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HOUSE BILL NO. 2270

Offered January 11, 2023

Prefiled January 11, 2023

A BILL to amend and reenact §§ 16.1-77 and 18.2-76 of the Code of Virginia and to amend the Code of Virginia by adding in Article 9 of Chapter 4 of Title 18.2 a section numbered 18.2-76.3, relating to provision of abortion; right to informed consent; penalties.

Patron—Greenhalgh

Referred to Committee for Courts of Justice**Be it enacted by the General Assembly of Virginia:**

1. That §§ 16.1-77 and 18.2-76 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 9 of Chapter 4 of Title 18.2 a section numbered 18.2-76.3 as follows:

§ 16.1-77. Civil jurisdiction of general district courts; amending amount of claim.

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 (i) 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, 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, and (ii) any action for injury to person, regardless of theory, and any action for wrongful death as provided for in Article 5 (§ 8.01-50 et seq.) of Chapter 3 of Title 8.01 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 \$50,000, exclusive of interest and any attorney fees. However, the jurisdictional limit shall not apply with respect to distress warrants under the provisions of § 8.01-130.4, 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. While a matter is pending in a general district court, upon motion of the plaintiff seeking to increase the amount of the claim, the court shall order transfer of the matter to the circuit court that has jurisdiction over the amended amount of the claim without requiring that the case first be dismissed or that the plaintiff suffer a nonsuit, and the tolling of the applicable statutes of limitations governing the pending matter shall be unaffected by the transfer. Except for good cause shown, no such order of transfer shall issue unless the motion to amend and transfer is made at least 10 days before trial. The plaintiff shall pay filing and other fees as otherwise provided by law to the clerk of the court to which the case is transferred, and such clerk shall process the claim as if it were a new civil action. The plaintiff shall prepare and present the order of transfer to the transferring court for entry, after which time the case shall be removed from the pending docket of the transferring court and the order of transfer placed among its records. The plaintiff shall provide a certified copy of the transfer order to the receiving court.

(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 14 (§ 55.1-1400 et seq.) of Title 55.1, 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

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HB2270

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) Jurisdiction to try and decide any cases pursuant to § 55.1-1819 of the Property Owners' Association Act (§ 55.1-1800 et seq.) or § 55.1-1959 of the Virginia Condominium Act (§ 55.1-1900 et seq.).

(8) 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 § 8.01-581.016.

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

For purposes of this section, the territory served by a county general district court expressly authorized by statute to be established in a city includes the general district court courtroom.

§ 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 or, if such abortion, induction, or termination is to be performed pursuant to § 18.2-72, either the physician or the nurse practitioner authorized pursuant to clause (ii) of § 18.2-72 to perform such abortion, induction, or termination 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 or, if the abortion, induction, or termination is to be performed pursuant to § 18.2-72, either the physician or the nurse practitioner authorized pursuant to clause (ii) of § 18.2-72 to perform such abortion, induction, or termination 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 or, if the abortion, induction, or termination is to be performed pursuant to § 18.2-72, either the physician or the nurse practitioner authorized pursuant to clause (ii) of § 18.2-72 to perform such abortion, induction, or termination perform the abortion or otherwise terminate the pregnancy.

B. *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 or authorized nurse practitioner 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 or authorized nurse practitioner who is to perform the abortion, by a referring physician or nurse practitioner, or by a licensed professional or practical nurse working under the direct supervision of either the physician or authorized nurse practitioner who is to perform the abortion or the referring physician or nurse practitioner; 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 or authorized nurse practitioner who is to perform the abortion or the referring physician or nurse practitioner. This basic information shall include:*

1. *A full, reasonable, and comprehensible medical explanation of the nature, benefits, and risks of and alternatives to the proposed procedures or protocols to be followed in her particular case;*

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

3. *An offer for the woman to speak with the physician or authorized nurse practitioner 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 may be performed prior to the abortion to confirm the gestational age at the woman's request; and*

5. *An offer to review the printed materials described in subsection D. 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 of Health; (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 of Health; (iv) she has the right to review the materials printed by the Department of Health 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.

C. The physician or authorized nurse practitioner 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. For purposes of this section, "medical emergency" means any condition that on the basis of the physician's or authorized nurse practitioner'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.

