.01-124 et seq.) of Chapter 3 of Title 8.01, and in Chapter 13 (§ 55-217 et seq.) of Title 55, and the maximum jurisdictional limits prescribed in subdivision (1) shall not apply to any claim, counter-claim or cross-claim in an unlawful detainer action that includes a claim for damages sustained or rent against any person obligated on the lease or guarantee of such lease.

(4) Except where otherwise specifically provided, all jurisdiction, power and authority over any civil action or proceeding conferred upon any general district court judge or magistrate under or by virtue of any provisions of the Code.

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59 (5) Jurisdiction to try and decide suits in interpleader involving personal or real property where the
 60 amount of money or value of the property is not more than the maximum jurisdictional limits of the
 61 general district court. However, the maximum jurisdictional limits prescribed in subdivision (1) shall not
 62 apply to any claim, counter-claim, or cross-claim in an interpleader action that is limited to the
 63 disposition of an earnest money deposit pursuant to a real estate purchase contract. The action shall be
 64 brought in accordance with the procedures for interpleader as set forth in § 8.01-364. However, the
 65 general district court shall not have any power to issue injunctions. Actions in interpleader may be
 66 brought by either the stakeholder or any of the claimants. The initial pleading shall be either by motion
 67 for judgment, by warrant in debt, or by other uniform court form established by the Supreme Court of
 68 Virginia. The initial pleading shall briefly set forth the circumstances of the claim and shall name as
 69 defendant all parties in interest who are not parties plaintiff.

70 (6) Jurisdiction to try and decide any cases pursuant to § 2.2-3713 of the Virginia Freedom of
 71 Information Act (§ 2.2-3700 et seq.) or § 2.2-3809 of the Government Data Collection and
 72 Dissemination Practices Act (§ 2.2-3800 et seq.), for writs of mandamus or for injunctions.

73 (7) Concurrent jurisdiction with the circuit courts having jurisdiction in such territory to adjudicate
 74 habitual offenders pursuant to the provisions of Article 9 (§ 46.2-355.1 et seq.) of Chapter 3 of Title
 75 46.2.

76 (8) ~~Jurisdiction to try and decide cases alleging a civil violation described in § 18.2-76.~~

77 (9) Jurisdiction to try and decide any cases pursuant to § 55-79.80:2 of the Condominium Act
 78 (§ 55-79.39 et seq.) or § 55-513 of the Property Owners' Association Act (§ 55-508 et seq.).

79 (10) (9) Concurrent jurisdiction with the circuit courts to submit matters to arbitration pursuant to
 80 Chapter 21 (§ 8.01-577 et seq.) of Title 8.01 where the amount in controversy is within the jurisdictional
 81 limits of the general district court. Any party that disagrees with an order by a general district court
 82 granting an application to compel arbitration may appeal such decision to the circuit court pursuant to
 83 § 8.01-581.016.

84 **§ 16.1-241. Jurisdiction; consent for abortion.**

85 The judges of the juvenile and domestic relations district court elected or appointed under this law
 86 shall be conservators of the peace within the corporate limits of the cities and the boundaries of the
 87 counties for which they are respectively chosen and within one mile beyond the limits of such cities and
 88 counties. Except as hereinafter provided, each juvenile and domestic relations district court shall have,
 89 within the limits of the territory for which it is created, exclusive original jurisdiction, and within one
 90 mile beyond the limits of said city or county, concurrent jurisdiction with the juvenile court or courts of
 91 the adjoining city or county, over all cases, matters and proceedings involving:

92 A. The custody, visitation, support, control or disposition of a child:

93 1. Who is alleged to be abused, neglected, in need of services, in need of supervision, a status
 94 offender, or delinquent except where the jurisdiction of the juvenile court has been terminated or
 95 divested;

96 2. Who is abandoned by his parent or other custodian or who by reason of the absence or physical
 97 or mental incapacity of his parents is without parental care and guardianship;

98 2a. Who is at risk of being abused or neglected by a parent or custodian who has been adjudicated
 99 as having abused or neglected another child in the care of the parent or custodian;

100 3. Whose custody, visitation or support is a subject of controversy or requires determination. In such
 101 cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, except
 102 as provided in § 16.1-244;

103 4. Who is the subject of an entrustment agreement entered into pursuant to § 63.2-903 or 63.2-1817
 104 or whose parent or parents for good cause desire to be relieved of his care and custody;

105 5. Where the termination of residual parental rights and responsibilities is sought. In such cases
 106 jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, as provided
 107 in § 16.1-244;

108 6. Who is charged with a traffic infraction as defined in § 46.2-100; or

109 7. Who is alleged to have refused to take a blood test in violation of § 18.2-268.2.

