

**H. B. 2651**

(By Delegates Boggs, Lane, Sobonya and Ellem)  
[Introduced January 20, 2011; referred to the  
Committee on Health and Human Resources then the  
Judiciary.]

A BILL to repeal §16-2F-5 of the Code of West Virginia, 1931, as amended; and to amend and reenact §16-2F-2, §16-2F-3, §16-2F-4, §16-2F-6, §16-2F-8 and §16-2F-9; and to amend said code by adding thereto a new section, designated §16-2F-8a, all relating to parental notification requirements for obtaining abortions by unemancipated minors; defining terms; requiring proof of age prior to an abortion; providing for substitute notification in certain instances; modifying physician reporting requirements; providing for criminal penalties; providing for preservation of fetal tissue in instances of sexual assault; and providing for severability.

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

That §16-2F-5 of the Code of West Virginia, 1931, as amended, be repealed; and that §16-2F-2, §16-2F-3, §16-2F-4, §16-2F-6, §16-2F-8 and §16-2F-9 of said code be amended and reenacted; and

1 that said code be amended by adding thereto a new section,  
2 designated §16-2F-8a, all to read as follows:

3 **ARTICLE 2F. PARENTAL NOTIFICATION OF ABORTIONS PERFORMED ON**  
4 **UNEMANCIPATED MINORS.**

5 **§16-2F-2. Definitions.**

6 For purposes of this article, unless the context in which used  
7 clearly requires otherwise:

8 ~~(1) "Minor" means any person under the age of eighteen years~~  
9 ~~who has not graduated from high school.~~

10 ~~(2) "Unemancipated minor" means any minor who is neither~~  
11 ~~married nor who has been emancipated as pursuant to applicable~~  
12 ~~federal law or as provided by section twenty-seven, article seven,~~  
13 ~~chapter forty-nine of this code.~~

14 ~~(3) "Actual notice" means the giving of notice directly, in~~  
15 ~~person or by telephone.~~

16 ~~(4) "Constructive notice" means the giving of notice by~~  
17 ~~certified mail to the last known address of the parents or legal~~  
18 ~~guardian, return receipt requested.~~

19 ~~(5) "Abortion" means the use of any instrument, medicine, drug~~  
20 ~~or any other substance or device with intent to terminate the~~  
21 ~~pregnancy of a female known to be pregnant and with intent to cause~~  
22 ~~the expulsion of a fetus other than by live birth: *Provided, That*~~  
23 ~~nothing in this article shall be construed so as to prevent the~~

1 ~~prescription, sale or transfer of intrauterine contraceptive~~  
2 ~~devices or other contraceptive devices or other generally medically~~  
3 ~~accepted contraceptive devices, instruments, medicines or drugs for~~  
4 ~~a female who is not known to be pregnant and for whom such~~  
5 ~~contraceptive devices, instruments, medicines or drugs were~~  
6 ~~prescribed by a physician solely for contraceptive purposes and not~~  
7 ~~for the purpose of inducing or causing the termination of a known~~  
8 ~~pregnancy.~~

9       (1) "Abortion" means the use or prescription of any  
10 instrument, medicine, drug or any other substance or device to  
11 intentionally terminate the pregnancy of a female known to be  
12 pregnant with knowledge that the termination by those means will,  
13 with reasonable likelihood, cause the expulsion of fetus other than  
14 by live birth: Provided, That nothing in this article may be  
15 construed so as to prevent the prescription, sale or transfer of  
16 intrauterine contraceptive devices or other contraceptive devices  
17 or other generally medically accepted contraceptive devices,  
18 instruments, medicines or drugs for a female who is not known to be  
19 pregnant and for whom the contraceptive devices, instruments,  
20 medicines or drugs were prescribed by a physician solely for  
21 contraceptive purposes and not for the purpose of inducing or  
22 causing the termination of a known pregnancy.

23       (2) "Actual notice" means the giving of notice directly, in  
24 person.

1       (3) "Constructive notice" means the giving of notice by  
2 certified mail, return receipt requested, to the last known address  
3 of the parents or legal guardian.

