

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 552

By Senators Rucker, Taylor, Karnes, Phillips, Grady,
Smith, Maynard, Martin, Azinger, Woodrum, Roberts,
Deeds, Oliverio, Swope, Stuart, Tarr, Barrett, Hunt,
Chapman, Queen, and Stover

[Introduced February 02, 2023; referred
to the Committee on Health and Human Resources;
and then to the Committee on the Judiciary]

1 A BILL to amend and reenact §16-2I-1, §16-2I-2, §16-2I-3, and §16-2I-4 of the Code of West
 2 Virginia, 1931, as amended; to repeal §16-2I-5 of said code; and to amend and reenact
 3 §16-2I-6, §16-2I-7, §16-2I-8, and §16-2I-9 of said code, all relating to abortion; defining
 4 terms; amending information provided during informed consent; removing liability
 5 protection for a physician when prescribing a non-Food and Drug Administration approved
 6 drug therapy; providing resource to contact if questions rise regarding chemical abortion;
 7 requiring the Secretary of the Department of Health and Human Resources to have a 24-
 8 hour telephone number to maximize awareness; revising information to be made available;
 9 requiring the Bureau of Public Health to publish information on its website; setting forth the
 10 required information; and providing for administrative discipline against a licensed medical
 11 professional for violation of article.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2I. WOMEN'S RIGHT TO KNOW ACT.

§16-2I-1. Definitions.

1 For the purposes of this article, the words or phrases defined in this section have these
 2 meanings ascribed to them.

3 "Abortion" means ~~the same as that term is defined in §16-2F-2~~ an "abortion", as defined in
 4 §16-2R-2 of this code that is performed pursuant to the exceptions provided for in §16-2R-3 of this
 5 code.

6 "Attempt to perform an abortion" means ~~the same as that term is defined in §16-2M-2~~
 7 "attempt to perform or induce an abortion", as defined in §16-2R-2 of this code that is performed
 8 pursuant to the exceptions provided for in §16-2R-3 of this code.

9 "Chemical abortion" means the use or prescription of an abortion-inducing drug dispensed
 10 with the intent to cause an abortion.

11 "Designee" means a person licensed under Chapter 30 of this code practicing within his or
 12 her scope of practice.

13 "Licensed medical professional" means the same as that term is defined in ~~§16-2P-1~~ §16-
14 2R-2 of this code.

15 "Medical emergency" ~~means any condition which, in the reasonable medical judgment of~~
16 ~~the patient's physician, so complicates the medical condition of a pregnant female as to~~
17 ~~necessitate the immediate termination of her pregnancy to avert her death or for which a delay will~~
18 ~~create serious risk of substantial and irreversible physical impairment of a major bodily function,~~
19 ~~not including psychological or emotional conditions. No condition shall be deemed a medical~~
20 ~~emergency if based on a claim or diagnosis that the female will engage in conduct which she~~
21 ~~intends to result in her death or in substantial and irreversible physical impairment of a major~~
22 ~~bodily function~~ means the same as that term is defined in §16-2R-2 of this code.

23 "Physician" ~~means the same as that term is defined in~~ of this code

24 "Probable gestational age of the embryo or fetus" means what, in the judgment of the
25 ~~physician~~ licensed medical professional, will with reasonable probability be the gestational age of
26 the embryo or fetus at the time the abortion is planned to be performed.

27 "Reasonable medical judgement" means the same as that term is defined in ~~§16-2M-2~~
28 §16-2R-2 of this code.

29 "Stable Internet website" means a website that, to the extent reasonably practicable, is
30 safeguarded from having its content altered by another other than the Department of Health and
31 Human Resources.

§16-2I-2. Informed consent.

