

HOUSE BILL NO. 1184

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on _____)

(Patron Prior to Substitute--Delegate Scott, P.A.)

A BILL to amend and reenact §§ 18.2-71.1 and 18.2-74.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-71.2, relating to partial birth infanticide; advanced practice registered nurse; provision of abortion; abortion based on the sex or ethnicity of unborn child prohibited; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-71.1 and 18.2-74.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-71.2 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,

27 regardless of the duration of pregnancy, which after such expulsion or extraction breathes or shows any
28 other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement
29 of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.

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

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

39 F. ~~The~~ Notwithstanding any other provision of law, the mother may not be prosecuted for any
40 criminal offense prior to complete extraction or expulsion based on the performance of any act or
41 procedure by a physician ~~in violation of this section~~ or advanced practice registered nurse related to the
42 death of a child.

43 **§ 18.2-71.2. Abortion based on the sex or ethnicity of the unborn child; penalties.**

44 A. For the purposes of this section:

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

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

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

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

56 "Commissioner" means the State Health Commissioner.

57 "Department" means the Department of Health.

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

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

68 B. Abortion based on the sex or ethnicity of the unborn child.

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

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

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

83 a. Date the abortion was performed;

84 b. Specific method of abortion used;

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

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

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

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

94 C. Professional sanctions and civil penalties.

95 1. A physician licensed by the Board of Medicine or an advanced practice registered nurse jointly
96 licensed by the Boards of Medicine and Nursing as an advanced practice registered nurse pursuant to §
97 54.1-2957 who intentionally or knowingly violates the prohibition in subdivision B 2 commits an act of
98 unprofessional conduct, and his license to practice in the Commonwealth shall be suspended or revoked
99 pursuant to the rules of unprofessional conduct pursuant to § 54.1-2915.

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

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

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

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

117 **§ 18.2-74.1. Abortion, etc., when necessary to save life of woman.**

118 ~~Notwithstanding any other provision of law, in the event it is necessary for a licensed physician~~
119 ~~or advanced practice registered nurse to terminate a human pregnancy or assist in the termination of a~~
120 ~~human pregnancy by performing an abortion or causing a miscarriage on any woman in order to save her~~
121 ~~life, in the opinion of the physician or advanced practice registered nurse so performing the abortion or~~
122 ~~causing the miscarriage, §§ 18.2-71, 18.2-73 and 18.2-74 shall not be applicable.~~

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

127 **3. That the provisions of this act may result in a net increase in periods of imprisonment or**
128 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**
129 **appropriation is _____ for periods of imprisonment in state adult correctional facilities;**
130 **therefore, Chapter 1 of the Acts of Assembly of 2023, Special Session I, requires the Virginia**
131 **Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-**

132 19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation is _____ for
133 periods of commitment to the custody of the Department of Juvenile Justice.

134 4. That an emergency exists and this act is in force from its passage.

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