4       (4) "Medical emergency" means any condition that a reasonably  
5 prudent physician with knowledge of the case and treatment  
6 possibilities with respect to the medical conditions involved would  
7 determine that a condition exists that would complicate the medical  
8 condition of a pregnant female to necessitate the immediate  
9 termination of her pregnancy to avert her death or for which delay  
10 will create a serious risk of substantial irreversible physical  
11 impairment of a major bodily function.

12       (5) "Minor" means any person under the age of eighteen years.

13       (6) "Parent" means one parent of the pregnant female, or  
14 guardian or curator if the pregnant female has one.

15       (7) "Unemancipated minor" means any minor who is neither  
16 married nor who has been emancipated as pursuant to applicable  
17 federal law or as provided by section twenty-seven, article seven,  
18 chapter forty-nine.

19 ~~§16-2F-3. Parental notification required for abortions performed~~  
20 ~~on unemancipated minors; waiver; notice to minor of~~  
21 ~~right of petition to circuit court; minor to be~~  
22 ~~referred for counseling.~~

23       (a) ~~No physician may perform an abortion upon an unemancipated~~

~~1 minor unless such physician has given or caused to be given at  
2 least twenty-four hours actual notice to one of the parents or to  
3 the legal guardian of the pregnant minor of his intention to  
4 perform the abortion, or, if the parent or guardian cannot be found  
5 and notified after a reasonable effort to do so, without first  
6 having given at least forty-eight hours constructive notice  
7 computed from the time of mailing to the parent or to the legal  
8 guardian of the minor: *Provided*, That prior to giving the  
9 notification required by this section, the physician shall advise  
10 the unemancipated minor of the right of petition to the circuit  
11 court for waiver of notification: *Provided, however*, That any such  
12 notification may be waived by a duly acknowledged writing signed by  
13 a parent or the guardian of the minor.~~

~~14 (b) Upon notification being given to any parent or to the  
15 legal guardian of such pregnant minor, the physician shall refer  
16 such pregnant minor to a counselor or caseworker of any church or  
17 school or of the department of human services or of any other  
18 comparable agency for the purpose of arranging or accompanying such  
19 pregnant minor in consultation with her parents. Such counselor  
20 shall thereafter be authorized to monitor the circumstances and the  
21 continued relationship of and between such minor and her parents.~~

~~22 (c) Parental notification required by subsection (a) of this  
23 section may be waived by a physician, other than the physician who  
24 is to perform the abortion, if such other physician finds that the~~

~~1 minor is mature enough to make the abortion decision independently  
2 or that notification would not be in the minor's best interest:  
3 *Provided*, That such other physician shall not be associated  
4 professionally or financially with the physician proposing to  
5 perform the abortion.~~

6 **§16-2F-3. Required proof of age prior to performing an abortion.**

7 (a) A physician may not perform an abortion on a pregnant  
8 female unless:

9 (1) The physician, or his or her designee, has obtained proof  
10 of age which a reasonably prudent person would think demonstrates  
11 the female is eighteen years of age or older or, proof that a  
12 reasonable and prudent person would think demonstrates that the  
13 minor is emancipated; or

14 (2) The physician has complied with section four of this  
15 article.

16 (b) If the physician, or his or her designee, obtains proof of  
17 the age or emancipation of the female as provided in subdivision  
18 (1) of subsection (a) of this section, the physician, or his or her  
19 designee, shall execute and sign for inclusion in the female's  
20 medical record an affidavit stating that, to the best information  
21 and belief, a reasonable and prudent person under similar  
22 circumstances would have relied upon the information presented as  
23 sufficient evidence of the identity of the person seeking the  
24 abortion and that she is not a minor or that she is an emancipated

1 minor.

2 (c) To the extent applicable, the physician shall keep a copy  
 3 in the female patient's file of all affidavits, proof of age and of  
 4 any court order provided in this section for seven years following  
 5 the date of the abortion or, for five years after the minor reaches  
 6 the age of majority, whichever is longer.

