

H. B. 3043

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(By Delegates Moye, Skaff, Kominar, Smith, Hall,
O'Neal, Varner, Ferns, Miley, White and Snuffer)
[Introduced February 7, 2011; referred to the
Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §16-5-21 of the Code of West Virginia,
1931, as amended, relating to the creation of fetal death
reporting; and creation of the Grieving Parents Act.

Be it enacted by the Legislature of West Virginia:

That §16-5-21 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 5. VITAL STATISTICS.

**§16-5-21. Reports of fetal death; spontaneous fetal death or
stillbirth, and induced termination of pregnancy
resulting in live birth; accommodation for grieving
parents.**

(a) Each fetal death of three hundred fifty grams or more ~~and~~
~~if weight is unknown,~~ of twenty completed weeks of gestation or
more, calculated from the date the last normal menstrual period
began to the date of delivery, which occurs in this state, shall be
reported within five days after delivery to the section of Vital
Statistics or as otherwise directed by the State Registrar.

(1) When a fetal death occurs, the person in charge of the

1 institution or his or her designated representative shall prepare
2 and file the report. In obtaining the information required by the
3 report, all institutions shall use information gathering
4 procedures, including worksheets, provided or approved by the State
5 Registrar.

6 (2) When a fetal death occurs, the physician in attendance at
7 or immediately after delivery shall prepare and file the report.

8 (3) When inquiry is required pursuant to article twelve,
9 chapter sixty-one, or other applicable provisions of this code, the
10 State Medical Examiner or designee or county medical examiner or
11 county coroner shall investigate the cause of fetal death and shall
12 prepare and file the report within five days. If after
13 investigation, the State Medical Examiner or designee or county
14 medical examiner or county coroner decline jurisdiction, the person
15 declining jurisdiction may direct the local health officer to
16 investigate the cause of fetal death and prepare and file the
17 report.

18 (4) When a fetal death occurs in a moving conveyance and the
19 fetus is first removed from the conveyance in this state, the place
20 where the fetus was first removed from the conveyance ~~will be~~ is
21 considered the place of fetal death.

22 (b) When a fetus is found in this state and the place of death
23 is unknown, the fetal death shall be recorded in this state, and
24 the place where the fetus was found ~~will be~~ is considered the place
25 of fetal death.

26 (c) Upon the occurrence of any spontaneous fetal death or
27 stillbirth and upon application of either parent, or their legal

1 designee, the death of a human embryo or fetus regardless of
2 gestational age or weight may be registered on a certificate of
3 birth resulting in stillbirth, except that the certificate of
4 birth resulting in stillbirth may not list the cause of death.

5 (d) For purposes of this section "spontaneous fetal death" or
6 "stillbirth" means the expulsion or extraction from its mother of
7 human embryo or fetus resulting in other than a live birth and when
8 the expulsion or extraction is not the result of an induced
9 termination of pregnancy.

10 (e) In preparing the certificate of birth resulting in
11 stillbirth, the State Registrar shall, within sixty days of a
12 request by a parent, as provided in section (c) of this section,
13 issue a fetal death certificate of birth resulting in stillbirth.

14 (f) The person who is required to file a fetal death
15 certificate shall advise the parent of a stillborn child:

16 (1) That the parent may request the preparation of a
17 certificate of birth resulting in stillbirth in addition to the
18 fetal death certificate;

19 (2) That the parent may obtain a certificate of birth
20 resulting in stillbirth by contacting the State Office of Vital
21 Records;

22 (3) How the parent may contact the State Office of Vital
23 Records to request a certificate of birth resulting in stillbirth;
24 and

25 (4) That a copy of the original certificate of birth
26 resulting in stillbirth is a document that is available as a vital
27 record when held by the State Registrar system.

1 (g) The request for a certificate of birth resulting in
2 stillbirth shall be on a form prescribed by the State Registrar.

3 (h) The certificate of birth resulting in stillbirth shall
4 contain:

5 (1) The date of the stillbirth;

6 (2) The county in which the stillbirth occurred;

7 (3) The name of the stillborn child as provided on the
8 original or amended certificate of the fetal death certificate. If
9 a name does not appear on the original or amended fetal death
10 certificate and the requesting parent, does not wish to provide a
11 name, the State Office of Vital Records shall fill in the
12 certificate of birth resulting in stillbirth with the name "baby
13 boy" or "baby girl" and the last name of the parents;

14 (4) The state file number of the corresponding fetal death
15 certificate; and

16 (5) The following statement: "This certificate is not proof
17 of live birth."

18 (i) The certificate of birth resulting in stillbirth shall
19 also contain:

20 (1) Gender;

21 (2) Place of delivery;

22 (3) Residence of mother;

23 (4) The attendant at delivery;

24 (5) Gestational age at delivery;

25 (6) Weight at delivery;

26 (7) Mother's name;

27 (8) Father's name;

1 (9) Time of delivery; and

2 (10) Type of delivery, including but not limited to single,
3 twin or triplet.

4 (j) A certificate of birth resulting in stillbirth is a vital
5 record when held by the State Registrar System. The State
6 Registrar shall inform any parent who requests a certificate of
7 birth resulting in stillbirth that a copy of the document is
8 available as a vital record.

9 (k) A parent may request that the State Registrar issue a
10 certificate of birth resulting in stillbirth regardless of the
11 date on which the certificate of fetal death was issued.

12 (l) The State Registrar may not use a certificate of birth
13 resulting in stillbirth to calculate live birth statistics.

14 (m) This section may not be used to establish, bring or
15 support a civil cause of action seeking damages against any person
16 or entity for bodily injury, personal injury or wrongful death for
17 a stillbirth.

18 (n) The State Registrar shall prescribe by rules the form,
19 content and process for the certificate of birth resulting in
20 stillbirth.

21 (o) When inquiry is required pursuant to article twelve,
22 chapter sixty-one, or other applicable provisions of this code,
23 the State Medical Examiner or designee or county medical examiner
24 or county coroner shall investigate the cause of fetal death and
25 shall prepare and file the report within five days. If after
26 investigation, the State Medical Examiner or designee or county
27 medical examiner or county coroner decline jurisdiction, the

1 person declining jurisdiction may direct the local health officer
2 to investigate the cause of fetal death and prepare and file the
3 report.

4 (p) (1) Whenever an induced termination of pregnancy procedure
5 results in a live birth, a birth certificate shall be issued
6 certifying the birth of the born human being, even though the human
7 being may thereafter die. For the purposes of this section, a human
8 being is live born, or there is a live birth, whenever there is
9 the complete expulsion or extraction from its mother of a human
10 embryo or fetus, irrespective of the duration of pregnancy, which
11 after the separation, breathes or shows any other evidence of
12 life, such as beating of the heart, pulsation of the umbilical
13 cord, or movement of the voluntary muscles, whether or not the
14 umbilical cord has been cut or the placenta is attached. In the
15 event death does ensue after a short time, a death certificate
16 shall be issued. Both the birth and the death certificates shall be
17 issued in accordance with the provisions of this chapter, or other
18 applicable provisions of this code, or by rule promulgated by the
19 State Registrar.

20 (2) Each induced termination of pregnancy which occurs in this
21 state shall be reported to the vital records registry in
22 accordance with section twenty-two, article five, chapter sixteen
23 of this code.

NOTE: The purpose of this bill is to reform the vital statistics procedures related to fetal death, spontaneous fetal death (stillbirth), and induced termination of pregnancy resulting in live birth. This bill may be referred to as "the Grieving Parents Act" or "Bobby's Law."

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