

DRAFT SUMMARY: *Abolishing abortion by providing equal protection of the laws; defining personhood from fertilization.* To enact the “Abolition of Abortion in Virginia Act” so as to provide that the deliberate termination of an unborn child by any means or at any stage of development is murder; to create criminal penalties; to declare certain abortion-related United States Supreme Court decisions void and unenforceable in the Commonwealth of Virginia; to ensure equal rights and protection of human beings at all stages of life; to prohibit state officials from enforcing court orders contrary to the provisions of this Act; to subject state officials who violate the provisions of this Act to professional discipline; to create certain definitions; and for other purposes.

1 *Be it enacted by the General Assembly of Virginia:*

2 **1. That the Code of Virginia is amended by adding a section numbered 18.2-32.4 as follows:**

3 ***§ 18.2-32.4 . Abolishing abortion by providing equal protection of the laws; defining***
4 ***personhood from fertilization.***

5 *A. This section may be cited as the “Abolition of Abortion in Virginia Act.”*

6 *B. The General Assembly hereby finds that:*

7 *1. Section 2, Article VI, United States Constitution, provides that “[The United*
8 *States Constitution], and the Laws of the United States which shall be made in Pursuance*
9 *thereof. . . shall be the supreme Law of the Land”;*

10 *2. The Tenth Amendment to the United States Constitution affirms that “The*
11 *powers not delegated to the United States by the Constitution, nor prohibited by it to the States,*
12 *are reserved to the States respectively, or to the people”;*

13 *3. Members of this body have solemnly sworn to support the Constitution of the*
14 *United States and the Constitution of the Commonwealth of Virginia, according to the best of our*
15 *ability, so help us God;*

16 *4. Though prudence dictates that states should not declare actions of the federal*
17 *judiciary void for light or indefinite causes, the legislature does not concede that the federal*
18 *judiciary is infallible nor its powers unlimited;*

19 *5. Nothing in the Constitution of the United States provides for a right to abortion*
20 *of preborn human beings;*

21 *6. The concept of the federal judiciary compelling states to allow the practice of*
22 *prenatal homicide runs completely contrary to the text and principles of the Constitution of the*
23 *United States;*

1 7. This body denies that the power to authorize the genocide of more than 63
2 million preborn human beings over the last 50 years and counting is within the legitimate powers
3 of the federal judiciary;

4 8. Actions of the federal judiciary purporting to provide a right to abortion are not
5 made in pursuance of the Constitution of the United States and consequently are not the supreme
6 law of the land;

7 9. Innocent human life, created in the image of God, should be equally protected
8 under the laws from the beginning of biological development to natural death;

9 10. Personhood of a living human preborn child should be fully recognized from
10 the beginning of biological development at the moment of fertilization upon the fusion of a
11 human spermatozoon with a human ovum or, in the case of asexual reproduction, at the
12 equivalent stage of development;

13 11. To ensure the right to life and equal protection of the laws, all preborn
14 children should be protected with the same homicide and wrongful death laws protecting all
15 other human persons;

16 12. Any and all federal statutes, regulations, treaties, orders, and court rulings
17 which would deprive a preborn child of the right to life or prohibit the equal protection of such
18 right under the law should be treated as void and of no effect; and

19 13. Abortion should be abolished in this state.

20 C. Notwithstanding any other provision of law, in this article the term "person" shall
21 include a living human child before birth from the beginning of biological development at the
22 moment of fertilization upon the fusion of a human spermatozoon with a human ovum or, in the
23 case of asexual reproduction, at the equivalent stage of development.

1 *D. To provide the equal protection of the laws to persons before birth, this state and all*
2 *political subdivisions of this state shall enforce the provisions of this article without regard to*
3 *the opinions and judgments of the Supreme Court of the United States in Roe v. Wade, 410 U.S.*
4 *113 (1973), and other related decisions of that court, past and future, including, but not limited*
5 *to, Planned Parenthood v. Casey, 505 U.S. 833 (1992), and June Med. Servs. L.L.C. v. Russo,*
6 *140 S. Ct. 2103 (2020), without limiting prosecutorial discretion.*

7 *E. Enforcement pursuant to this section is subject to the same presumptions, defenses,*
8 *justifications, immunities, and clemencies as would apply to the homicide of a person*
9 *who had been born alive.*

10 *F.*

11 1. *Any federal statute, regulation, treaty, executive order, or court ruling that*
12 *purports to supersede, stay, or overrule this section is in violation of the constitution of this state*
13 *and the Constitution of the United States of America and is therefore void.*

14 2. *This state, any political subdivision of this state, and any agent of this state or*
15 *a political subdivision of this state may disregard any part or the whole of any federal court*
16 *decision which purports to enjoin or void any provision of this section.*

17 *G. This section is prospective only and shall not apply to crimes committed prior to the*
18 *effective date of this act. For purposes of this section, a crime is committed before the effective*
19 *date of this act if any element of the crime occurs before the effective date.*