110 In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated
 111 in subsection B of § 16.1-269.1, and for any charges ancillary thereto, the jurisdiction of the juvenile
 112 court shall be limited to conducting a preliminary hearing to determine if there is probable cause to
 113 believe that the juvenile committed the act alleged and that the juvenile was 14 years of age or older at
 114 the time of the commission of the alleged offense, and any matters related thereto. In any case in which
 115 the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection C of
 116 § 16.1-269.1, and for all charges ancillary thereto, if the attorney for the Commonwealth has given
 117 notice as provided in subsection C of § 16.1-269.1, the jurisdiction of the juvenile court shall be limited
 118 to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile
 119 committed the act alleged and that the juvenile was 14 years of age or older at the time of the
 120 commission of the alleged offense, and any matters related thereto. A determination by the juvenile

121 court following a preliminary hearing pursuant to subsection B or C of § 16.1-269.1 to certify a charge
 122 to the grand jury shall divest the juvenile court of jurisdiction over the charge and any ancillary charge.
 123 In any case in which a transfer hearing is held pursuant to subsection A of § 16.1-269.1, if the juvenile
 124 court determines to transfer the case, jurisdiction of the juvenile court over the case shall be divested as
 125 provided in § 16.1-269.6.

126 In all other cases involving delinquent acts, and in cases in which an ancillary charge remains after a
 127 violent juvenile felony charge has been dismissed or a violent juvenile felony has been reduced to a
 128 lesser offense not constituting a violent juvenile felony, the jurisdiction of the juvenile court shall not be
 129 divested unless there is a transfer pursuant to subsection A of § 16.1-269.1.

130 The authority of the juvenile court to adjudicate matters involving the custody, visitation, support,
 131 control or disposition of a child shall not be limited to the consideration of petitions filed by a mother,
 132 father or legal guardian but shall include petitions filed at any time by any party with a legitimate
 133 interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not
 134 be limited to, grandparents, step-grandparents, stepparents, former stepparents, blood relatives and family
 135 members. A party with a legitimate interest shall not include any person (i) whose parental rights have
 136 been terminated by court order, either voluntarily or involuntarily, (ii) whose interest in the child derives
 137 from or through a person whose parental rights have been terminated by court order, either voluntarily
 138 or involuntarily, including, but not limited to, grandparents, stepparents, former stepparents, blood
 139 relatives and family members, if the child subsequently has been legally adopted, except where a final
 140 order of adoption is entered pursuant to § 63.2-1241, or (iii) who has been convicted of a violation of
 141 subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another
 142 state, the United States, or any foreign jurisdiction, when the child who is the subject of the petition was
 143 conceived as a result of such violation. The authority of the juvenile court to consider a petition
 144 involving the custody of a child shall not be proscribed or limited where the child has previously been
 145 awarded to the custody of a local board of social services.

146 B. The admission of minors for inpatient treatment in a mental health facility in accordance with the
 147 provisions of Article 16 (§ 16.1-335 et seq.) and the involuntary admission of a person with mental
 148 illness or judicial certification of eligibility for admission to a training center for persons with
 149 intellectual disability in accordance with the provisions of Chapter 8 (§ 37.2-800 et seq.) of Title 37.2.
 150 Jurisdiction of the involuntary admission and certification of adults shall be concurrent with the general
 151 district court.

152 C. Except as provided in subsections D and H, judicial consent to such activities as may require
 153 parental consent may be given for a child who has been separated from his parents, guardian, legal
 154 custodian or other person standing in loco parentis and is in the custody of the court when such consent
 155 is required by law.

156 D. Judicial consent for emergency surgical or medical treatment for a child who is neither married
 157 nor has ever been married, when the consent of his parent, guardian, legal custodian or other person
 158 standing in loco parentis is unobtainable because such parent, guardian, legal custodian or other person
 159 standing in loco parentis (i) is not a resident of the Commonwealth, (ii) has his whereabouts unknown,
 160 (iii) cannot be consulted with promptness, reasonable under the circumstances, or (iv) fails to give such
 161 consent or provide such treatment when requested by the judge to do so.

162 E. Any person charged with deserting, abandoning or failing to provide support for any person in
 163 violation of law.

164 F. Any parent, guardian, legal custodian or other person standing in loco parentis of a child:

- 165 1. Who has been abused or neglected;
- 166 2. Who is the subject of an entrustment agreement entered into pursuant to § 63.2-903 or 63.2-1817
 167 or is otherwise before the court pursuant to subdivision A 4; or
- 168 3. Who has been adjudicated in need of services, in need of supervision, or delinquent, if the court
 169 finds that such person has by overt act or omission induced, caused, encouraged or contributed to the
 170 conduct of the child complained of in the petition.

