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SENATE BILL NO. 709

Offered January 10, 2018

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A BILL to amend and reenact §§ 16.1-77, 18.2-74, 18.2-76, and 32.1-127 of the Code of Virginia, relating to performance of abortions; informed written consent.

Patron—Wexton

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-77, 18.2-74, 18.2-76, and 32.1-127 of the Code of Virginia are amended and reenacted as follows:

§ 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.

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

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

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

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

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

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

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59 § 8.01-581.016.

60 **§ 18.2-74. When abortion or termination of pregnancy lawful after second trimester of**
61 **pregnancy.**

62 Notwithstanding any of the provisions of § 18.2-71 and in addition to the provisions of §§ 18.2-72
63 and 18.2-73, it shall be lawful for any physician licensed by the Board of Medicine to practice medicine
64 and surgery to terminate or attempt to terminate a human pregnancy or aid or assist in the termination
65 of a human pregnancy by performing an abortion or causing a miscarriage on any woman in a stage of
66 pregnancy subsequent to the second trimester, provided *that* the following conditions are met:

67 (a) Said operation is performed in a hospital licensed by the Virginia State Department of Health or
68 operated by the Department of Behavioral Health and Developmental Services.

69 (b) The physician ~~and two consulting physicians certify~~ *certifies* and so ~~enter~~ *enters* in the hospital
70 record of the woman, that in ~~their~~ *the physician's* medical opinion, based upon ~~their~~ *the physician's* best
71 clinical judgment, the continuation of the pregnancy is likely to result in the death of the woman or
72 ~~substantially and irretrievably~~ *substantially and irretrievably* impair the mental or physical health of the woman.

73 (c) Measures for life support for the product of such abortion or miscarriage ~~must~~ *shall* be available
74 and utilized if there is any clearly visible evidence of viability.

75 **§ 18.2-76. Informed written consent required.**

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

83 B. At least 24 hours before the performance of an abortion, a qualified medical professional trained
84 in sonography and working under the supervision of a physician licensed in the Commonwealth shall
85 perform fetal transabdominal ultrasound imaging on the patient undergoing the abortion for the purpose
86 of determining gestational age. If the pregnant woman lives at least 100 miles from the facility where
87 the abortion is to be performed, the fetal ultrasound imaging shall be performed at least two hours
88 before the abortion. The ultrasound image shall contain the dimensions of the fetus and accurately
89 portray the presence of external members and internal organs of the fetus, if present or viewable.
90 Determination of gestational age shall be based upon measurement of the fetus in a manner consistent
91 with standard medical practice in the community for determining gestational age. When only the
92 gestational sac is visible during ultrasound imaging, gestational age may be based upon measurement of
93 the gestational sac. If gestational age cannot be determined by a transabdominal ultrasound, then the
94 patient undergoing the abortion shall be verbally offered other ultrasound imaging to determine
95 gestational age, which she may refuse. A print of the ultrasound image shall be made to document the
96 measurements that have been taken to determine the gestational age of the fetus.

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

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

109 D. For purposes of this section:

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

120 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. 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. 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. 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.

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

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

186 **§ 32.1-127. Regulations.**

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

192 B. Such regulations:

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

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

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

208 4. Shall also require that each hospital establish a protocol for organ donation, in compliance with
209 federal law and the regulations of the Centers for Medicare and Medicaid Services (CMS), particularly
210 42 C.F.R. § 482.45. Each hospital shall have an agreement with an organ procurement organization
211 designated in CMS regulations for routine contact, whereby the provider's designated organ procurement
212 organization certified by CMS (i) is notified in a timely manner of all deaths or imminent deaths of
213 patients in the hospital and (ii) is authorized to determine the suitability of the decedent or patient for
214 organ donation and, in the absence of a similar arrangement with any eye bank or tissue bank in
215 Virginia certified by the Eye Bank Association of America or the American Association of Tissue
216 Banks, the suitability for tissue and eye donation. The hospital shall also have an agreement with at least
217 one tissue bank and at least one eye bank to cooperate in the retrieval, processing, preservation, storage,
218 and distribution of tissues and eyes to ensure that all usable tissues and eyes are obtained from potential
219 donors and to avoid interference with organ procurement. The protocol shall ensure that the hospital
220 collaborates with the designated organ procurement organization to inform the family of each potential
221 donor of the option to donate organs, tissues, or eyes or to decline to donate. The individual making
222 contact with the family shall have completed a course in the methodology for approaching potential
223 donor families and requesting organ or tissue donation that (a) is offered or approved by the organ
224 procurement organization and designed in conjunction with the tissue and eye bank community and (b)
225 encourages discretion and sensitivity according to the specific circumstances, views, and beliefs of the
226 relevant family. In addition, the hospital shall work cooperatively with the designated organ procurement
227 organization in educating the staff responsible for contacting the organ procurement organization's
228 personnel on donation issues, the proper review of death records to improve identification of potential
229 donors, and the proper procedures for maintaining potential donors while necessary testing and
230 placement of potential donated organs, tissues, and eyes takes place. This process shall be followed,
231 without exception, unless the family of the relevant decedent or patient has expressed opposition to
232 organ donation, the chief administrative officer of the hospital or his designee knows of such opposition,
233 and no donor card or other relevant document, such as an advance directive, can be found;

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

236 6. Shall also require that each licensed hospital develop and implement a protocol requiring written
237 discharge plans for identified, substance-abusing, postpartum women and their infants. The protocol shall
238 require that the discharge plan be discussed with the patient and that appropriate referrals for the mother
239 and the infant be made and documented. Appropriate referrals may include, but need not be limited to,
240 treatment services, comprehensive early intervention services for infants and toddlers with disabilities
241 and their families pursuant to Part H of the Individuals with Disabilities Education Act, 20 U.S.C.
242 § 1471 et seq., and family-oriented prevention services. The discharge planning process shall involve, to
243 the extent possible, the father of the infant and any members of the patient's extended family who may

participate in the follow-up care for the mother and the infant. Immediately upon identification, pursuant to § 54.1-2403.1, of any substance-abusing, postpartum woman, the hospital shall notify, subject to federal law restrictions, the community services board of the jurisdiction in which the woman resides to appoint a discharge plan manager. The community services board shall implement and manage the discharge plan;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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