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**SENATE BILL NO. 910**

Offered January 19, 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.*

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 Patron—McClellan
 

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Referred to Committee on Education and Health

**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.

(5) Jurisdiction to try and decide suits in interpleader involving personal or real property where the

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

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

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

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

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

78 ~~(10) (9) Concurrent jurisdiction with the circuit courts to submit matters to arbitration pursuant to~~  
79 ~~Chapter 21 (§ 8.01-577 et seq.) of Title 8.01 where the amount in controversy is within the jurisdictional~~  
80 ~~limits of the general district court. Any party that disagrees with an order by a general district court~~  
81 ~~granting an application to compel arbitration may appeal such decision to the circuit court pursuant to~~  
82 ~~§ 8.01-581.016.~~

83 **§ 16.1-241. Jurisdiction; consent for abortion.**

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

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

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

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

97 2a. Who is at risk of being abused or neglected by a parent or custodian who has been adjudicated  
98 as having abused or neglected another child in the care of the parent or custodian;

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

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

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

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

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

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

to the grand jury shall divest the juvenile court of jurisdiction over the charge and any ancillary charge. In any case in which a transfer hearing is held pursuant to subsection A of § 16.1-269.1, if the juvenile court determines to transfer the case, jurisdiction of the juvenile court over the case shall be divested as provided in § 16.1-269.6.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

197 M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1,  
198 16.1-253.4, or 16.1-279.1, and all petitions filed for the purpose of obtaining an order of protection  
199 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  
200 juvenile.

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

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

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

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

211 R. [Repealed.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

For purposes of this subsection:

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

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

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

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

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

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

"Unemancipated minor" means a minor who has not been emancipated by (i) entry into a valid marriage, even though the marriage may have been terminated by dissolution; (ii) active duty with any of the Armed Forces of the United States; (iii) willingly living separate and apart from his or her

305 parents or guardian, with the consent or acquiescence of the parents or guardian; or (iv) entry of an  
306 order of emancipation pursuant to Article 15 (§ 16.1-331 et seq.).

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

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

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

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

316 **§ 32.1-127. Regulations.**

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

322 B. Such regulations:

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

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

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

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

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

366 6. Shall also require that each licensed hospital develop and implement a protocol requiring written

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



supervision of a physician licensed to practice medicine or osteopathy who is acting within the physician's scope of practice.

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

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

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

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

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

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

F. Before providing any abortion, the health care provider shall obtain the informed written consent of the pregnant person. However, if the pregnant person has been adjudicated incapacitated by any court of competent jurisdiction or if the health care provider knows or has good reason to believe that such pregnant person 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 pregnant person may the health care provider provide the abortion.

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

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

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