171 G. Petitions filed by or on behalf of a child or such child's parent, guardian, legal custodian or other
 172 person standing in loco parentis for the purpose of obtaining treatment, rehabilitation or other services
 173 that are required by law to be provided for that child or such child's parent, guardian, legal custodian or
 174 other person standing in loco parentis. Jurisdiction in such cases shall be concurrent with and not
 175 exclusive of that of courts having equity jurisdiction as provided in § 16.1-244.

176 H. Judicial consent to apply for a work permit for a child when such child is separated from his
 177 parents, legal guardian or other person standing in loco parentis.

178 I. The prosecution and punishment of persons charged with ill-treatment, abuse, abandonment or
 179 neglect of children or with any violation of law that causes or tends to cause a child to come within the
 180 purview of this law, or with any other offense against the person of a child. In prosecution for felonies
 181 over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is

182 probable cause.

183 J. All offenses in which one family or household member is charged with an offense in which
184 another family or household member is the victim and all offenses under § 18.2-49.1.

185 In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to
186 determining whether or not there is probable cause. Any objection based on jurisdiction under this
187 subsection shall be made before a jury is impaneled and sworn in a jury trial or, in a nonjury trial,
188 before the earlier of when the court begins to hear or receive evidence or the first witness is sworn, or it
189 shall be conclusively waived for all purposes. Any such objection shall not affect or be grounds for
190 challenging directly or collaterally the jurisdiction of the court in which the case is tried.

191 K. Petitions filed by a natural parent, whose parental rights to a child have been voluntarily
192 relinquished pursuant to a court proceeding, to seek a reversal of the court order terminating such
193 parental rights. No such petition shall be accepted, however, after the child has been placed in the home
194 of adoptive parents.

195 L. Any person who seeks spousal support after having separated from his spouse. A decision under
196 this subdivision shall not be res judicata in any subsequent action for spousal support in a circuit court.
197 A circuit court shall have concurrent original jurisdiction in all causes of action under this subdivision.

198 M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1,
199 16.1-253.4, or 16.1-279.1, and all petitions filed for the purpose of obtaining an order of protection
200 pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10 if either the alleged victim or the respondent is a
201 juvenile.

202 N. Any person who escapes or remains away without proper authority from a residential care facility
203 in which he had been placed by the court or as a result of his commitment to the Virginia Department
204 of Juvenile Justice.

205 O. Petitions for emancipation of a minor pursuant to Article 15 (§ 16.1-331 et seq.).

206 P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 19
207 (§ 63.2-1900 et seq.) of Title 63.2, or by another state in the same manner as if the orders were entered
208 by a juvenile and domestic relations district court upon the filing of a certified copy of such order in the
209 juvenile and domestic relations district court.

210 Q. Petitions for a determination of parentage pursuant to Chapter 3.1 (§ 20-49.1 et seq.) of Title 20.
211 A circuit court shall have concurrent original jurisdiction to the extent provided for in § 20-49.2.

212 R. [Repealed.]

213 S. Petitions filed by school boards against parents pursuant to §§ 16.1-241.2 and 22.1-279.3.

214 T. Petitions to enforce any request for information or subpoena that is not complied with or to
215 review any refusal to issue a subpoena in an administrative appeal regarding child abuse and neglect
216 pursuant to § 63.2-1526.

217 U. Petitions filed in connection with parental placement adoption consent hearings pursuant to
218 § 63.2-1233. Such proceedings shall be advanced on the docket so as to be heard by the court within 10
219 days of filing of the petition, or as soon thereafter as practicable so as to provide the earliest possible
220 disposition.

221 V. Petitions filed for the purpose of obtaining the court's assistance with the execution of consent to
222 an adoption when the consent to an adoption is executed pursuant to the laws of another state and the
223 laws of that state provide for the execution of consent to an adoption in the court of the
224 Commonwealth.

225 W. Petitions filed by a juvenile seeking judicial authorization for a ~~physician~~ *health care provider* to
226 ~~perform~~ *provide* an abortion if a minor elects not to seek consent of an authorized person.

227 After a hearing, a judge shall issue an order authorizing a ~~physician~~ *health care provider* to ~~perform~~
228 *provide* an abortion, without the consent of any authorized person, if he finds that (i) the minor is
229 mature enough and well enough informed to make ~~her~~ *the minor's* abortion decision, in consultation
230 with ~~her~~ *physician the minor's health care provider*, independent of the wishes of any authorized person,
231 or (ii) the minor is not mature enough or well enough informed to make such decision, but the desired
232 abortion would be in ~~her~~ *the minor's* best interest.

233 If the judge authorizes an abortion based on the best interests of the minor, such order shall
234 expressly state that such authorization is subject to the ~~physician~~ *health care provider* or his agent
235 giving notice of intent to ~~perform~~ *provide* the abortion; however, no such notice shall be required if the
236 judge finds that such notice would not be in the best interest of the minor. In determining whether
237 notice is in the best interest of the minor, the judge shall consider the totality of the circumstances;
238 however, he shall find that notice is not in the best interest of the minor if he finds that (i) one or more
239 authorized persons with whom the minor regularly and customarily resides is abusive or neglectful, and
240 (ii) every other authorized person, if any, is either abusive or neglectful or has refused to accept
241 responsibility as parent, legal guardian, custodian or person standing in loco parentis.

