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SENATE BILL NO. 133

Offered January 10, 2018

Prefiled December 19, 2017

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

Patron—Locke

Referred to Committee on Education and Health

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. 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;

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

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

64 4. A statement of the probable gestational age of the fetus at the time the abortion is to be performed
65 and that fetal ultrasound imaging shall be performed prior to the abortion to confirm the gestational age;
66 and

67 5. An offer to review the printed materials described in subsection F. If the woman chooses to
68 review such materials, they shall be provided to her in a respectful and understandable manner, without
69 prejudice and intended to give the woman the opportunity to make an informed choice and shall be
70 provided to her at least 24 hours before the abortion or mailed to her at least 72 hours before the
71 abortion by first-class mail or, if the woman requests, by certified mail, restricted delivery. This offer for
72 the woman to review the material shall advise her of the following: (i) the Department of Health
73 publishes printed materials that describe the unborn child and list agencies that offer alternatives to
74 abortion; (ii) medical assistance benefits may be available for prenatal care, childbirth and neonatal care,
75 and that more detailed information on the availability of such assistance is contained in the printed
76 materials published by the Department; (iii) the father of the unborn child is liable to assist in the
77 support of her child, even in instances where he has offered to pay for the abortion, that assistance in
78 the collection of such support is available, and that more detailed information on the availability of such
79 assistance is contained in the printed materials published by the Department; (iv) she has the right to
80 review the materials printed by the Department and that copies will be provided to her free of charge if
81 she chooses to review them; and (v) a statewide list of public and private agencies and services that
82 provide ultrasound imaging and auscultation of fetal heart tone services free of charge. Where the
83 woman has advised that the pregnancy is the result of a rape, the information in clause (iii) may be
84 omitted.

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

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

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

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

107 2. Materials designed to inform the woman of the probable anatomical and physiological
108 characteristics of the human fetus at two-week gestational increments from the time when a woman can
109 be known to be pregnant to full term, including any relevant information on the possibility of the fetus's
110 survival and pictures or drawings representing the development of the human fetus at two-week
111 gestational increments. Such pictures or drawings shall contain the dimensions of the fetus and shall be
112 realistic and appropriate for the stage of pregnancy depicted. The materials shall be objective,
113 nonjudgmental and designed to convey only accurate scientific information about the human fetus at the
114 various gestational ages; and

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

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

121 G. Any woman seeking an abortion may waive in writing any requirement under subsection B, C, or
122 D (i) establishing a mandatory time period before an abortion may be performed or (ii) mandating that
123 a physician provide to or review with the woman specific information or materials before an abortion
124 may be performed. A copy of such waiver shall be maintained in the woman's medical record at the
125 facility where the abortion is to be performed for the longer of (a) seven years or (b) the extent
126 required by applicable federal or state law. Nothing in this subsection shall relieve a physician of his
127 duty to satisfy the applicable standard of care pursuant to § 8.01-581.20.

128 H. Any physician who fails to comply with ~~the provisions~~ any provision of this section shall be not
129 waived pursuant to subsection G by the woman seeking an abortion is subject to a \$2,500 civil penalty.