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**HOUSE BILL NO. 422**

Offered January 9, 2008

Prefiled January 4, 2008

*A BILL to amend and reenact §§ 18.2-75 and 18.2-76 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 18.2-74.3, and to repeal §§ 18.2-72, 18.2-73, and 18.2-74 of the Code of Virginia, relating to legality of abortion following viability.*

Patron—Marshall, R.G.

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 18.2-75 and 18.2-76 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-74.3 as follows:**

*§ 18.2-74.3. Prohibition of abortion following viability; penalty.*

*Any person who knowingly performs an abortion except to prevent the death of the pregnant woman (i) when no determination of viability has been made in accordance with this section or (ii) after a fetus has been determined to be viable in accordance with this section, is guilty of a Class 4 felony.*

*Determination of fetal viability shall be made by two physicians prior to the performance of any abortion on the basis of their best clinical judgment. The physicians shall determine whether, based on the particular facts of a woman's pregnancy that are known to them, and in light of medical technology and information reasonably available to them, there is a realistic possibility of maintaining and nourishing the life of the fetus outside of the womb, with or without temporary, artificial life-sustaining support.*

*§ 18.2-75. Conscience clause.*

*Nothing in §§ ~~18.2-72, 18.2-73~~ or § ~~18.2-74~~ this article shall require a hospital or other medical facility or physician to admit any patient under the provisions hereof for the purpose of performing an abortion. In addition, any person who shall state 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 which 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 shall revoke it in writing or terminate his association with the facility with which it is filed.*

*§ 18.2-76. Informed written consent required; civil penalty.*

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

*B. For purposes of this section:*

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

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

*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*

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59 procedures and protocols;

60 4. A statement of the probable gestational age of the fetus at the time the abortion is to be  
61 performed; and

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

78 The information required by this subsection may be provided by telephone without conducting a  
79 physical examination of or tests upon the woman, in which case the information required to be provided  
80 may be based on facts supplied by the woman and whatever other relevant information is reasonably  
81 available to the physician. If a physical examination, tests or the availability of other information to the  
82 physician or the nurse subsequently indicates, in the medical judgment of the physician or the nurse, a  
83 revision of the information previously supplied to the woman, that revised information may be  
84 communicated to the woman at any time prior to the performance of the abortion.

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

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

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

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

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

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

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

- 121 2. That §§ 18.2-72, 18.2-73, and 18.2-74 of the Code of Virginia are repealed.
- 122 3. That the provisions of this act may result in a net increase in periods of imprisonment or
- 123 commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot
- 124 be determined for periods of imprisonment in state adult correctional facilities and is \$0 for
- 125 periods of commitment to the custody of the Department of Juvenile Justice.

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