

1 **H. B. 2295**

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3 (By Delegate Azinger)

4 [Introduced January 12, 2011; referred to the  
5 Committee on Health and Human Resources then the  
6 Judiciary.]  
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10 A BILL to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new article, designated §16-2L-1, relating to  
12 requiring any abortion be performed in a hospital or only by  
13 a physician with admitting privileges to a hospital;  
14 providing, if not performed in a hospital, anesthesia must be  
15 given by a licensed anesthesiologist or licensed certified  
16 nurse anesthetist; requiring certain reporting requirements of  
17 abortion or reproductive health centers and for license  
18 suspension for failure to report; and, providing a basis for  
19 professional disciplinary action, injunctive relief, damages  
20 and penalties for violations.

21 *Be it enacted by the Legislature of West Virginia:*

22 That the Code of West Virginia, 1931, as amended, be amended  
23 by adding thereto a new article, designated §16-2L-1, to read as  
24 follows:

1 ARTICLE 2L. VENUES RESTRICTED FOR ABORTION PROCEDURE.

2 §16-2L-1. Abortions to be performed only in hospital or by  
3 physician with admitting privileges.

4 (a) For purposes of this article, the following terms have the  
5 following meanings:

6 (1) "Abortion" means the use or prescription of any instrument,  
7 medicine, drug, or any other substance or device with the intent to  
8 terminate the pregnancy of a woman known by the defendant to be  
9 pregnant. Such use or prescription is not an abortion if done with  
10 the intent to do any of the following:

11 (A) Save the life or preserve the health of an unborn child;

12 (B) Remove a dead unborn child; and

13 (C) Remove an unborn child prematurely in order to preserve the  
14 health of the mother and her unborn child.

15 (2) "Abortion or reproductive health center" means an  
16 institution licensed as such pursuant to the provisions of the law  
17 of this state.

18 (3) "Anesthesiologist" means a physician qualified by  
19 appropriate medical standards to administer anesthesia.

20 (4) "Certified registered nurse anesthetist" means a person  
21 licensed as such pursuant to the provisions of the law of this  
22 state.

23 (5) "Facility" means any place other than a hospital.

24 (6) "Hospital" means an institution licensed as such pursuant

1 to the law of this state.

2 (7) "Hospital admitting privileges" means the privileges given  
3 to a physician by a hospital allowing the physician to practice  
4 medicine at that hospital or allowing the physician to admit  
5 patients to that hospital.

6 (8) "Medical emergency" means that condition which, on the  
7 basis of the physician's good faith clinical judgment, complicates  
8 the medical condition of a pregnant woman so as to necessitate the  
9 immediate abortion of her pregnancy to avert her death or in which  
10 a delay will create a serious risk of substantial and or reversible  
11 impairment of a major bodily function.

12 (9) "Physician" means any person licensed to practice medicine  
13 in this state. The term includes medical doctors and doctors of  
14 osteopathy.

15 (b) Except in the case of a medical emergency, any physician  
16 performing an abortion in a facility other than a hospital, must  
17 have admitting privileges at a hospital within the local service  
18 area where the abortion is to be performed.

19 (c) Except in the case of a medical emergency, any physician  
20 performing an abortion in a facility other than a hospital, where  
21 the procedure requires general anesthesia, shall perform the  
22 abortion only if the anesthesia is administered by a licensed  
23 anesthesiologist or a licensed certified registered nurse  
24 anesthetist.

1       (d) Every abortion or reproductive health center shall report  
2 to the Bureau for Public Health, the name of each physician and the  
3 name of the hospital at which the physician has admitting  
4 privileges, and the name of each anesthesiologist and certified  
5 registered nurse anesthetist, providing services at the abortion or  
6 reproductive health center. The report shall be made on or before  
7 January 31 of each year and a supplemental report for any departing  
8 or new physician, anesthesiologist, or certified registered nurse  
9 anesthetist shall be made within thirty days of the departure or  
10 beginning service. All reports shall be made on forms provided by  
11 the Bureau for Public Health.

12       (e) (1) Any person who intentionally, knowingly, or recklessly  
13 violates any provision of this article is guilty of a misdemeanor  
14 and, shall be fined not more than \$500 and confined in jail for not  
15 more than thirty days.

16       (2) No physician may be guilty of violating the provisions of  
17 this section if he or she can demonstrate, by a preponderance of the  
18 evidence, that he or she reasonably believed to a medical certainty  
19 that providing the abortion was a medical emergency. The  
20 determination and all supporting reasons shall be documented in  
21 writing in the patient's medical records by the physician.

22       (3) Any abortion or reproductive health center that violates  
23 any provision of this section shall, upon a determination by the  
24 Bureau for Public Health, have its license suspended for not less

1 than twelve months.

2 (f) In addition to the remedies available under common law or  
3 under the statutory law of this state, failure to comply with any  
4 requirement of this section shall:

5 (1) Provide a basis for a civil action for injunctive,  
6 compensatory, and punitive damages. Any conviction under this  
7 section shall be admissible in a civil court as prima facie evidence  
8 of a failure to meet any requirement of this article. Any civil  
9 action may be based on a claim that the article was a result of  
10 simple negligence, gross negligence, wantonness, willfulness,  
11 intention, or other legal standard of care.

12 (2) Provide a basis for professional disciplinary action under  
13 any applicable statutory or regulatory procedure for the suspension  
14 or revocation of the license of any physician, nurse, or other  
15 licensed or regulated person.

16 (g) The provisions of this section are declared to be  
17 severable, and if any provision, word, phrase, or clause of this  
18 section or the application thereof to any person is held invalid,  
19 the invalidity may not affect the validity of the remaining portions  
20 of this section.

21 (h) Nothing in this section may be construed as creating or  
22 recognizing a right to abortion, nor shall it make lawful an  
23 abortion that is currently unlawful.

NOTE: The purpose of this bill is to require that abortions be performed in hospitals or by physicians with admitting privileges to a hospital within the local service area.

This article is new; therefore, it has been completely underscored.