7 ~~§16-2F-4. Waiver of notification; petition to circuit court;~~  
 8 ~~contents of petition; duties of Attorney General~~  
 9 ~~and circuit clerk; confidentiality of proceedings;~~  
 10 ~~appointment of counsel and limitation of~~  
 11 ~~compensation; findings required to be made by~~  
 12 ~~court; petition to supreme court; waiver of certain~~  
 13 ~~fees.~~

14 ~~(a) A minor who objects to such notice being given to her~~  
 15 ~~parent or legal guardian may petition for a waiver of such notice~~  
 16 ~~to the circuit court of the county in which the minor resides or in~~  
 17 ~~which the abortion is to be performed, or to the judge of either of~~  
 18 ~~such courts. Such minor may so petition and proceed in her own~~  
 19 ~~right or, at her option, by a next friend.~~

20 ~~(b) Such petition need not be made in any specific form and~~  
 21 ~~shall be sufficient if it fairly sets forth the facts and~~  
 22 ~~circumstances of the matter, but shall contain the following~~  
 23 ~~information:~~

1       ~~(i) The age of the petitioner and her educational level;~~  
2       ~~(ii) The county and state in which she resides;~~  
3       ~~(iii) A brief statement of petitioner's reason or reasons for~~  
4 ~~the desired waiver of notification of the parent or guardian of~~  
5 ~~such minor petitioner.~~

6       ~~No such petition shall be dismissed nor shall any hearing~~  
7 ~~thereon be refused because of any defect in the form of the~~  
8 ~~petition.~~

9       ~~(c) Upon the effective date of this article or as soon~~  
10 ~~thereafter as may be, the Attorney General shall prepare suggested~~  
11 ~~form petitions and accompanying instructions and shall make the~~  
12 ~~same available to the several clerks of the circuit courts. Such~~  
13 ~~clerks shall see that a sufficient number of such suggested form~~  
14 ~~petitions and instructions are available in the clerk's office for~~  
15 ~~the use of any person desiring to use the same for the purposes of~~  
16 ~~this section.~~

17       ~~(d) All proceedings held pursuant to this article shall be~~  
18 ~~confidential and the court shall conduct all such proceedings in~~  
19 ~~camera. The court shall inform the minor petitioner of her right~~  
20 ~~to be represented by counsel and that if she is without the~~  
21 ~~requisite funds to retain the services of an attorney, that the~~  
22 ~~court will appoint an attorney to represent her interest in the~~  
23 ~~matter. If the minor petitioner desires the services of an~~  
24 ~~attorney, an attorney shall be appointed to represent such minor~~



~~1 petitioner, if she advises the court under oath or affidavit that  
2 she is financially unable to retain counsel. Any attorney  
3 appointed to represent such minor petitioner shall be appointed and  
4 paid for her services pursuant to the provisions of article  
5 twenty one, chapter twenty nine of this code: *Provided*, That the  
6 pay to any such attorney pursuant to such appointment shall not  
7 exceed the sum of one hundred dollars.~~

~~8 (e) The court shall conduct a hearing upon the petition  
9 without delay, but in no event shall the delay exceed the next  
10 succeeding judicial day, and the court shall render its decision  
11 immediately upon its submission and, in any event, an order  
12 reflecting the findings of fact and conclusions of law reached by  
13 the court and its judgement shall be endorsed by the judge thereof  
14 not later than twenty four hours following such submission and  
15 shall be forthwith entered of record by the clerk of the court.  
16 All testimony, documents and other evidence presented to the court,  
17 as well as the petition and any orders entered thereon and all  
18 records of whatsoever nature and kind relating to the matter shall  
19 be sealed by the clerk and shall not be opened to any person except  
20 upon order of the court and, then, only upon good cause being shown  
21 therefor. A separate order book for the purposes of this article  
22 shall be maintained by such clerk and shall likewise be sealed and  
23 not open to inspection by any person save upon order of the court  
24 for good cause shown.~~

1       ~~(f) Notice as required by section three of this article shall~~  
2 ~~be ordered waived by the court if the court finds either:~~

3       ~~(1) That the minor petitioner is mature and well informed~~  
4 ~~sufficiently to make the decision to proceed with the abortion~~  
5 ~~independently and without the notification or involvement of her~~  
6 ~~parent or legal guardian, or~~

7       ~~(2) That notification to the person or persons to whom such~~  
8 ~~notification would otherwise be required would not be in the best~~  
9 ~~interest of the minor petitioner.~~