20 *H. The provisions of this section are nonseverable.*

21 *I. This section prevails over other law to the extent of any conflict.*

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1 **2. That the Code of Virginia is amended by adding a section numbered 18.2-70 as follows:**

2 **§ 18.2-70. Definitions.**

3 *As used in this article unless the context requires another meaning:*

4 *'Unborn child' means a person from the moment of fertilization upon the fusion of a*
5 *human spermatozoon with a human ovum through every stage of physical development until*
6 *birth, including but not limited to the human conceptus, zygote, morula, blastocyst, embryo, and*
7 *fetus, whether conceived or located inside or outside the body of a biological human female.*

8 *'Abortion' means the use, administration, or prescription of any instrument, drug or*
9 *any other thing, device, or procedure to intentionally kill an unborn child whether performed*
10 *by a licensed physician or any other person.*

11 *'Drug' means any chemical, abortifacient substance or hormonal contraceptive*
12 *designed to, or with the intentional result of, preventing the implantation of the fertilized egg*
13 *within the mother or causing the abortion of an unborn child.*

14 *'Miscarriage' means the spontaneous death of a preborn child not caused by abortion.*

15 **3. That § 18.2-32.2 of the Code of Virginia is amended and reenacted as follows:**

16 **§ 18.2-32.2. Killing a fetus an unborn child; penalty.**

17 A. Any person who unlawfully, willfully, deliberately, maliciously and with premeditation
18 kills the fetus unborn child of another is guilty of a Class 2 felony.

19 B. Any person who unlawfully, willfully, deliberately and maliciously kills the fetus unborn
20 child of another is guilty of a felony punishable by confinement in a state correctional facility
21 for not less than five nor more than 40 years.

22 C. For purposes of this section, unborn child means a person from the moment of fertilization
23 upon the fusion of a human spermatozoon with a human ovum or, in the case of asexual
24 reproduction, at the equivalent stage of development.

1 **4. That § 8.01-50 of the Code of Virginia is amended and reenacted as follows:**

2 **§ 8.01-50. Action for death by wrongful act; how and when to be brought.**

3 A. Whenever the death of a person shall be caused by the wrongful act, neglect, or
4 default of any person or corporation, or of any ship or vessel, and the act, neglect, or default is
5 such as would, if death had not ensued, have entitled the party injured to maintain an action, or to
6 proceed in rem against such ship or vessel or in personam against the owners thereof or those
7 having control of her, and to recover damages in respect thereof, then, and in every such case,
8 the person who, or corporation or ship or vessel which, would have been liable, if death had not
9 ensued, shall be liable to an action for damages, or, if a ship or vessel, to a libel in rem, and her
10 owners or those responsible for her acts or defaults or negligence to a libel in personam,
11 notwithstanding the death of the person injured, and although the death shall have been caused
12 under such circumstances, as amount in law to a felony.

13 ~~B. Whenever a fetal death, as defined in § 32.1-249, is caused by the wrongful act,~~
14 ~~neglect, or default of any person, ship, vessel, or corporation, the natural mother of the fetus may~~
15 ~~bring an action pursuant to this section against such tortfeasor. Nothing in this section shall be~~
16 ~~construed to create a cause of action for a fetal death against the natural mother of the fetus.~~

17 C. Every such action under subsection A shall be brought by and in the name of the
18 personal representative of such deceased person. ~~Actions for fetal death under subsection B shall~~
19 ~~be brought by and in the name of the natural mother; provided, however, if the natural mother~~
20 ~~dies, or is or becomes a person under a disability as defined in § 8.01-2, such action may be~~
21 ~~initiated or maintained by the administrator of the natural mother's estate, her guardian, or her~~
22 ~~personal representative qualified to bring such action. In an action for fetal death under~~
23 ~~subsection B brought under Chapter 21.1 (§ 8.01-581.1 et seq.) where the wrongful act that~~
24 ~~resulted in a fetal death also resulted in the death of another fetus of the natural mother or in the~~

1 ~~death or injury of the natural mother, recovery for all damages sustained as a result of such~~
2 ~~wrongful act shall not exceed the limitations on the total amount recoverable for a single patient~~
3 ~~for any injury under § 8.01-581.15. The person bringing an action under subsection B shall have~~
4 ~~the power to compromise a claim pursuant to § 8.01-55 and any damages recovered shall be~~
5 ~~distributed pursuant to this article.~~ Every such action under this section shall be brought within
6 the time limits specified in § 8.01-244.

7 D. If the deceased person was an infant who was in the custody of a parent pursuant to an
8 order of court or written agreement with the other parent, administration shall be granted first to
9 the parent having custody; however, that parent may waive his right to qualify in favor of any
10 other person designated by him. If no such parent or his designee applies for administration
11 within 30 days from the death of the infant, administration shall be granted as in other cases.

12 E. For purposes of this section, ~~“natural mother” means the woman carrying the child~~
13 *the term “person” shall include a living human child before birth from the beginning of biological*
14 *development at the moment of fertilization upon the fusion of a human spermatozoon with a*
15 *human ovum or, in the case of asexual reproduction, at the equivalent stage of development.*

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