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HOUSE BILL NO. 1865

Offered January 11, 2023

Prefiled January 10, 2023

A BILL to amend the Code of Virginia by adding a section numbered 18.2-71.2, relating to provision of abortion; abortion based on a disability or the sex or ethnicity of the unborn child prohibited; penalty.

Patrons—Scott, P.A., Brewer, Freitas, Orrock and Runion

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 a section numbered 18.2-71.2 as follows:

§ 18.2-71.2. Abortion based on a disability or the sex or ethnicity of the unborn child; civil penalty.

A. For the purposes of this section:

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

"Attempt to perform or induce an abortion" means to do or omit anything that, under the circumstances as the person believes them to be, is an act or omission that constitutes a substantial step in a course of conduct planned to culminate in the performance or induction of an abortion in the Commonwealth, in violation of this section.

"Based on a disability" means on account of the presence or presumed presence of a genetic, physical, emotional, or intellectual disability or diagnosis in the unborn child, including Down syndrome or other chromosomal disorder or condition, or morphological malformations occurring as the result of atypical gene expressions.

"Based on the ethnicity" means on account of the actual or presumed race or racial ethnicity of the unborn child.

"Based on the sex" means on account of the actual or presumed sex of the unborn child.

"Commissioner" means the State Health Commissioner.

"Department" means the Department of Health.

"Down syndrome" means a chromosomal condition caused by an error in cell division that results in the presence of an extra or partial copy of chromosome 21.

"Health care practitioner" means a person who is licensed, certified, or otherwise authorized by law or regulation to provide or render health care services or genetic counseling to expectant or new parents.

"Medical emergency" means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the pregnant woman will engage in conduct that she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

"Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

B. A health care practitioner who administers, or causes to be administered, a test for any physical, emotional, or intellectual disability or diagnosis to an expectant or new parent shall, upon receiving a test result that confirms the presence of any disability, provide the expectant or new parent with educational information made available by the Department under subsection C. Delivery of information prepared by the Department in accordance with subsection C at the time genetic results or diagnostic conclusions are provided shall constitute compliance with this subsection.

C. The Department shall make the following informational publications available to health care practitioners on the Department's publicly accessible website:

1. Up-to-date, evidence-based information about any in utero physical or intellectual disability or diagnosis that has been reviewed by medical experts and any national disability rights organizations. The information provided shall include the following:

- 59 a. Physical, developmental, educational, and psychosocial outcomes;
60 b. Life expectancy;
61 c. Clinical course;
62 d. Intellectual and functional development;
63 e. Treatment options; and
64 f. Any other information the Department deems necessary; and
65 2. Contact information regarding First Call programs and support services, including the following:
66 a. Information hotlines specific to any in utero fetal disabilities or conditions;
67 b. Relevant resource centers or clearinghouses;
68 c. National and local disability rights organizations; and
69 d. Education and support programs.

70 The information provided in accordance with this subsection shall conform to the applicable
71 standard or standards provided in the enhanced National Standards for Culturally and Linguistically
72 Appropriate Services (CLAS) in Health and Health Care as adopted by the U.S. Department of Health
73 and Human Services and published in the Federal Register on September 24, 2013.

74 D. Abortion based on a disability or the sex or ethnicity of the unborn child.

75 1. Except in a medical emergency, a physician, or a nurse practitioner pursuant to the requirements
76 of § 18.2-72, shall not perform, induce, or attempt to perform or induce an abortion unless such
77 physician or nurse practitioner who is to perform or induce the abortion has first (i) confirmed that the
78 abortion is not being sought on the basis of a disability or on the basis of the sex or ethnicity of an
79 unborn child and (ii) documented these facts in the pregnant woman's chart, as well as in the report to
80 be filed with the Commissioner as set forth in subdivision 3.

81 2. Except in a medical emergency, a physician, or a nurse practitioner pursuant to the requirements
82 of § 18.2-72, shall not intentionally or knowingly perform, induce, or attempt to perform or induce an
83 abortion of an unborn child if the abortion is being sought on the basis of a disability or on the basis
84 of the sex or ethnicity of such unborn child.