1 An abortion may not be performed in this state except with the voluntary and informed
2 consent of the female upon whom the abortion is to be performed. Except in the case of a medical
3 emergency, consent to an abortion is voluntary and informed if, and only if:

4 (a) The female is told the following, by telephone or in person, by the ~~physician~~ or the
5 licensed medical professional or the designee to whom the responsibility has been delegated by
6 the ~~physician~~ licensed medical professional who is to perform the abortion at least 24 hours before

7 the abortion:

8 (1) The particular medical risks associated with the particular abortion procedure to be
9 employed, including, ~~when medically accurate~~ among other things pertinent to informed consent,
10 the risks of infection, hemorrhage, danger to subsequent pregnancies, and infertility;

11 (2) The probable gestational age of the embryo or fetus at the time the abortion is to be
12 performed;

13 ~~(3) The medical risks associated with carrying her child to term; and~~

14 ~~(4) (3)~~ (3) If a chemical abortion involving the two-drug process of mifepristone is initiated and
15 then a prostaglandin such as misoprostol is planned to be used at a later time, the female shall be
16 informed that:

17 (A) ~~Some~~ Studies suggest that it may be possible to counteract the intended effects of a
18 mifepristone chemical abortion by taking progesterone if the female changes her mind, before
19 taking the second drug. ~~but this process has not been approved by the Food and Drug~~
20 ~~Administration~~

21 (B) After the first drug involved in the two-drug process is dispensed in a mifepristone
22 chemical abortion, the ~~physician~~ licensed medical professional or agent of the ~~physician~~ licensed
23 medical professional shall provide written medical discharge instructions to the pregnant female
24 which shall include the statement:

25 "If you change your mind and decide to try to counteract the intended effects of a
26 mifepristone chemical abortion, if the second pill has not been taken, please consult with ~~your~~
27 ~~physician~~ a licensed medical professional knowledgeable about discontinuing a medical abortion
28 or you can get immediate help by calling the Abortion Pill Reversal 24-hour Hotline at 877-558-
29 0333 or going to website <https://www.abortionpillreversal.com>.

30 (i) You might experience a complete abortion without ever taking misoprostol;

31 (ii) You might experience a missed abortion, which means the fetus is no longer viable, but
32 the fetus did not leave your body; or

33 (iii) It is possible that your pregnancy may continue; and

34 (iv) You should consult with your ~~physician~~ licensed medical professional."

35 (C) The female shall certify, as part of the informed consent process for any medical
36 procedure, that she has been informed about the above possibilities regarding a chemical
37 abortion.

38 ~~(D) Notwithstanding any law to the contrary, a physician acting in conformity with the~~
39 ~~informed consent provisions of this section relating to the possibility of counteracting the intended~~
40 ~~effects of a chemical abortion, or a physician prescribing a non-Food and Drug Administration~~
41 ~~approved drug therapy to counteract a chemical abortion is not liable for any loss, damage,~~
42 ~~physical injury, or death arising from any information provided by the physician related to~~
43 ~~counteracting the intended effects of a chemical abortion or arising from prescribing a non-Food~~
44 ~~and Drug Administration approved drug therapy to counteract a chemical abortion. In the case that~~
45 ~~a child is diagnosed with a disability in the womb, it is important that she is presented and informed~~
46 ~~of the resources available. In the case of a female seeking an abortion of a nonviable embryo or~~
47 ~~fetus as defined in §16-2R-2 of this code, the female is informed, by telephone or in person, by the~~
48 ~~licensed medical professional who is to perform the abortion or the licensed medical professional's~~
49 ~~agent:~~

50 (1) That perinatal hospital services are available;

51 (2) This service is an alternative to abortion;

52 (3) That she has the right to review the printed materials described in §16-2I-3 of this code;

53 (4) That these materials are available on a state sponsored website, and

54 (5) What the website address is where she can access this information.

55 The information required by this subsection may be provided by telephone without
56 conducting a physical examination or tests of the patient, in which case the information required to
57 be provided may be based on facts supplied by the female to the ~~physician~~ licensed medical
58 professional or ~~other licensed health care professional~~ a designee to whom the responsibility has

59 been delegated by the ~~physician~~ licensed medical professional and whatever other relevant
60 information is reasonably available to the ~~physician~~ licensed medical professional or ~~other~~
61 ~~licensed health care professional~~ a designee to whom the responsibility has been delegated by the
62 ~~physician~~ licensed medical professional. It may not be provided by a tape recording, but must be
63 provided during a consultation in which the ~~physician~~ or licensed medical professional ~~licensed~~
64 ~~health care professional~~ or a designee to whom the responsibility has been delegated by the
65 ~~physician~~ licensed medical professional is able to ask questions of the female and the female is
66 able to ask questions of the ~~physician~~ or the licensed ~~health care~~ medical professional or a
67 designee to whom the responsibility has been delegated by the ~~physician~~ licensed medical
68 professional.

