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HOUSE BILL NO. 1079

Offered January 25, 1994

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

Patrons—Martin, Clement, Cox, Crouch, Dickinson, Forbes, Hamilton, Johnson, McDonnell, Newman, Reynolds, Stump and Thomas; Senators: Benedetti, Colgan, Earley and Holland, R.J.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-76 of the Code of Virginia is amended and reenacted as follows:

§18.2-76. Informed consent required.

A. Before performing any abortion or inducing any miscarriage or terminating a pregnancy as provided for in §§ 18.2-72, 18.2-73 or § 18.2-74, the physician shall obtain the informed written consent of the pregnant woman; ~~provided, however, if such~~ . *However, if the woman shall be is incompetent as adjudicated by any court of competent jurisdiction or if the physician knows or has good reason to believe that such the woman is incompetent 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 such incompetent the woman* , may the physician perform ~~such~~ an abortion or otherwise terminate the pregnancy.

The physician shall inform the pregnant woman of the nature of the proposed procedure to be utilized and the risks, if any, in her particular case to her health in terminating or continuing the pregnancy.

B. Except in the case of a medical emergency, consent to an abortion is voluntary and informed only if:

1. The woman is told the following by the physician who is to perform the abortion, by the referring physician or by the agent of either, at least twenty-four hours before the abortion:

a. The name of the physician who will perform the abortion;

b. The particular medical risks associated with the particular abortion procedure to be employed including, when medically accurate, the risks of infection, hemorrhage, danger to subsequent pregnancies and infertility;

c. The probable gestational age of the unborn child at the time the abortion is to be performed;

d. The medical risks associated with carrying her child to term; and

e. That she may ask questions.

The physician may provide this information by telephone without conducting a physical examination of, or any tests on, the patient, in which event the information required to be supplied may be based upon facts supplied to the physician by the patient, and whatever other relevant information is reasonably available to the physician.

As used in this subsection and subsection D, "medical emergency" means a condition which, in 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 in order to avert her death or for which a delay will create a serious risk of substantial and irreversible impairment of a major bodily function.

2. The woman is informed, by the physician or his agent, at least twenty-four hours before the abortion:

a. That medical assistance benefits may be available for prenatal care, childbirth and neonatal care;

b. That the father is liable to assist in the support of her child, even in instances in which the father has offered to pay for the abortion; and

c. That she has the right to review the printed materials described in subsection C of this section.

The physician or his agent shall orally inform the woman, either in person or over the telephone, that the materials have been provided by the Commonwealth of Virginia and that they describe the unborn child and list agencies which offer alternatives to abortion. If the woman chooses to view the materials, copies of them shall be furnished to her at least twenty-four hours before the abortion or mailed to her at least seventy-two hours before the abortion by certified mail, restricted delivery to the addressee, which means the postal employee can only deliver the mail to the addressee.

3. The woman certifies in writing, prior to the abortion, that (i) the information described in subdivisions 1 and 2 has been furnished her and (ii) she has been informed of her opportunity to review the information referred to in subsection C and, if the information is requested, has reviewed that information. The physician who is to perform the abortion, or his agent, shall be provided with a copy

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60 of the certification prior to performing an abortion.

61 C. On or before October 1, 1994, the Department of Health shall publish and make available in
62 English, Spanish and other languages spoken by a significant number of state residents, printed
63 materials containing the following information in such a way as to ensure that the information is easily
64 comprehensible:

65 1. Geographically indexed materials designed to inform the woman of public and private agencies
66 and services available to assist a woman through pregnancy, upon childbirth and while the child is
67 dependent, including adoption agencies. This information shall include a comprehensive list of the
68 agencies available, a description of the services they offer, and a description of the manner, including
69 telephone numbers and addresses, in which they might be contacted. At the option of the Department of
70 Health, printed materials may be provided including a toll-free, 24-hour-a-day telephone number which
71 may be called to obtain, orally, such a list and description of agencies in the locality of the caller and
72 of the services they offer.

73 2. Materials designed to inform the woman of the probable anatomical and physiological
74 characteristics of the unborn child at two-week gestational increments from the time when a woman can
75 be known to be pregnant to full term, including pictures or drawings representing the development of
76 unborn children at two-week gestational increments. However, any such pictures or drawings shall
77 contain the dimensions of the fetus and must be realistic and appropriate for the stage of pregnancy
78 depicted. The materials shall include any relevant information on the possibility of the unborn child's
79 survival and shall be objective, nonjudgmental, and designed to convey only accurate scientific
80 information about the unborn child at the various gestational ages. The materials shall also contain
81 objective information describing the methods of abortion procedures commonly employed, the medical
82 risks commonly associated with each such procedure, the possible detrimental psychological effects of
83 abortion, and the medical risks commonly associated with carrying a child to term.

84 The materials shall be printed in a typeface large enough to be clearly legible and shall be available
85 at no cost from the Department of Health upon request and in appropriate number to any person,
86 facility or hospital.

87 D. When a medical emergency compels the performance of an abortion, the physician shall inform
88 the woman, prior to the abortion if possible, of the medical indications supporting his judgment.

89 E. Any person upon whom an abortion has been performed without complying with this section, or
90 upon whom such an abortion is attempted, may maintain an action against the person who performed
91 the abortion for treble damages.

92 F. Compliance with subdivision 2 c of subsection B or that portion of subdivision 3 of subsection B
93 requiring a written certification that the woman has been informed of her opportunity to review the
94 information referred to in subdivision 2 c of subsection B shall not be required until the Department of
95 Health has made the printed materials available at the time the physician or his agent is required to
96 inform the woman of her right to review them.

97 G. In every civil or criminal proceeding or action brought under this section, the court shall rule
98 whether the anonymity of any woman upon whom an abortion is performed or attempted shall be
99 preserved from public disclosure if she does not give her consent to such disclosure. The court, upon
100 motion or sua sponte, shall make such a ruling and, upon determining that her anonymity should be
101 preserved, shall issue orders to the parties, witnesses and counsel; and, notwithstanding any other
102 provision of law, shall direct the sealing of the record and exclusion of individuals from courtrooms or
103 hearing rooms, to the extent necessary to safeguard her identity from public disclosure. Each such order
104 shall be accompanied by specific written findings explaining why the anonymity of the woman should be
105 preserved from public disclosure, why the order is essential to that end, how the order is narrowly
106 tailored to serve that interest, and why no reasonable less restrictive alternative exists.

107 In the absence of written consent of the woman upon whom an abortion has been performed or
108 attempted, anyone, other than a public official, who brings an action under subsection F shall do so
109 under a pseudonym. This section shall not be construed to conceal the identity of the plaintiff or of
110 witnesses from the defendant.