242 The minor may participate in the court proceedings on ~~her~~ *the minor's* own behalf, and the court
243 may appoint a guardian ad litem for the minor. The court shall advise the minor that ~~she~~ *the minor* has

244 a right to counsel and shall, upon ~~her~~ *the minor's* request, appoint counsel for ~~her~~ *the minor*.

245 Notwithstanding any other provision of law, the provisions of this subsection shall govern
 246 proceedings relating to consent for a minor's abortion. Court proceedings under this subsection and
 247 records of such proceedings shall be confidential. Such proceedings shall be given precedence over other
 248 pending matters so that the court may reach a decision promptly and without delay in order to serve the
 249 best interests of the minor. Court proceedings under this subsection shall be heard and decided as soon
 250 as practicable but in no event later than four days after the petition is filed.

251 An expedited confidential appeal to the circuit court shall be available to any minor for whom the
 252 court denies an order authorizing an abortion without consent or without notice. Any such appeal shall
 253 be heard and decided no later than five days after the appeal is filed. The time periods required by this
 254 subsection shall be subject to subsection B of § 1-210. An order authorizing an abortion without consent
 255 or without notice shall not be subject to appeal.

256 No filing fees shall be required of the minor at trial or upon appeal.

257 If either the original court or the circuit court fails to act within the time periods required by this
 258 subsection, the court before which the proceeding is pending shall immediately authorize a ~~physician~~
 259 *health care provider* to ~~perform~~ *provide* the abortion without consent of or notice to an authorized
 260 person.

261 Nothing contained in this subsection shall be construed to authorize a ~~physician~~ *health care provider*
 262 to ~~perform~~ *provide* an abortion ~~on~~ *to* a minor in circumstances or in a manner that would be unlawful if
 263 ~~performed on~~ *provided to* an adult woman.

264 A ~~physician~~ *health care provider* shall not knowingly ~~perform~~ *provide* an abortion ~~upon~~ *to* an
 265 unemancipated minor unless consent has been obtained or the minor delivers to the physician a court
 266 order entered pursuant to this section and the ~~physician~~ *health care provider* or his agent provides such
 267 notice as such order may require. However, neither consent nor judicial authorization nor notice shall be
 268 required if the minor declares that ~~she~~ *the minor* is abused or neglected and the attending ~~physician~~
 269 *health care provider* has reason to suspect that the minor may be an abused or neglected child as
 270 defined in § 63.2-100 and reports the suspected abuse or neglect in accordance with § 63.2-1509; or if
 271 there is a medical emergency, in which case the attending ~~physician~~ *health care provider* shall certify
 272 the facts justifying the exception in the minor's medical record.

273 For purposes of this subsection:

274 "Authorization" means the minor has delivered to the ~~physician~~ *health care provider* a notarized,
 275 written statement signed by an authorized person that the authorized person knows of the minor's intent
 276 to have an abortion and consents to such abortion being ~~performed on~~ *provided to* the minor.

277 "Authorized person" means (i) a parent or duly appointed legal guardian or custodian of the minor or
 278 (ii) a person standing in loco parentis, including, but not limited to, a grandparent or adult sibling with
 279 whom the minor regularly and customarily resides and who has care and control of the minor. Any
 280 person who knows he is not an authorized person and who knowingly and willfully signs an
 281 authorization statement consenting to an abortion for a minor is guilty of a Class 3 misdemeanor.

282 "Consent" means that (i) the ~~physician~~ *health care provider* has given notice of intent to ~~perform~~
 283 *provide* the abortion and has received authorization from an authorized person, or (ii) at least one
 284 authorized person is present with the minor seeking the abortion and provides written authorization to
 285 the ~~physician~~ *health care provider*, which shall be witnessed by the ~~physician~~ *health care provider* or an
 286 agent thereof. In either case, the written authorization shall be incorporated into the minor's medical
 287 record and maintained as a part thereof.

288 "Medical emergency" means any condition which, on the basis of the ~~physician's~~ *health care*
 289 *provider's* good faith clinical judgment, so complicates the medical condition of the pregnant minor as to
 290 necessitate the immediate abortion of ~~her~~ *the minor's* pregnancy to avert ~~her~~ *the minor's* death or for
 291 which a delay will ~~create a serious risk of substantial and irreversible impairment of a major bodily~~
 292 ~~function~~ *impair the mental or physical health of the minor*.