10       ~~(g) If or when the circuit court, or the judge thereof, shall~~  
11 ~~refuse to order the waiver of the notification required by section~~  
12 ~~three of this article, a copy of the petition and all orders~~  
13 ~~entered in the matter and all other documents and papers submitted~~  
14 ~~to the circuit court, may be presented to the Supreme Court of~~  
15 ~~Appeals, or to any justice thereof if such court then be in~~  
16 ~~vacation, and such court or justice if deemed proper, may thereupon~~  
17 ~~order the waiver of notification otherwise required by section~~  
18 ~~three of this article. The Supreme Court of Appeals or justice~~  
19 ~~thereof shall hear and decide the matter without delay and shall~~  
20 ~~enter such orders as such court or justice may deem appropriate.~~

21       ~~(h) If either the circuit court or the Supreme Court of~~  
22 ~~Appeals, or any judge or justice thereof if either of such courts~~  
23 ~~be then in vacation, shall order a waiver of the notification~~  
24 ~~required by section three of this article, any physician to whom a~~

1 ~~certified copy of said order shall be presented may proceed to~~  
 2 ~~perform the abortion to the same extent as if such physician were~~  
 3 ~~in compliance with the provisions of said section three and,~~  
 4 ~~notwithstanding the fact that no notification is given to either~~  
 5 ~~the parent or legal guardian of any such unemancipated minor, any~~  
 6 ~~such physician shall not be subject to the penalty provisions which~~  
 7 ~~may be prescribed by this article for such failure of notification.~~

8 ~~(i) No filing fees may be required of any minor who avails~~  
 9 ~~herself of any of the procedures provided by this section.~~

10 **§16-2F-4. Parental notification required for abortions on**  
 11 **unemancipated minors; exceptions.**

12 (a) (1) A physician may not perform an abortion upon an  
 13 unemancipated minor unless notice is given to the parent of the  
 14 unemancipated pregnant minor prior to a physician performing an  
 15 abortion. Notice shall be given at least forty-eight hours prior  
 16 to performing the procedure and a copy of the notice shall be kept  
 17 in the minor's medical records for at least seven years or, for  
 18 five years after she reaches the age of majority, whichever is  
 19 longer. A parent may receive:

20 (A) Actual notice and may waive the forty-eight-hour notice  
 21 period: *Provided*, That this waiver may not be construed to waive  
 22 any period mandated by section two, article two-i, chapter sixteen;  
 23 or

24 (B) Constructive notice sent via the United States post office

1 to the parent's last known address, restricted delivery, return  
2 receipt requested. The address of the parent must be sufficiently  
3 complete and accurate so that a reasonable and prudent person,  
4 under similar circumstances, would have relied upon it as  
5 sufficient evidence that the parent resides at that address. The  
6 forty-eight-hour time period for written notice shall commence to  
7 run at twelve noon on the next day on which regular mail delivery  
8 takes place, subsequent to the date of the mailing.

9       (2) Prior to performing an abortion, a physician, or his or  
10 her designee, shall obtain from the parent to whom actual notice is  
11 given, proof of identification that a reasonable and prudent  
12 person, under similar circumstances, would have relied upon as  
13 sufficient evidence that the person is the parent of the minor  
14 female. A copy of this information or specific details concerning  
15 the proof provided shall be included in the minor's medical records  
16 for at least seven years or, for five years after the minor reaches  
17 the age of majority, whichever is longer.

18       (3) The physician performing the abortion, or his or her  
19 designee, shall execute an affidavit certifying the information  
20 presented by the female of her age or emancipation was so complete  
21 and accurate that a reasonable and prudent person, under similar  
22 circumstances would have relied upon the information as sufficient  
23 evidence of her age or emancipation. This affidavit shall be  
24 included in the female's medical records for at least seven years

1 or, for five years after the minor reaches the age of majority,  
2 whichever is longer.

3 (4) The physician performing the abortion, or his or her  
4 designee, shall execute an affidavit certifying the information  
5 presented by the parent receiving actual notice was sufficient  
6 evidence of her identity which a reasonable and prudent person,  
7 under similar circumstances, would have relied upon as sufficient  
8 evidence that the person is the parent of the minor. This  
9 affidavit shall be included in the minor's medical records for at  
10 least seven years or, for five years after the minor reaches the  
11 age of majority, whichever is longer.