D. On or before October 1, 2023, the Department of Health shall publish, in English and in each language that 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 information on services relating to (i) adoption as a positive alternative; (ii) counseling, 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 that may be called to obtain, orally, such a list and description of agencies in the locality of the caller and of the services they offer;

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

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

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

E. Any physician or authorized nurse practitioner who fails to comply with the provisions of this section shall be subject to a \$2,500 civil penalty payable to the Literary Fund.

§ 18.2-76.3. Reporting; penalty.

A. Any physician or authorized nurse practitioner who performs or attempts to perform or induce an abortion shall report to the Department of Health, on a schedule and in accordance with forms and regulations adopted by the Board of Health, the following information:

1. The number of women to whom the physician or authorized nurse practitioner provided the information described by subsection B of § 18.2-76 and, of that number, (i) how many women were provided such information by phone and, of that number, how many women were informed of such by a referring physician or nurse practitioner and how many were informed of such by a physician or nurse practitioner performing the abortion and (ii) how many women were provided such information in person and, of that number, how many women were informed of such by a referring physician or nurse practitioner and how many were informed of such by a physician or nurse practitioner performing the abortion;

182 2. The number of women who availed themselves of the opportunity to obtain and review a copy of
183 the printed information described by subsection D of § 18.2-76 and, of that number, how many women
184 proceeded to obtain an abortion, to the extent known; and

185 3. The number of abortions performed wherein the informed written consent of the woman was not
186 obtained because the abortion was to be performed pursuant to a medical emergency or spontaneous
187 miscarriage.

188 B. Reports required by subsection A shall not contain the name or the address or any other
189 information identifying the patient receiving information required by subsection B of § 18.2-76 or the
190 person providing such information, except that each report shall contain a unique medical record
191 identifying number to enable matching the report to the patient's medical records. Such reports shall be
192 maintained in strict confidence by the Department, shall not be available for public inspection, and shall
193 not be made available except to the attorney for the Commonwealth with appropriate jurisdiction
194 pursuant to a criminal investigation, or in the event a civil action is instituted under subsection E of
195 § 18.2-76.

196 C. By February 28 of each year, the reports required by subsection A shall be submitted to the
197 Department for the previous calendar year. Any physician or authorized nurse practitioner who fails to
198 submit a report by the end of 30 days following the due date shall be subject to a late fee of \$1,000 for
199 each additional 30-day period or portion of a 30-day period the report is overdue. Any physician or
200 authorized nurse practitioner required to report in accordance with this article who has not submitted a
201 report, or has submitted only an incomplete report, more than six months following the due date, may,
202 in an action brought by the Board of Medicine, be directed by a court of competent jurisdiction to
203 submit a complete report within a period stated by court order or be subject to civil contempt.
204 Intentional or reckless failure by any physician or authorized nurse practitioner to conform to any
205 requirement of this section, other than late filing of a report, constitutes unprofessional conduct.
206 Intentional or reckless failure by any physician or authorized nurse practitioner to submit a complete
207 report in accordance with a court order constitutes unprofessional conduct. Intentional or reckless
208 falsification of any report required under this section is a Class 1 misdemeanor.

209 D. By June 30 of each year, the Department shall issue a public report providing statistics for the
210 previous calendar year compiled from all of the reports covering that year submitted in accordance with
211 this section for each of the items listed in subsection A. Each such report shall also provide the
212 statistics for all previous calendar years during which this section was in effect, adjusted to reflect any
213 additional information from late or corrected reports. The Department shall take care to ensure that
214 none of the information included in the public reports could reasonably lead to the identification of any
215 pregnant woman to whom information was given pursuant to § 18.2-76 or the provider of such
216 information.

217 2. That the Board of Health shall adopt forms and regulations required by § 18.2-76.3 of the Code
218 of Virginia, as created by this act, within 120 days of the effective date of this act.

219 3. That the provisions of subsection A of § 18.2-76.3, as created by this act, shall apply to
220 abortions performed or induced on and after the first day of the first calendar month following
221 the effective date of any regulations adopted by the Board of Health pursuant to the second
222 enactment of this act.