293 "Notice of intent to ~~perform~~ *provide* the abortion" means that (i) the ~~physician~~ *health care provider*
 294 or his agent has given actual notice of his intention to ~~perform~~ *provide* such abortion to an authorized
 295 person, either in person or by telephone, at least 24 hours previous to the ~~performance~~ *provision* of the
 296 abortion; or (ii) the ~~physician~~ *health care provider* or his agent, after a reasonable effort to notify an
 297 authorized person, has mailed notice to an authorized person by certified mail, addressed to such person
 298 at his usual place of abode, with return receipt requested, at least 72 hours prior to the ~~performance~~
 299 *provision* of the abortion.

300 "~~Perform~~ *Provide* an abortion" means to ~~interrupt or terminate any medical treatment provided with~~
 301 ~~the intention of inducing the termination of a pregnancy by any surgical or nonsurgical procedure or to~~
 302 ~~induce a miscarriage as provided in § 18.2-72, 18.2-73, or 18.2-74 as provided in § 54.1-2400.01:3.~~

303 "Unemancipated minor" means a minor who has not been emancipated by (i) entry into a valid
 304 marriage, even though the marriage may have been terminated by dissolution; (ii) active duty with any

305 of the Armed Forces of the United States; (iii) willingly living separate and apart from his or her
 306 parents or guardian, with the consent or acquiescence of the parents or guardian; or (iv) entry of an
 307 order of emancipation pursuant to Article 15 (§ 16.1-331 et seq.).

308 X. Petitions filed pursuant to Article 17 (§ 16.1-349 et seq.) relating to standby guardians for minor
 309 children.

310 The ages specified in this law refer to the age of the child at the time of the acts complained of in
 311 the petition.

312 Notwithstanding any other provision of law, no fees shall be charged by a sheriff for the service of
 313 any process in a proceeding pursuant to subdivision A 3, except as provided in subdivision A 6 of
 314 § 17.1-272, or subsection B, D, M, or R.

315 Notwithstanding the provisions of ~~§ 18.2-71~~ *54.1-2400.01:3*, any ~~physician~~ *health care provider* who
 316 ~~performs~~ *provides* an abortion in violation of subsection W shall be guilty of a Class 3 misdemeanor.

317 **§ 32.1-127. Regulations.**

318 A. The regulations promulgated by the Board to carry out the provisions of this article shall be in
 319 substantial conformity to the standards of health, hygiene, sanitation, construction and safety as
 320 established and recognized by medical and health care professionals and by specialists in matters of
 321 public health and safety, including health and safety standards established under provisions of Title
 322 XVIII and Title XIX of the Social Security Act, and to the provisions of Article 2 (§ 32.1-138 et seq.).

323 B. Such regulations:

324 1. Shall include minimum standards for (i) the construction and maintenance of hospitals, nursing
 325 homes and certified nursing facilities to ensure the environmental protection and the life safety of its
 326 patients; *and* employees; and the public; (ii) the operation, staffing and equipping of hospitals, nursing
 327 homes and certified nursing facilities; (iii) qualifications and training of staff of hospitals, nursing homes
 328 and certified nursing facilities, except those professionals licensed or certified by the Department of
 329 Health Professions; (iv) conditions under which a hospital or nursing home may provide medical and
 330 nursing services to patients in their places of residence; and (v) policies related to infection prevention,
 331 disaster preparedness, and facility security of hospitals, nursing homes, and certified nursing facilities.
 332 ~~For purposes of this paragraph, facilities in which five or more first trimester abortions per month are~~
 333 ~~performed shall be classified as a category of "hospital";~~

334 2. Shall provide that at least one physician who is licensed to practice medicine in this
 335 Commonwealth shall be on call at all times, though not necessarily physically present on the premises,
 336 at each hospital which operates or holds itself out as operating an emergency service;

337 3. May classify hospitals and nursing homes by type of specialty or service and may provide for
 338 licensing hospitals and nursing homes by bed capacity and by type of specialty or service;