69 If a physical examination, tests or the availability of other information to the ~~physician~~
70 licensed medical professional or ~~other licensed health care professional~~ a designee to whom the
71 responsibility has been delegated by the ~~physician~~ licensed medical professional subsequently
72 indicate, in the medical judgment of the ~~physician~~ licensed medical professional or the ~~licensed~~
73 ~~health care professional~~ a designee to whom the responsibility has been delegated by the
74 ~~physician~~ licensed medical professional, a revision of the information previously supplied to the
75 patient, that revised information may be communicated to the patient at any time before the
76 performance of the abortion procedure.

77 Nothing in this section may be construed to preclude provision of required information in a
78 language understood by the patient through a translator.

79 (b) The female is informed, by telephone or in person, by the ~~physician~~ licensed medical
80 professional who is to perform the abortion, or by an agent of the ~~physician~~ licensed medical
81 professional, at least 24 hours before the abortion procedure:

82 (1) That medical assistance benefits may be available for prenatal care, childbirth, and
83 neonatal care through governmental or private entities;

84 (2) That the father, if his identity can be determined, is liable to assist in the support of her

85 child based upon his ability to pay even in instances in which the father has offered to pay for the
86 abortion;

87 (3) That she has the right to review the printed materials described in §16-21-3 of this code,
88 that these materials are available on a state-sponsored website and the website address; and

89 (4) That the female will be presented with a form which she will be required to execute prior
90 to the abortion procedure that is available pursuant to §16-21-3 of this code. ~~and that the form to be~~
91 ~~presented will inform her of the opportunity to view the ultrasound image and her right to view or~~
92 ~~decline to view the ultrasound image, if an ultrasound is performed~~

93 The ~~physician~~ licensed medical professional, or an agent of the ~~physician~~ licensed medical
94 professional shall orally inform the female that the materials have been provided by the State of
95 West Virginia and that they describe the embryo or fetus and list agencies and entities which offer
96 alternatives to abortion.

97 If the female chooses to view the materials other than on the website, then they shall either
98 be provided to her at least 24 hours before the abortion or mailed to her at least 72 hours before
99 the abortion by first class mail in an unmarked envelope.

100 The information required by this subsection may be provided by a tape recording if
101 provision is made to record or otherwise register specifically whether the female does or does not
102 choose to have the printed materials given or mailed to her.

103 (c) The form required pursuant to subdivision (b)(4) of this section shall include the
104 following information:

105 (1) It is a female's decision whether or not to undergo any ultrasound imaging procedure in
106 consultation with her health care provider;

107 (2) If an ultrasound is performed in conjunction with the performance of an abortion
108 procedure, the female has the right to view or to decline to view the image; and

109 (3) That the female has been previously informed of her opportunity to view the ultrasound
110 image and her right to view or decline to view the ultrasound image. The female shall certify her

111 choice on this form prior to the abortion procedure being performed.

112 The female shall certify in writing, before the abortion, that the information described in
113 subsections (a) and (b) of this section has been provided to her and that she has been informed of
114 her opportunity to review the information referred to in subdivision (b)(3) of this section.

115 Before performing the abortion procedure, the ~~physician~~ licensed medical professional
116 who is to perform the abortion or the ~~physician's~~ licensed medical professional's agent shall obtain
117 a copy of the executed certification required by the provisions of subsections (b) and (c) of this
118 section.

§16-21-3. Printed information.

