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HOUSE BILL NO. 2570

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 14, 2001)

(Patron Prior to Substitute—Delegate McDonnell)

A *BILL to amend and reenact §§ 16.1-77 and 18.2-76 of the Code of Virginia, relating to abortion, informed written consent as a prerequisite for a lawful abortion; penalty.*

Be it enacted by the General Assembly of Virginia:**1. That §§ 16.1-77 and 18.2-76 of the Code of Virginia are amended and reenacted as follows:**

§ 16.1-77. Civil jurisdiction of general district courts.

Except as provided in Article 5 (§ 16.1-122.1 et seq.) of this chapter, each general district court shall have, within the limits of the territory it serves, civil jurisdiction as follows:

(1) Exclusive original jurisdiction of any claim to specific personal property or to any debt, fine or other money, or to damages for breach of contract or for injury done to property, real or personal, or for any injury to the person, which would be recoverable by action at law or suit in equity, when the amount of such claim does not exceed \$3,000 exclusive of interest and any attorney's fees contracted for in the instrument, and concurrent jurisdiction with the circuit courts having jurisdiction in such territory of any such claim when the amount thereof exceeds \$3,000 but does not exceed \$15,000, exclusive of interest and any attorney's fees contracted for in the instrument. However, this \$15,000 limit shall not apply with respect to distress warrants under the provisions of § 55-230.

(2) Jurisdiction to try and decide attachment cases when the amount of the plaintiff's claim does not exceed \$15,000 exclusive of interest and any attorney's fees contracted for in the instrument.

(3) Jurisdiction of actions of unlawful entry or detainer as provided in Article 13 (§ 8.01-124 et seq.) of Chapter 3 of Title 8.01, and in Chapter 13 (§ 55-217 et seq.) of Title 55, and the maximum jurisdictional limits prescribed in subdivision (1) shall not apply to any claim for damages sustained or rent proved to be owing where the premises were used by the occupant primarily for business, commercial or agricultural purposes.

(4) Except where otherwise specifically provided, all jurisdiction, power and authority over any civil action or proceeding conferred upon any general district court judge or magistrate under or by virtue of any provisions of the Code of Virginia.

(5) Jurisdiction to try and decide suits in interpleader involving personal property where the amount of money or value of the property is not more than the maximum jurisdictional limits of the general district court. The action shall be brought in accordance with the procedures for interpleader as set forth in § 8.01-364. However, the general district court shall not have any power to issue injunctions. Actions in interpleader may be brought by either the stakeholder or any of the claimants. The initial pleading shall be either by motion for judgment or by warrant in debt. The initial pleading shall briefly set forth the circumstances of the claim and shall name as defendant all parties in interest who are not parties plaintiff.

(6) Jurisdiction to try and decide any cases pursuant to § 2.1-346 of the Virginia Freedom of Information Act (§ 2.1-340 et seq.), for writs of mandamus or for injunctions.

(7) Concurrent jurisdiction with the circuit courts having jurisdiction in such territory to adjudicate habitual offenders pursuant to the provisions of Article 9 (§ 46.2-355.1 et seq.) of Chapter 3 of Title 46.2.

(8) *Jurisdiction to try and decide cases alleging a civil violation described in § 18.2-76.*

§ 18.2-76. Informed written 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 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.*

~~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. *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

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60 basic information to effect such consent, as required by this subsection, shall be provided by telephone
61 or in person to the woman at least twenty-four hours before the abortion by the physician who is to
62 perform the abortion, by a referring physician, or by a licensed professional or practical nurse working
63 under the direct supervision of either the physician who is to perform the abortion or the referring
64 physician; however, the information in subdivision 5 may be provided instead by a licensed health-care
65 professional working under the direct supervision of either the physician who is to perform the abortion
66 or the referring physician. This basic information shall include:

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

69 2. An instruction that the woman may withdraw her consent at any time prior to the performance of
70 the procedure;

71 3. An offer for the woman to speak with the physician who is to perform the abortion so that he may
72 answer any questions that the woman may have and provide further information concerning the
73 procedures and protocols;

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

76 5. An offer to review the printed materials described in subsection D. If the woman chooses to
77 review such materials, they shall be provided to her at least twenty-four hours before the abortion or
78 mailed to her at least seventy-two hours before the abortion by first class mail or, if the woman
79 requests, by certified mail, restricted delivery. This offer for the woman to review the material shall
80 advise her of the following: (i) the Department of Health publishes printed materials that describe the
81 unborn child and list agencies that offer alternatives to abortion; (ii) medical assistance benefits may be
82 available for prenatal care, childbirth and neonatal care, and that more detailed information on the
83 availability of such assistance is contained in the printed materials published by the Department; (iii)
84 the father of the unborn child is liable to assist in the support of her child, even in instances where he
85 has offered to pay for the abortion, that assistance in the collection of such support is available, and
86 that more detailed information on the availability of such assistance is contained in the printed
87 materials published by the Department; and (iv) she has the right to review the materials printed by the
88 Department and that copies will be provided to her free of charge if she chooses to review them. Where
89 the woman has advised that the pregnancy is the result of a rape, the information in clause (iii) above
90 may be omitted.

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

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

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

108 1. Geographically indexed materials designed to inform the woman of public and private agencies
109 and services available to assist a woman through pregnancy, upon childbirth and while the child is
110 dependent, including, but not limited to, information on services relating to adoption, paternity
111 establishment and child support enforcement, child development, child rearing and stress management,
112 and pediatric and maternal health care. The materials shall include a comprehensive list of the names
113 and telephone numbers of the agencies, or, at the option of the Department of Health, printed materials
114 including a toll-free, twenty-four-hour-a-day telephone number which may be called to obtain, orally,
115 such a list and description of agencies in the locality of the caller and of the services they offer;

116 2. Materials designed to inform the woman of the probable anatomical and physiological
117 characteristics of the human fetus at two-week gestational increments from the time when a woman can
118 be known to be pregnant to full term, including any relevant information on the possibility of the fetus's
119 survival and pictures or drawings representing the development of the human fetus at two-week
120 gestational increments. Such pictures or drawings shall contain the dimensions of the fetus and shall be
121 realistic and appropriate for the stage of pregnancy depicted. The materials shall be objective,

122 *nonjudgmental and designed to convey only accurate scientific information about the human fetus at the*
123 *various gestational ages; and*

124 *3. Materials containing objective information describing the methods of abortion procedures*
125 *commonly employed, the medical risks commonly associated with each such procedure, the possible*
126 *detrimental psychological effects of abortion, and the medical risks commonly associated with carrying a*
127 *child to term.*

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

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

132 **2. That the provisions of this act shall become effective on October 1, 2001.**