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SENATE BILL NO. 1205

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee
on February 22, 2003)

(Patron Prior to Substitute—Senator Newman)

A BILL to amend and reenact § 32.1-249 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 18.2-71.1, and to repeal § 18.2-74.2 of the Code of Virginia, relating to infanticide; penalty.

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-249 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 18.2-71.1 as follows:

§ 18.2-71.1. Partial birth infanticide; penalty.

A. Any person who knowingly performs partial birth infanticide and thereby kills a human infant is guilty of a Class 4 felony.

B. For the purposes of this section, "partial birth infanticide" means any deliberate act that (i) is intended to kill a human infant who has been born alive, but who has not been completely extracted or expelled from its mother, and that (ii) does kill such infant, regardless of whether death occurs before or after extraction or expulsion from its mother has been completed.

The term "partial birth infanticide" shall not under any circumstances be construed to include any of the following procedures: (i) the suction curettage abortion procedure, (ii) the suction aspiration abortion procedure, (iii) the dilation and evacuation abortion procedure involving dismemberment of the fetus prior to removal from the body of the mother, or (iv) completing delivery of a living human infant and severing the umbilical cord of any infant who has been completely delivered.

C. For the purposes of this section, "human infant who has been born alive" means a product of human conception that has been completely or substantially expelled or extracted from its mother, regardless of the duration of pregnancy, which after such expulsion or extraction breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.

D. For purposes of this section, "substantially expelled or extracted from its mother" means, in the case of a headfirst presentation, the infant's entire head is outside the body of the mother, or, in the case of breech presentation, any part of the infant's trunk past the navel is outside the body of the mother.

E. This section shall not prohibit the use by a physician of any procedure that, in reasonable medical judgment, is necessary to prevent the death of the mother, so long as the physician takes every medically reasonable step, consistent with such procedure, to preserve the life and health of the infant. A procedure shall not be deemed necessary to prevent the death of the mother if completing the delivery of the living infant would prevent the death of the mother.

F. The mother may not be prosecuted for any criminal offense based on the performance of any act or procedure by a physician in violation of this section.

§ 32.1-249. Definitions.

As used in this chapter:

1. "Dead body" means a human body or such parts of such human body from the condition of which it reasonably may be concluded that death recently occurred.

2. "Fetal death" means death prior to the complete expulsion or extraction from its mother of a product of human conception, regardless of the duration of pregnancy; death is indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

a. "Induced termination of pregnancy" means the intentional interruption of pregnancy with the intention to produce other than a live-born infant or to remove a dead fetus and which does not result in a live birth.

b. "Spontaneous fetal death" means the expulsion or extraction of a product of human conception resulting in other than a live birth and which is not an induced termination of pregnancy.

3. "File" means the presentation of a vital record provided for in this chapter for registration by the Department.

4. "Final disposition" means the burial, interment, cremation, removal from the Commonwealth or other authorized disposition of a dead body or fetus.

5. ~~Repealed.~~

6. "Institution" means any establishment, public or private, which provides inpatient medical, surgical, or diagnostic care or treatment, or nursing, custodial or domiciliary care, or to which persons

SENATE

SUBSTITUTE

SB1205S1

60 are committed by law.

61 76. "Live birth" means the complete *or substantial* expulsion or extraction from its mother of a
62 product of human conception, irrespective of the duration of pregnancy, which, after such expulsion or
63 extraction, breathes or shows any other evidence of life such as beating of the heart, pulsation of the
64 umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been
65 cut or the placenta is attached.

66 "*Substantial expulsion or extraction*" means, in the case of a headfirst presentation, the infant's
67 entire head is outside the body of the mother or, in the case of a breech delivery, when any part of the
68 infant's trunk past the navel is outside the body of the mother.

69 87. "Physician" means a person authorized or licensed to practice medicine or osteopathy in this
70 Commonwealth.

71 98. "Registration" means the acceptance by the Department and the incorporation of vital records as
72 provided for in this chapter into its official records.

73 ~~10. [Repealed.]~~

74 ~~119.~~ "System of vital records" means the registration, collection, preservation, amendment, and
75 certification of vital records; the collection of other reports required by this chapter; and related
76 activities.

77 ~~1210.~~ "Vital records" means certificates or reports of births, deaths, fetal deaths, adoptions, marriages,
78 divorces or annulments and amendment data related thereto.

79 **2. That § 18.2-74.2 of the Code of Virginia is repealed.**

80 **3. That the provisions of this act may result in a net increase in periods of imprisonment or**
81 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
82 **be determined for periods of imprisonment in state adult correctional facilities and is \$0 for**
83 **periods of commitment to the custody of the Department of Juvenile Justice.**