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HOUSE BILL NO. 2241

Offered January 13, 2021

Prefiled January 13, 2021

A *BILL to amend the Code of Virginia by adding in Article 6 of Chapter 29 of Title 54.1 a section numbered 54.1-2973.2, relating to unborn child protection from dismemberment abortion; penalties.*

Patron—LaRock

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 6 of Chapter 29 of Title 54.1 a section numbered 54.1-2973.2 as follows:

§ 54.1-2973.2. Unborn child protection from dismemberment abortion; penalties.

A. For purposes of this section:

"Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device to (i) purposely kill an unborn child of a woman known to be pregnant or (ii) purposely terminate the pregnancy of a woman known to be pregnant with a purpose other than to, after viability, produce a live birth and preserve the life and health of a child who is born alive or to remove a dead unborn child.

"Attempt to perform an abortion" means to do or omit to do anything that, under the circumstances as an individual believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in the individual performing an abortion. Such substantial steps include (i) agreeing with an individual to perform an abortion on that individual or on some other person, regardless of whether the term "abortion" is used in the agreement or whether the agreement is contingent on another factor, such as receipt of payment or a determination of pregnancy, or (ii) scheduling or planning a time to perform an abortion on an individual, regardless of whether the term "abortion" is used in the agreement or whether the agreement is contingent on another factor, such as receipt of payment or a determination of pregnancy. This definition shall not be construed to require that an abortion procedure be initiated for an attempted abortion to occur.

"Dismemberment abortion" means to, with the purpose of causing the death of an unborn child, purposely dismember a living unborn child and extract him one piece at a time from the uterus through the use of clamps, grasping forceps, tongs, scissors, or any other instrument that, through the convergence of two rigid levers, slice, crush, or grasp a portion of the unborn child's body to cut or rip such portion of the unborn child's body. "Dismemberment abortion" does not include an abortion that uses suction to dismember the body of an unborn child by sucking fetal parts into a collection container, but it does include an abortion in which a dismemberment abortion is used to cause the death of an unborn child but suction is subsequently used to extract fetal parts after the death of the unborn child.

"Physician" means any person who is legally authorized to perform an abortion.

"Purposely" means that a person, with knowledge of the circumstances of a situation, (i) knows that the nature of his conduct will cause a specific result, and it is his conscious objective to engage in such conduct or cause such result or (ii) he is aware of the attendant circumstances that could cause a certain result and he believes or hopes that such circumstances exist.

"Serious health risk to the unborn child's mother" means that in the reasonable medical judgment of a licensed physician, an unborn child's mother has a health condition that so complicates her medical condition that it necessitates an abortion to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, with the exception of psychological or emotional conditions. No such condition may be determined to exist if it is based on a claim or diagnosis that the unborn child's mother will engage in conduct that she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

"Woman" means an adult or minor female human being.

B. Notwithstanding any other provision of law, it is unlawful for any person to purposely perform or attempt to perform a dismemberment abortion and thereby kill an unborn child unless such dismemberment abortion is necessary to prevent serious health risk to the unborn child's mother. A person accused in a proceeding of unlawful conduct under this subsection may seek a hearing before the Board to determine whether a dismemberment abortion was necessary to prevent serious health risk to the unborn child's mother and the Board's findings shall be admissible on that issue at any trial in which such unlawful conduct is alleged. Upon a motion of the person accused, the court shall delay the beginning of the trial for not more than 30 days to permit such a hearing to take place.

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59 No woman upon whom an abortion is performed or attempted to be performed shall be liable for
60 performing or attempting to perform a dismemberment abortion. No nurse, technician, secretary,
61 receptionist, or other employee or agent who is not a physician but who acts at the direction of a
62 physician and no pharmacist or other individual who is not a physician but who fills a prescription or
63 provides instruments or materials used in an abortion at the direction of or to a physician shall be
64 liable for performing or attempting to perform a dismemberment abortion.