339 4. Shall also require that each hospital establish a protocol for organ donation, in compliance with
 340 federal law and the regulations of the Centers for Medicare and Medicaid Services (CMS), particularly
 341 42 C.F.R. § 482.45. Each hospital shall have an agreement with an organ procurement organization
 342 designated in CMS regulations for routine contact, whereby the provider's designated organ procurement
 343 organization certified by CMS (i) is notified in a timely manner of all deaths or imminent deaths of
 344 patients in the hospital and (ii) is authorized to determine the suitability of the decedent or patient for
 345 organ donation and, in the absence of a similar arrangement with any eye bank or tissue bank in
 346 Virginia certified by the Eye Bank Association of America or the American Association of Tissue
 347 Banks, the suitability for tissue and eye donation. The hospital shall also have an agreement with at least
 348 one tissue bank and at least one eye bank to cooperate in the retrieval, processing, preservation, storage,
 349 and distribution of tissues and eyes to ensure that all usable tissues and eyes are obtained from potential
 350 donors and to avoid interference with organ procurement. The protocol shall ensure that the hospital
 351 collaborates with the designated organ procurement organization to inform the family of each potential
 352 donor of the option to donate organs, tissues, or eyes or to decline to donate. The individual making
 353 contact with the family shall have completed a course in the methodology for approaching potential
 354 donor families and requesting organ or tissue donation that (a) is offered or approved by the organ
 355 procurement organization and designed in conjunction with the tissue and eye bank community and (b)
 356 encourages discretion and sensitivity according to the specific circumstances, views, and beliefs of the
 357 relevant family. In addition, the hospital shall work cooperatively with the designated organ procurement
 358 organization in educating the staff responsible for contacting the organ procurement organization's
 359 personnel on donation issues, the proper review of death records to improve identification of potential
 360 donors, and the proper procedures for maintaining potential donors while necessary testing and
 361 placement of potential donated organs, tissues, and eyes takes place. This process shall be followed,
 362 without exception, unless the family of the relevant decedent or patient has expressed opposition to
 363 organ donation, the chief administrative officer of the hospital or his designee knows of such opposition,
 364 and no donor card or other relevant document, such as an advance directive, can be found;

365 5. Shall require that each hospital that provides obstetrical services establish a protocol for admission
 366 or transfer of any pregnant woman who presents herself while in labor;

367 6. Shall also require that each licensed hospital develop and implement a protocol requiring written
 368 discharge plans for identified, substance-abusing, postpartum women and their infants. The protocol shall
 369 require that the discharge plan be discussed with the patient and that appropriate referrals for the mother
 370 and the infant be made and documented. Appropriate referrals may include, but need not be limited to,
 371 treatment services, comprehensive early intervention services for infants and toddlers with disabilities
 372 and their families pursuant to Part H of the Individuals with Disabilities Education Act, 20 U.S.C.
 373 § 1471 et seq., and family-oriented prevention services. The discharge planning process shall involve, to
 374 the extent possible, the father of the infant and any members of the patient's extended family who may
 375 participate in the follow-up care for the mother and the infant. Immediately upon identification, pursuant
 376 to § 54.1-2403.1, of any substance-abusing, postpartum woman, the hospital shall notify, subject to
 377 federal law restrictions, the community services board of the jurisdiction in which the woman resides to
 378 appoint a discharge plan manager. The community services board shall implement and manage the
 379 discharge plan;

380 7. Shall require that each nursing home and certified nursing facility fully disclose to the applicant
 381 for admission the home's or facility's admissions policies, including any preferences given;

382 8. Shall require that each licensed hospital establish a protocol relating to the rights and
 383 responsibilities of patients which shall include a process reasonably designed to inform patients of such
 384 rights and responsibilities. Such rights and responsibilities of patients, a copy of which shall be given to
 385 patients on admission, shall be consistent with applicable federal law and regulations of the Centers for
 386 Medicare and Medicaid Services;

387 9. Shall establish standards and maintain a process for designation of levels or categories of care in
 388 neonatal services according to an applicable national or state-developed evaluation system. Such
 389 standards may be differentiated for various levels or categories of care and may include, but need not be
 390 limited to, requirements for staffing credentials, staff/patient ratios, equipment, and medical protocols;

391 10. Shall require that each nursing home and certified nursing facility train all employees who are
 392 mandated to report adult abuse, neglect, or exploitation pursuant to § 63.2-1606 on such reporting
 393 procedures and the consequences for failing to make a required report;

394 11. Shall permit hospital personnel, as designated in medical staff bylaws, rules and regulations, or
 395 hospital policies and procedures, to accept emergency telephone and other verbal orders for medication
 396 or treatment for hospital patients from physicians, and other persons lawfully authorized by state statute
 397 to give patient orders, subject to a requirement that such verbal order be signed, within a reasonable
 398 period of time not to exceed 72 hours as specified in the hospital's medical staff bylaws, rules and
 399 regulations or hospital policies and procedures, by the person giving the order, or, when such person is
 400 not available within the period of time specified, co-signed by another physician or other person
 401 authorized to give the order;

402 12. Shall require, unless the vaccination is medically contraindicated or the resident declines the offer
 403 of the vaccination, that each certified nursing facility and nursing home provide or arrange for the
 404 administration to its residents of (i) an annual vaccination against influenza and (ii) a pneumococcal
 405 vaccination, in accordance with the most recent recommendations of the Advisory Committee on
 406 Immunization Practices of the Centers for Disease Control and Prevention;

407 13. Shall require that each nursing home and certified nursing facility register with the Department of
 408 State Police to receive notice of the registration or reregistration of any sex offender within the same or
 409 a contiguous zip code area in which the home or facility is located, pursuant to § 9.1-914;

