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**HOUSE BILL NO. 1184**

Offered January 10, 2024

Prefiled January 10, 2024

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 the sex or ethnicity of unborn child prohibited; penalties.*

Patrons—Scott, P.A. and Earley

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 the sex or ethnicity of the unborn child; penalties.****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 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.

"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. Abortion based on the sex or ethnicity of the unborn child.**

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

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

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

a. Date the abortion was performed;

b. Specific method of abortion used;

c. A statement confirming that the reason for the abortion, as stated by the pregnant woman, was not based on the sex or ethnicity of the unborn child; and

d. Probable health consequences of the abortion and specific abortion method used.

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

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

63 C. Professional sanctions and civil penalties.

64 1. A physician licensed by the Board of Medicine or an advanced practice registered nurse jointly  
65 licensed by the Boards of Medicine and Nursing as an advanced practice registered nurse pursuant to  
66 § 54.1-2957 who intentionally or knowingly violates the prohibition in subdivision B 2 commits an act  
67 of unprofessional conduct, and his license to practice in the Commonwealth shall be suspended or  
68 revoked pursuant to the rules of unprofessional conduct pursuant to § 54.1-2915.

69 2. A physician or advanced practice registered nurse who knowingly or intentionally delivers to the  
70 Commissioner any report required by subdivision B 3 known by him to be false is subject to a civil  
71 penalty as determined by the Board of Medicine or the Boards of Medicine and Nursing. The Board of  
72 Medicine or the Boards of Medicine and Nursing shall also determine how such penalty is collected and  
73 where such funds shall be distributed.

74 D. The Attorney General may bring an action in law or equity to enforce the provisions of this  
75 section on behalf of the Commissioner or the Board of Medicine or the Boards of Medicine and  
76 Nursing. The Board of Medicine or the Board of Nursing may bring such action on its own behalf.

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

80 F. If any one or more provisions, subsections, sentences, clauses, phrases, or words of this section or  
81 the application thereof to any person or circumstance are found to be unconstitutional, the same is  
82 hereby declared to be severable, and the balance of this section shall remain effective notwithstanding  
83 such unconstitutionality. The General Assembly hereby declares that it would have passed this section,  
84 and each provision, subsection, sentence, clause, phrase, or word thereof, irrespective of the fact that  
85 any one or more provisions, subsections, sentences, clauses, phrases, or words be declared  
86 unconstitutional.

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

91 3. That the provisions of this act may result in a net increase in periods of imprisonment or  
92 commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the  
93 necessary appropriation cannot be determined for periods of imprisonment in state adult  
94 correctional facilities; therefore, Chapter 1 of the Acts of Assembly of 2023, Special Session I,  
95 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of  
96 \$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary  
97 appropriation is \$0 for periods of commitment to the custody of the Department of Juvenile  
98 Justice.