65 C. A cause of action for injunctive relief against a person who has performed a dismemberment
66 abortion may be maintained by (i) a woman upon whom such dismemberment abortion was performed;
67 (ii) if the woman is a minor, the parent or guardian of the minor woman upon whom such
68 dismemberment abortion was performed; or (iii) the attorney for the Commonwealth of the county or
69 city in which the dismemberment abortion occurred or in which the person who performed the
70 dismemberment abortion resides or in which the woman upon whom such dismemberment abortion was
71 performed resides. A court of competent jurisdiction may enjoin a person who has performed a
72 dismemberment abortion from performing or attempting to perform further dismemberment abortions in
73 violation of this section. A cause of action under this subsection may not be maintained by a plaintiff if
74 the pregnancy resulted from the plaintiff's criminal conduct.

75 D. A cause of action for civil damages against a person who has performed a dismemberment
76 abortion in violation of this section may be maintained by (i) a woman upon whom such dismemberment
77 abortion was performed; (ii) the father of the unborn child, if the father was married to the woman at
78 the time that the dismemberment abortion was performed; or (iii) if the woman was a minor at the time
79 that the dismemberment abortion occurred or if the woman died as a result of the abortion, the
80 maternal grandparents of the unborn child. A cause of action under this subsection may not be
81 maintained by a plaintiff if the pregnancy resulted from the plaintiff's criminal conduct. Civil damages
82 awarded to a plaintiff shall include money damages for all injuries, psychological and physical, that
83 occurred as a result of the dismemberment abortion. Any person who commits a violation of this section
84 by performing a dismemberment abortion is subject to a civil penalty not to exceed \$5,000. Such penalty
85 shall be collected by the Board and the proceeds shall be deposited into the general fund. Any person
86 assessed a civil penalty pursuant to this section shall not receive a license, registration, or certification
87 or renewal of such from any health regulatory board unless such penalty has been paid.

88 E. If a judgment is rendered in favor of the plaintiff under an action pursuant to subsections C and
89 D, the court shall also award reasonable attorney fees to the plaintiff against the defendant. If a
90 judgment is rendered in favor of the defendant and the court determines that the plaintiff's cause of
91 action was frivolous and brought in bad faith, the court shall award reasonable attorney fees in favor of
92 the defendant against the plaintiff. No attorney fees may be assessed against the woman upon whom an
93 abortion was performed or attempted to be performed unless the court determines that her lawsuit was
94 frivolous and brought in bad faith.

95 F. If any person purposely performs a dismemberment abortion in violation of this section, he is
96 guilty of a Class 4 felony.

97 G. In any action brought pursuant to this section, the court shall rule whether the anonymity of any
98 woman upon whom an abortion has been performed or attempted to be performed shall be preserved
99 from public disclosure if she does not give her consent to such disclosure. The court shall make such a
100 ruling and, upon determining that the woman's anonymity should be preserved, shall issue orders to the
101 parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals
102 from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public
103 disclosure. Each such order shall be accompanied by specific written findings explaining why the
104 anonymity of the woman should be preserved from public disclosure, why the order is essential to that
105 end, how the order is narrowly tailored to serve that interest, and why no reasonable, less-restrictive
106 alternative exists. In the absence of written consent of the woman upon whom an abortion has been
107 performed or attempted to be performed, anyone other than a public official who brings an action under
108 this section shall do so under a pseudonym. This section may not be construed to conceal the identity of
109 the plaintiff or witnesses from the defendant or from attorneys for the defendant.

110 H. This section does not prevent an abortion for any reason, including rape and incest, or by any
111 other method.

112 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
113 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**
114 **necessary appropriation cannot be determined for periods of imprisonment in state adult**
115 **correctional facilities; therefore, Chapter 1289 of the Acts of Assembly of 2020 requires the**
116 **Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant**
117 **to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot**
118 **be determined for periods of commitment to the custody of the Department of Juvenile Justice.**