12 (5) The physician performing the abortion, or his or her  
13 designee, shall execute an affidavit certifying the information  
14 provided by the minor concerning the last known address of the  
15 parent for constructive notice was complete and accurate that a  
16 reasonable and prudent person, under similar circumstances, would  
17 have relied upon as sufficient evidence of the parent's last known  
18 address. This affidavit shall be included in the minor's medical  
19 records and kept for at least seven years or until five years after  
20 the minor reaches the age of majority, whichever is longer.

21 (b) Notice to the parent is not required if:

22 (1) The pregnant minor female declares that she is a victim of  
23 sexual abuse, neglect, or physical abuse as defined in articles  
24 eight-b and eight-d, chapter sixty-one and the attending physician

1 reports the sexual abuse, neglect, or physical abuse in accordance  
2 with section two, article six-a, chapter forty-nine. In these  
3 circumstances, the Department of Health and Human Resources and,  
4 any judge supervising proceedings in which information concerning  
5 the Department of Health and Human Resources report or  
6 investigation may be presented or referred, shall maintain the  
7 confidentiality of the fact that she has sought or obtained an  
8 abortion and shall take all necessary steps to ensure that this  
9 information is not revealed to her parents. The physician is  
10 required to describe in writing the sexual abuse, physical abuse or  
11 neglect on a form provided by the Department of Health and Human  
12 Resources. A copy of this form shall be maintained in the minor's  
13 medical records for at least seven years or for five years after  
14 she reaches the age of majority, whichever is longer; or

15       (2) The physician performing an abortion concludes a medical  
16 emergency exists. The physician is required to certify to the  
17 Department of Health and Human Resources, on a form provided by the  
18 department, the medical justification supporting the physician's  
19 judgment that a medical emergency existed. A copy of this form  
20 shall be maintained in the minor's medical records for at least  
21 seven years or for five years after she reaches the age of  
22 majority, whichever is longer.

23       (c) The physician shall keep a copy of the medical records of  
24 a minor for at least seven years following the date of the abortion

1 or for five years past the minor's age of majority, whichever is  
2 greater.

3 (d) The attending physician or the physician's designee shall  
4 verbally inform the parent within twenty-four hours after the  
5 performance of a medical emergency abortion, that a medical  
6 emergency abortion was performed on the unemancipated minor and  
7 shall send a written notice, in the manner described in paragraph  
8 (B), subdivision (1), subsection (a) of this section of the  
9 performed medical emergency abortion.

10 (e) The Department of Health and Human Resources shall propose  
11 legislative rules in accordance with the provisions of article  
12 three, chapter twenty-nine-a to propose all forms, affidavits and  
13 certifications required by this section.

14 **§16-2F-6. Reporting requirements for physicians.**

15 (a) Any physician performing an abortion upon an unemancipated  
16 minor shall provide the Department of Health and Human Resources a  
17 written report of the procedure within thirty days after having  
18 performed the abortion. Nothing in this report may personally  
19 identify any individual female. The Department of Health and Human  
20 Resources shall provide reporting forms for this purpose to all  
21 physicians and public health facilities required to be licensed  
22 pursuant to article five-b of this chapter. The following  
23 information, in addition to any other information which may be  
24 required by the Department of Health and Human Resources, regarding

1 the minor receiving the abortion shall be included in ~~such~~ the  
2 reporting form:

3 (1) Age;

4 (2) Educational level;

5 (3) Previous pregnancies;

6 (4) Previous live births;

7 (5) Previous abortions;

8 (6) Complications, if any, of the abortion being reported;

9 and

10 ~~(7) Reason for waiver of notification of the minor's parent~~  
11 ~~or guardian, if such notice was waived; and~~

12 ~~(8)~~ (7) The city and county in which the abortion was  
13 performed.