85 3. In every case in which a physician, or a nurse practitioner pursuant to the requirements of
86 § 18.2-72, performs or induces an abortion of an unborn child, the physician or nurse practitioner shall
87 within 15 days of the procedure cause to be filed with the Commissioner, on a form supplied by the
88 Commissioner, a report containing the following information:

- 89 a. Date the abortion was performed;
90 b. Specific method of abortion used;
91 c. Whether the presence or presumed presence of a disability in the unborn child had been detected
92 at the time of the abortion by genetic testing or any other fetal testing, such as maternal serum tests, by
93 ultrasound, such as nuchal translucency (NT) screening, or by other forms of testing;
94 d. A statement confirming that the reason for the abortion, as stated by the pregnant woman, was
95 not based on a disability or the sex or ethnicity of the unborn child; and
96 e. Probable health consequences of the abortion and specific abortion method used.

97 The physician or nurse practitioner shall sign the form as his attestation under penalty of perjury
98 that the information stated is true and correct to the best of his knowledge.

99 4. Reports required and submitted under subdivision 3 shall not contain the name of the pregnant
100 woman upon whom the abortion was performed or any other information or identifiers that would make
101 it possible to identify, in any manner or under any circumstances, a woman who obtained or sought to
102 obtain an abortion.

103 E. Professional sanctions and civil penalties.

104 1. A physician licensed by the Board of Medicine or a nurse practitioner jointly licensed by the
105 Boards of Medicine and Nursing as a nurse practitioner pursuant to § 54.1-2957 who intentionally or
106 knowingly violates the prohibition in subdivision D 2 commits an act of unprofessional conduct, and his
107 license to practice in the Commonwealth shall be suspended or revoked pursuant to the rules of
108 unprofessional conduct pursuant to § 54.1-2915.

109 2. A physician or nurse practitioner who knowingly or intentionally delivers to the Commissioner any
110 report required by subdivision D 3 known by him to be false is subject to a civil penalty as determined
111 by the Board of Medicine or the Boards of Medicine and Nursing. The Board of Medicine or the Boards
112 of Medicine and Nursing shall also determine how such penalty is collected and where such funds shall
113 be distributed.

114 F. The Attorney General may bring an action in law or equity to enforce the provisions of this
115 section on behalf of the Commissioner or the Board of Medicine or the Boards of Medicine and
116 Nursing. The Board of Medicine or the Board of Nursing may bring such action on its own behalf.

117 G. Nothing in this section shall be construed as creating or recognizing a right to abortion or as
118 altering generally accepted medical standards. Further, it is not the intention of this section to make
119 lawful an abortion that is currently unlawful.

120 H. If any one or more provisions, subsections, sentences, clauses, phrases, or words of this section

121 *or the application thereof to any person or circumstance are found to be unconstitutional, the same is*
122 *hereby declared to be severable, and the balance of this section shall remain effective notwithstanding*
123 *such unconstitutionality. The General Assembly hereby declares that it would have passed this section,*
124 *and each provision, subsection, sentence, clause, phrase, or word thereof, irrespective of the fact that*
125 *any one or more provisions, subsections, sentences, clauses, phrases, or words be declared*
126 *unconstitutional.*

127 **2. That the State Health Commissioner shall create the forms required by this act within 30 days**
128 **after the effective date of this act. No provision of this act requiring the reporting of information**
129 **on forms published by the State Health Commissioner may be applicable until 10 days after the**
130 **requisite forms have been made available or the effective date of this act, whichever is later.**

131 **3. That the provisions of this act may result in a net increase in periods of imprisonment or**
132 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**
133 **necessary appropriation cannot be determined for periods of imprisonment in state adult**
134 **correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2022, Special Session I,**
135 **requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of**
136 **\$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**
137 **appropriation is \$0 for periods of commitment to the custody of the Department of Juvenile**
138 **Justice.**