410 14. Shall require that each nursing home and certified nursing facility ascertain, prior to admission,
 411 whether a potential patient is a registered sex offender, if the home or facility anticipates the potential
 412 patient will have a length of stay greater than three days or in fact stays longer than three days;

413 15. Shall require that each licensed hospital include in its visitation policy a provision allowing each
 414 adult patient to receive visits from any individual from whom the patient desires to receive visits,
 415 subject to other restrictions contained in the visitation policy including, but not limited to, those related
 416 to the patient's medical condition and the number of visitors permitted in the patient's room
 417 simultaneously;

418 16. Shall require that each nursing home and certified nursing facility shall, upon the request of the
 419 facility's family council, send notices and information about the family council mutually developed by
 420 the family council and the administration of the nursing home or certified nursing facility, and provided
 421 to the facility for such purpose, to the listed responsible party or a contact person of the resident's
 422 choice up to six times per year. Such notices may be included together with a monthly billing statement
 423 or other regular communication. Notices and information shall also be posted in a designated location
 424 within the nursing home or certified nursing facility. No family member of a resident or other resident
 425 representative shall be restricted from participating in meetings in the facility with the families or
 426 resident representatives of other residents in the facility;

427 17. Shall require that each nursing home and certified nursing facility maintain liability insurance

428 coverage in a minimum amount of \$1 million, and professional liability coverage in an amount at least
429 equal to the recovery limit set forth in § 8.01-581.15, to compensate patients or individuals for injuries
430 and losses resulting from the negligent or criminal acts of the facility. Failure to maintain such
431 minimum insurance shall result in revocation of the facility's license;

432 18. Shall require each hospital that provides obstetrical services to establish policies to follow when a
433 stillbirth, as defined in § 32.1-69.1, occurs that meet the guidelines pertaining to counseling patients and
434 their families and other aspects of managing stillbirths as may be specified by the Board in its
435 regulations;

436 19. Shall require each nursing home to provide a full refund of any unexpended patient funds on
437 deposit with the facility following the discharge or death of a patient, other than entrance-related fees
438 paid to a continuing care provider as defined in § 38.2-4900, within 30 days of a written request for
439 such funds by the discharged patient or, in the case of the death of a patient, the person administering
440 the person's estate in accordance with the Virginia Small Estates Act (§ 64.2-600 et seq.); and

441 20. Shall require that each hospital that provides inpatient psychiatric services establish a protocol
442 that (i) requires, for any refusal to admit a medically stable patient referred to its psychiatric unit, direct
443 verbal communication between the on-call physician in the psychiatric unit and the referring physician,
444 if requested by such referring physician, and (ii) prohibits on-call physicians or other hospital staff from
445 refusing a request for such direct verbal communication by a referring physician.

446 C. Upon obtaining the appropriate license, if applicable, licensed hospitals, nursing homes, and
447 certified nursing facilities may operate adult day care centers.

448 D. All facilities licensed by the Board pursuant to this article which provide treatment or care for
449 hemophiliacs and, in the course of such treatment, stock clotting factors, shall maintain records of all lot
450 numbers or other unique identifiers for such clotting factors in order that, in the event the lot is found to
451 be contaminated with an infectious agent, those hemophiliacs who have received units of this
452 contaminated clotting factor may be apprised of this contamination. Facilities which have identified a lot
453 which is known to be contaminated shall notify the recipient's attending physician and request that he
454 notify the recipient of the contamination. If the physician is unavailable, the facility shall notify by mail,
455 return receipt requested, each recipient who received treatment from a known contaminated lot at the
456 individual's last known address.

457 **§ 38.2-3451. Essential health benefits.**

458 A. Notwithstanding any provision of § 38.2-3431 or any other section of this title to the contrary, a
459 health carrier offering a health benefit plan providing individual or small group health insurance
460 coverage shall provide that such coverage includes the essential health benefits as required by § 1302(a)
461 of the PPACA. The essential health benefits package may also include associated cost-sharing
462 requirements or limitations. ~~No qualified health insurance plan that is sold or offered for sale through an~~
463 ~~exchange established or operating in the Commonwealth shall provide coverage for abortions, regardless~~
464 ~~of whether such coverage is provided through the plan or is offered as a separate optional rider thereto,~~
465 ~~provided that such limitation shall not apply to an abortion performed (i) when the life of the mother is~~
466 ~~endangered by a physical disorder, physical illness, or physical injury, including a life-endangering~~
467 ~~physical condition caused by or arising from the pregnancy itself, or (ii) when the pregnancy is the~~
468 ~~result of an alleged act of rape or incest.~~