14 ~~Any such report shall not contain the name, address or other~~  
15 ~~information by which the minor receiving the abortion may be~~  
16 ~~identified.~~

17 (b) Any physician performing abortions upon unemancipated  
18 minors shall provide the Department of Health and Human Resources  
19 a written report containing the information listed in this  
20 subsection. Nothing in the report may personally identify any  
21 individual female. The following information, in addition to any  
22 other information which may be required by the Department of Health  
23 and Human Resources, regarding the minor receiving the abortion  
24 shall be included:



1       (1) The number of females whose parents were notified pursuant  
2 to section four of this article and the manner in which they were  
3 notified;

4       (2) The number of females who, to the best of the reporting  
5 physician's information and belief, went on to obtain the abortion;

6       (3) The number of females upon whom the physician performed an  
7 abortion without providing the notice described in section four of  
8 this article, including the number who were emancipated minors;

9       (4) The number of abortions performed upon a female by the  
10 physician after receiving judicial authorization to do so without  
11 parental notification;

12       (5) The number of abortions performed for medical emergency  
13 reasons; and

14       (6) The number of abortions performed on pregnant minors who  
15 declared they were a victim of sexual assault or abuse, neglect or  
16 physical abuse.

17       (c) The Department of Health and Human Resources may propose  
18 legislative rules in accordance with the provisions of article  
19 three, chapter twenty-nine-a to develop reporting forms as  
20 described in this section. The rules shall ensure that copies of  
21 the reporting forms, described in this section, together with a  
22 reprint of this article, are provided:

23       (1) By December 1 of every year, other than the calendar year  
24 in which forms are distributed in accordance with this section, to

1 all physicians licensed to practice in this state; and

2 (2) To each physician who subsequently becomes newly licensed  
3 to practice in this state at the same time as official notification  
4 to that physician that the physician is so licensed.

5 (d) By February 28 of each year following a calendar year in  
6 any part of which this article was in effect, each physician or his  
7 or her designee who provided the notice described in section four  
8 of this article and any physician who knowingly performed an  
9 abortion upon a pregnant minor or upon a female for whom a guardian  
10 or curator had been appointed pursuant to applicable federal law or  
11 as provided by sections three and four, article ten, chapter  
12 forty-four because of a finding of incompetency of the pregnant  
13 minor during the previous calendar year shall submit to the  
14 Department of Health and Human Resources a copy of the forms  
15 described in this section with the requested data entered  
16 accurately and completely. The information included in the reports  
17 shall not personally identify any individual female.

18 (e) Reports that are not submitted within thirty days  
19 following the due date are subject to a late fee of \$500 for the  
20 first month and \$1,000 for each additional thirty-day period or  
21 portion of a thirty-day period they are overdue. Any physician  
22 required to report in accordance with this section who has not  
23 submitted a report, or has submitted only an incomplete report,  
24 more than one year following the due date, may, in an action

1 brought by the Department of Health and Human Resources, be  
2 directed by a circuit court of the county in which the physician  
3 resides or practices to submit a complete report within a period  
4 stated by court order or be subject to sanctions for civil contempt.

5 (f) By June 30 of each year, the Department of Health and  
6 Human Resources shall issue a public report providing statistics  
7 for the previous calendar year compiled from all of the reports  
8 covering that year submitted in accordance with this article. The  
9 report shall also include statistics which shall be obtained from  
10 the Supreme Court of Appeals giving the total number of petitions  
11 or motions filed under subsection (a), section five of this  
12 article, including the number in which the court appointed a  
13 guardian ad litem, the number in which the court appointed counsel,  
14 the number in which the family court judge issued an order  
15 authorizing an abortion without notification, the number in which  
16 the family court judge denied an order, the number of denials from  
17 which an appeal was filed, the number of appeals that resulted in  
18 the denials being affirmed and the number of appeals that resulted  
19 in reversals of denials. Each report shall provide the statistics  
20 from late or corrected reports for all previous calendar years.  
21 The information included in the public reports shall not personally  
22 identify any individual female.

23 (g) If the Department of Health and Human Resources fails to  
24 issue the public report required by subsection (f) of this section,

1 any group of ten or more citizens of this state may seek an  
2 injunction in the circuit court of Kanawha County against the  
3 Secretary of the Department of Health and Human Resources requiring  
4 that a complete report be issued within a period stated by court  
5 order.