1 (a) Within 90 days of the effective date of this article, upon its reenactment during the 2023
2 Regular Session, the Secretary of the Department of Health and Human Resources shall cause to
3 be published, in English and in each language which is the primary language of two percent or
4 more of the state's population, as determined by the most recent decennial census performed by
5 the U.S. census bureau, and shall cause to be available on the website provided in §16-21-4 of this
6 code the following printed materials in such a way as to ensure that the information is easily
7 comprehensible:

8 (1) Geographically indexed materials designed to inform the reader of public and private
9 agencies and services available to assist a female through pregnancy, upon childbirth and while
10 the child is dependent, including adoption agencies, which shall include a comprehensive list of
11 the agencies available, a description of the services they offer and a description of the manner,
12 including telephone numbers. ~~At the option of the Secretary of Health and Human Resources, a~~ A
13 24-hour-a-day telephone number ~~may~~ shall be established with the number being published in
14 such a way as to maximize public awareness of its existence which may be called to obtain a list
15 and description of agencies in the locality of the caller and of the services they offer;

16 (2) Materials designed to inform the female of the probable anatomical and physiological
17 characteristics of the embryo or fetus at two-week gestational increments from the time when a

18 female can be known to be pregnant to full term, including any relevant information on the
19 possibility of the embryo or fetus's survival and pictures or drawings representing the development
20 of an embryo or fetus at two-week gestational increments: *Provided*, That any such pictures or
21 drawings must contain the dimensions of the embryo or fetus and must be realistic and
22 appropriate for the stage of pregnancy depicted. The materials shall be objective, nonjudgmental,
23 and designed to convey only accurate scientific information about the embryo or fetus at the
24 various gestational ages. The material shall also contain objective information describing the
25 methods of abortion procedures commonly employed, the medical risks commonly associated
26 with each procedure, and the possible detrimental psychological effects of abortion; ~~and the~~
27 ~~medical risks commonly associated with carrying a child to term and~~

28 (3) Materials designed to inform the female of the range of possibilities regarding the
29 effects and risks of a mifepristone chemical abortion or an attempt to counteract it and information
30 on and assistance with the resources that may be available.

31 (b) The materials referred to in subsection (a) of this section shall be printed in a typeface
32 large enough to be clearly legible. The website provided for in section four of this article shall be
33 maintained at a minimum resolution of seventy dots per inch. All pictures appearing on the website
34 shall be a minimum of 200 x 300 pixels. All letters on the website shall be a minimum of 11-point
35 font. All information and pictures shall be accessible with an industry standard browser requiring
36 no additional plug-ins.

37 (c) The materials required under this section shall be available at no cost from the
38 Department of Health and Human Resources upon request and in appropriate numbers to any
39 person, facility, or hospital.

§16-21-4. Internet website.

1 (a) Within 90 days of the effective date of this article upon the reenactment of this article
2 during the 2023 Regular Session, the secretary of the Department of Health and Human
3 Resources shall develop and maintain a stable Internet website to provide the information

4 required to be provided pursuant to the provisions of ~~section three of this article~~ §16-2I-3 of this
5 code. No information regarding persons visiting the website may be collected or maintained. The
6 secretary of the Department of Health and Human Resources shall monitor the website on a daily
7 basis to prevent and correct tampering.

8 (b) The Bureau for Public Health shall make the following available through the bureau's
9 publicly accessible internet website:

10 (1) Up-to-date evidence-based information about any in-utero disability or diagnosis that
11 has been peer reviewed by medical experts and any national disability rights organizations. The
12 information provided shall include the following:

13 (A) Physical, developmental, educational, and psychological outcomes;

14 (B) Life expectancy;

15 (C) Clinical course;

16 (D) Intellectual and functional development;

17 (E) Treatment options; and

18 (F) Any other information the bureau deems necessary.

19 (G) Contact information regarding first call programs and support services, including the
20 following:

21 (i) Information hotlines specific to any in-utero fetal disabilities or conditions;

22 (ii) Relevant resources centers or clearinghouses;

23 (iii) Information about adoption specific to disabilities;

24 (iv) National and local disability rights organizations; and

25 (v) Education and support programs.

1 (H) Information regarding perinatal hospice and palliative care as provided in section §16-
2 2I-2(4).

3 (c) The information provided in accordance with this section shall conform to the applicable
4 standard or standards provided in the Enhanced National Standards for Culturally and

5 Linguistically Appropriate Services in Health and Health Care as adopted by the United States
 6 Department of Health and Human Resources and published in the Federal Register on September
 7 24, 2013.