469 B. The provisions of subsection A regarding the inclusion of the PPACA-required minimum essential
470 pediatric oral health benefits shall be deemed to be satisfied for health benefit plans made available in
471 the small group market or individual market in the Commonwealth outside an exchange, as defined in
472 § 38.2-3455, issued for policy or plan years beginning on or after January 1, 2015, that do not include
473 the PPACA-required minimum essential pediatric oral health benefits if the health carrier has obtained
474 reasonable assurance that such pediatric oral health benefits are provided to the purchaser of the health
475 benefit plan. The health carrier shall be deemed to have obtained reasonable assurance that such
476 pediatric oral health benefits are provided to the purchaser of the health benefit plan if:

477 1. At least one qualified dental plan, as defined in § 38.2-3455, (i) offers the minimum essential
478 pediatric oral health benefits that are required under the PPACA and (ii) is available for purchase by the
479 small group or individual purchaser; and

480 2. The health carrier prominently discloses, in a form approved by the Commission, at the time that
481 it offers the health benefit plan that the plan does not provide the PPACA-required minimum essential
482 pediatric oral health benefits.

483 **§ 54.1-2400.01:3. Abortion defined; who may provide abortions.**

484 A. As used in this subtitle, "abortion" means any medical treatment provided with the intention of
485 inducing the termination of a pregnancy except for the purpose of producing a live birth.

486 B. No person shall provide an abortion to a pregnant person during the first trimester of pregnancy
487 unless he is (i) licensed by the Board of Medicine as a physician of medicine or osteopathy, a
488 physician's assistant, or a midwife and acting within his scope of practice; (ii) jointly licensed by the
489 Board of Medicine and the Board of Nursing as a nurse practitioner or certified nurse midwife and

490 acting within his scope of practice; or (iii) acting pursuant to the orders and under the appropriate
 491 supervision of a physician licensed to practice medicine or osteopathy who is acting within the
 492 physician's scope of practice.

493 C. No person shall provide an abortion to a pregnant person during the second trimester of
 494 pregnancy unless he is (i) a physician licensed by the Board of Medicine to practice medicine or
 495 osteopathy and acting within his scope of practice or (ii) acting pursuant to the orders and under the
 496 appropriate supervision of a physician licensed to practice medicine or osteopathy who is acting within
 497 the physician's scope of practice.

498 D. No person shall provide an abortion to a pregnant person during the third trimester of pregnancy
 499 unless he is (i) a physician licensed by the Board of Medicine to practice medicine or osteopathy and
 500 acting within his scope of practice or (ii) acting pursuant to the orders and under the appropriate
 501 supervision of a physician licensed to practice medicine or osteopathy who is acting within the
 502 physician's scope of practice and the following conditions are met:

503 1. The abortion is provided in a hospital licensed by the Virginia State Department of Health or
 504 operated by the Department of Behavioral Health and Developmental Services;

505 2. The physician certifies and enters in the hospital record of the pregnant person that in his medical
 506 opinion, based upon his best clinical judgment, (i) the pregnancy is not viable, (ii) the continuation of
 507 the pregnancy is likely to result in the death of the pregnant person, or (iii) the continuation of the
 508 pregnancy is likely to impair the mental or physical health of the pregnant person; and

509 3. Measures for life support for the product of such abortion are available and utilized if there is
 510 any clearly visible evidence of viability.

511 E. Subsections B, C, and D shall not apply in the event that it is necessary for a health care
 512 provider to terminate a human pregnancy or assist in the termination of a human pregnancy by
 513 providing an abortion to any pregnant person in order to save such person's life, in the opinion of the
 514 health care provider so providing the abortion.

515 F. Before providing any abortion, the health care provider shall obtain the informed written consent
 516 of the pregnant person. However, if the pregnant person has been adjudicated incapacitated by any
 517 court of competent jurisdiction or if the health care provider knows or has good reason to believe that
 518 such pregnant person is incapacitated as adjudicated by a court of competent jurisdiction, then only
 519 after permission is given in writing by a parent, guardian, committee, or other person standing in loco
 520 parentis to the pregnant person may the health care provider provide the abortion.

521 G. Nothing in this section shall require a hospital or other medical facility or physician to admit any
 522 patient for the purpose of providing an abortion. In addition, any person who states in writing an
 523 objection to any abortion or all abortions on personal, ethical, moral, or religious grounds shall not be
 524 required to participate in procedures that will result in such abortion, and the refusal of such person,
 525 hospital, or other medical facility to participate therein shall not form the basis of any claim for
 526 damages on account of such refusal or for any disciplinary or recriminatory action against such person,
 527 nor shall any such person be denied employment because of such objection or refusal. The written
 528 objection shall remain in effect until such person revokes it in writing or terminates his association with
 529 the facility with which it is filed.

530 H. Nothing in this section shall be construed to restrict, limit, change, or expand the scope of
 531 practice in effect on June 30, 2018, of any profession licensed by any of the health regulatory boards
 532 within the Department of Health Professions.

533 2. That § 18.2-71 and §§ 18.2-72 through 18.2-76 of the Code of Virginia are repealed.