6 (h) The Department of Health and Human Resources may propose  
7 rules for legislative approval pursuant to section five, article  
8 three, chapter twenty-nine-a to alter the dates established by  
9 subdivision (1), subsection (b) of this section or subsection (c)  
10 or (f) of this section or consolidate the forms or reports to  
11 achieve administrative convenience or fiscal savings or to reduce  
12 the burden of reporting requirements, so long as reporting forms  
13 are sent to all licensed physicians in the state at least once  
14 every year and the report described in subsection (f) of this  
15 section is issued at least once every year.

16 ~~§16-2F-8. Penalties.~~

17 ~~Any person who knowingly performs an abortion upon an~~  
18 ~~unemancipated minor in violation of this article or who knowingly~~  
19 ~~fails to conform to any requirement of this article shall be guilty~~  
20 ~~of a misdemeanor, and, upon conviction thereof, shall be fined not~~  
21 ~~less than five hundred dollars nor more than one thousand dollars~~  
22 ~~or imprisoned in the county jail not more than thirty days, or both~~  
23 ~~fined and imprisoned.~~

24 §16-2F-8. Penalties.

1       (a) A person who uses a false governmental record or makes a  
2 false representation or statement in order to obtain an abortion  
3 for a minor or who signs an affidavit or certification required by  
4 section three or four of this article that is false is guilty of  
5 false swearing as defined in section two, article five of chapter  
6 sixty-one.

7       (b) Any person who uses a false governmental record or makes  
8 a false representation or statement in order to obtain an abortion  
9 for a minor or who signs an affidavit or certification required by  
10 section three or four of this article that is false is civilly  
11 liable to the person or persons entitled to receive parental notice  
12 for pain and suffering and any subsequent costs of medical or  
13 psychiatric treatment a minor might require because of  
14 complications resulting from the abortion.

15       (c) Any person who knowingly performs an abortion upon an  
16 unemancipated minor in violation of this article or who knowingly  
17 fails to conform to any requirement of this article is guilty of a  
18 misdemeanor and, upon conviction thereof, shall be fined not less  
19 than \$500 nor more than \$1,000 or confined in jail not more than  
20 one year, or both fined and confined.

21       (d) Any person who knowingly, recklessly or negligently  
22 performs an abortion on an unemancipated minor in violation of this  
23 article is civilly liable to the person or persons entitled to  
24 receive parental notice for pain and suffering and any subsequent

1 costs of medical or psychiatric treatment a minor might require  
2 because of complications resulting from the abortion.

3 (e) It is not a defense to a claim brought pursuant to this  
4 section that the minor gave informed and voluntary consent.

5 (f) An unemancipated minor does not have capacity to consent  
6 to any action that violates this article.

7 **§16-2F-8a. Fetal tissue preservation.**

8 (a) Any physician who performs an abortion on a minor who has  
9 alleged sexual assault pursuant to articles eight-b and eight-d of  
10 chapter sixty-one-e, shall preserve, in accordance to the rules of  
11 the West Virginia State Police Crime Lab, the tissue extracted  
12 during the abortion. The physician shall submit the tissue to the  
13 State Police Child Abuse and Neglect Investigation Unit for  
14 investigation.

15 (b) Failure of a physician to comply with these provisions  
16 shall constitute unprofessional conduct.

17 **§16-2F-9. Severability.**

18 ~~The provisions of subsection (cc), section ten, article two,~~  
19 ~~chapter two of this code shall apply to the provisions of this~~  
20 ~~article to the same extent as if said subsection were set forth in~~  
21 ~~extenso herein.~~

22 **§16-2F-9. Severability.**

23 If any one or more provision, section, subsection, sentence,  
24 clause, phrase or word of this article or the application thereof

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

NOTE: The purpose of this bill is relative to parental involvement in the minor's decision to obtain an abortion. The bill requires physicians to obtain proof of age prior to the performance of an abortion on a pregnant woman. The bill provides for a constructive notice to parents of minors, and maintains information for a specified period in the minor's medical file. The bill creates penalties. The bill also provides for collection of fetal tissue in instances when the minor alleges sexual assault. Finally, the bill mandates specific reporting requirements.

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

§16-2F-8a is new; therefore, strike-throughs and underscoring have been omitted.