8 (d) The website:

9 (1) Must use enhanced, user-friendly search capabilities to ensure that the information
 10 described in §16-2I-3 of this code is easily accessible, and must use searchable by keywords and
 11 phrases, specifically to ensure that entering the terms "abortion" and "abortion pill reversal" and
 12 "disability" and "fetal abnormality" and "non -medically viable fetus" yields the §16-2I-3 of this code
 13 materials, regardless of §16-2I-3 of this code materials are labeled.

14 (2) Must ensure that the §16-2I-3 of this code material is printable.

15 (3) Must give clear prominent instructions on how to receive the information in printed form;
 16 and

17 (4) Must be accessible to the public without requiring registration or use of a username, a
 18 password, or another user identification.

§16-2I-5. Procedure in case of medical emergency.

1 [Repealed.]

§16-2I-6. Protection of privacy in court proceedings.

1 In every civil or criminal proceeding or action brought under this article, the court shall rule
 2 whether the anonymity of any female upon whom an abortion has been performed or attempted
 3 shall be preserved from public disclosure if she does not give her consent to such disclosure. The
 4 court, upon motion or sua sponte, shall make such a ruling and, upon determining that her
 5 anonymity should be preserved, shall issue orders to the parties, witnesses and counsel and shall
 6 direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to
 7 the extent necessary to safeguard her identity from public disclosure. Each such order shall be
 8 accompanied by specific written findings explaining why the anonymity of the female should be
 9 preserved from public disclosure, why the order is essential to that end, how the order is narrowly

10 tailored to serve that interest and why no reasonable, less restrictive alternative exists. In the
 11 absence of written consent of the female upon whom an abortion has been performed or
 12 attempted, anyone, other than a public official, who brings an action under ~~section nine of this~~
 13 ~~article §16-21-8 of this code~~ shall do so under a pseudonym. This section may not be construed to
 14 conceal the identity of the plaintiff or of witnesses from the defendant.

§16-21-7. Reporting requirements.

1 (a) Within 90 days of the effective date of this article upon the reenactment of this article
 2 during the 2023 Regular Session, the secretary of the Department of Health and Human
 3 Resources shall prepare a reporting form for ~~physicians~~ licensed medical professional containing
 4 a reprint of this article and listing:

5 (1) The number of females to whom the information described in subsection (a), ~~section~~
 6 ~~two of this article §16-21-2 of this code~~ was provided;

7 (2) The number of females to whom the ~~physician~~ licensed medical professional, or an
 8 agent of the ~~physician~~ licensed medical professional provided the information described in
 9 subsection (b), ~~section two of this article §16-21-2 of this code~~;

10 (3) The number of females who availed themselves of the opportunity to obtain a copy of
 11 the printed information described in ~~section three of this article §16-21-3~~ of this code other than on
 12 the website;

13 (4) The number of abortions performed in cases involving medical emergency; and

14 (5) The number of abortions performed in cases not involving a medical emergency.

15 (b) The secretary of the Department of Health and Human Resources shall ensure that
 16 copies of the reporting forms described in subsection (a) of this section are provided:

17 (1) Within 120 days after the effective date of this article to all ~~physicians~~ licensed medical
 18 professionals licensed to practice in this state;

19 (2) To each ~~physician~~ licensed medical professional who subsequently becomes newly
 20 licensed to practice in this state, at the same time as official notification to that ~~physician~~ licensed

21 medical professional that the ~~physician~~ licensed medical professional is so licensed; and

22 (3) By December 1, of each year, other than the calendar year in which forms are
23 distributed in accordance with subdivision (1) of this subsection, to all ~~physicians~~ licensed medical
24 professionals licensed to practice in this state.

25 (c) By the February 28, of each year following a calendar year in any part of which this act
26 was in effect, each ~~physician~~ licensed health professional who provided, or whose agent provided,
27 information to one or more females in accordance with section two of this article during the
28 previous calendar year shall submit to the secretary of the Department of Health and Human
29 Resources a copy of the form described in subsection (a) of this section with the requested data
30 entered accurately and completely.

31 (d) Reports that are not submitted by the end of a grace period of 30 days following the due
32 date are subject to a late fee of \$500 for each additional 30-day period or portion of a 30-day period
33 they are overdue. Any ~~physician~~ licensed health professional required to report in accordance with
34 this section who has not submitted a report, or has submitted only an incomplete report, more than
35 one year following the due date may, in an action brought by the secretary of the Department of
36 Health and Human Resources, be directed by a court of competent jurisdiction to submit a
37 complete report within a period stated by court order or be subject to sanctions for civil contempt.

38 (e) By August 1, of each year, the secretary of the Department of Health and Human
39 Resources shall issue a public report providing statistics for the previous calendar year compiled
40 from all of the reports covering that year submitted in accordance with this section for each of the
41 items listed in subsection (a) of this section. Each report shall also provide the statistics for all
42 previous calendar years, adjusted to reflect any additional information from late or corrected
43 reports. The secretary of the Department of Health and Human Resources shall prevent any of the
44 information from being included in the public reports that could reasonably lead to the identification
45 of any ~~physician~~ licensed medical professional who performed or treated an abortion, or any
46 female who has had an abortion, in accordance with subsection (a), (b) or (c) of this section. Any

47 information that could reasonably lead to the identification of any ~~physician~~ licensed medical
 48 professional who performed or treated an abortion, or any female who has had an abortion, in
 49 accordance with subsection (a), (b) or (c) of this section is exempt from disclosure under the
 50 freedom of information act, ~~article one, chapter twenty-nine-b~~ §29B-1-1 et seq. of this code.

51 (f) The secretary of the Department of Health and Human Resources may propose rules
 52 for legislative approval in accordance with the provisions of ~~article three, chapter twenty-nine-a~~
 53 §29A-3-1 et seq. of this code which alter the dates established by subdivision (3), subsection (b) of
 54 this section or subsection (c) or (e) of this section or consolidate the forms or reports described in
 55 this section with other forms or reports to achieve administrative convenience or fiscal savings or
 56 to reduce the burden of reporting requirements, so long as reporting forms are sent to all ~~licensed~~
 57 physicians licensed medical professionals in the state at least once every year and the report
 58 described in subsection (e) of this section is issued at least once every year.

§16-21-8. Administrative remedies.

1 ~~Any physician or agent thereof who willfully violates the provisions of this article may be~~
 2 ~~subject to sanctions as levied by the licensing board governing his or her profession.~~

3 A licensed medical professional who knowingly and willfully performs, induces, or attempts
 4 to perform or induce an abortion, in violation of this article, is subject to disciplinary action by his or
 5 her applicable licensing board. If the licensing board finds that the licensed medical professional
 6 has knowingly and willfully performed, induced, or attempted to perform or induce an elective
 7 abortion in violation of this article, the licensing board shall revoke the medical professional's
 8 license.

§16-21-9. Severability.

1 ~~Effective from the reenactment of this section during the third extraordinary session of the~~
 2 ~~Legislature, 2022, this article is of no force or effect unless any provision of §16-2R-1 et seq. of this~~
 3 ~~code is judicially determined to be unconstitutional~~

4 If any one or more provision, section, subsection, sentence, clause, phrase, or word of this

5 article or the application thereof to any person or circumstance is found to be unconstitutional, the
6 same is hereby declared to be severable and the balance of this article shall remain effective
7 notwithstanding such unconstitutionality. The Legislature hereby declares that it would have
8 passed this article, and each provision, section, subsection, sentence, clause, phrase, or word
9 thereof, irrespective of the fact that any one or more provision, section, subsection, sentence,
10 clause, phrase, or word be declared unconstitutional.

NOTE: The purpose of this bill is to normalize definitions with more recently passed abortion legislation, expand requirements for informed consent, remove liability protection for a physician regarding the prescribing of non-FDA approved drug therapy, require the Department of Health and Human resources to place enhanced information on its web page, and administrative penalties for licensed medical professionals knowingly and willfully violating article.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.