

Senate Bill No. 574

(By Senators Green, Kessler (Acting President), Beach,
Hall, Minard, Plymale, Prezioso, Sypolt, Unger, Jenkins,
Browning and McCabe)

[Introduced February 21, 2011; referred to the Committee on the
Judiciary.]

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

1 began to the date of delivery, which occurs in this state, shall be
2 reported within five days after delivery to the section of Vital
3 Statistics or as otherwise directed by the State Registrar.

4 (1) When a fetal death occurs, the person in charge of the
5 institution or his or her designated representative shall prepare
6 and file the report. In obtaining the information required by the
7 report, all institutions shall use information gathering
8 procedures, including worksheets, provided or approved by the State
9 Registrar.

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

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

22 (4) When a fetal death occurs in a moving conveyance and the
23 fetus is first removed from the conveyance in this state, the place
24 where the fetus was first removed from the conveyance ~~will be~~ is

1 considered the place of fetal death.

2 (b) When a fetus is found in this state and the place of death
3 is unknown, the fetal death shall be recorded in this state, and
4 the place where the fetus was found ~~will be~~ is considered the place
5 of fetal death.

6 (c) Upon the occurrence of any spontaneous fetal death or
7 stillbirth and upon application of either parent, or their legal
8 designee, the death of a human embryo or fetus regardless of
9 gestational age or weight may be registered on a certificate of
10 birth resulting in stillbirth, except that the certificate of birth
11 resulting in stillbirth may not list the cause of death.

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

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

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

23 (1) That the parent may request the preparation of a
24 certificate of birth resulting in stillbirth in addition to the

1 fetal death certificate;

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

5 (3) How the parent may contact the State Office of Vital
6 Records to request a certificate of birth resulting in stillbirth;
7 and

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

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

13 (h) The certificate of birth resulting in stillbirth shall
14 contain:

15 (1) The date of the stillbirth;

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

17 (3) The name of the stillborn child as provided on the
18 original or amended certificate of the fetal death certificate. If
19 a name does not appear on the original or amended fetal death
20 certificate and the requesting parent, does not wish to provide a
21 name, the State Office of Vital Records shall fill in the
22 certificate of birth resulting in stillbirth with the name "baby
23 boy" or "baby girl" and the last name of the parents;

24 (4) The state file number of the corresponding fetal death

1 certificate; and

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

4 (i) The certificate of birth resulting in stillbirth shall
5 also contain:

6 (1) Gender;

7 (2) Place of delivery;

8 (3) Residence of mother;

9 (4) The attendant at delivery;

10 (5) Gestational age at delivery;

11 (6) Weight at delivery;

12 (7) Mother's name;

13 (8) Father's name;

14 (9) Time of delivery; and

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

17 (j) A certificate of birth resulting in stillbirth is a vital
18 record when held by the State Registrar System. The State Registrar
19 shall inform any parent who requests a certificate of birth
20 resulting in stillbirth that a copy of the document is available as
21 a vital record.

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

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

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

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

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

20 (p) (1) Whenever an induced termination of pregnancy procedure
21 results in a live birth, a birth certificate shall be issued
22 certifying the birth of the born human being, even though the human
23 being may thereafter die. For the purposes of this section, a human
24 being is live born, or there is a live birth, whenever there is the

1 complete expulsion or extraction from its mother of a human embryo
2 or fetus, irrespective of the duration of pregnancy, which after
3 the separation, breathes or shows any other evidence of life, such
4 as beating of the heart, pulsation of the umbilical cord, or
5 movement of the voluntary muscles, whether or not the umbilical
6 cord has been cut or the placenta is attached. In the event death
7 does ensue after a short time, a death certificate shall be issued.
8 Both the birth and the death certificates shall be issued in
9 accordance with the provisions of this chapter, or other applicable
10 provisions of this code, or by rule promulgated by the State
11 Registrar.

12 (2) Each induced termination of pregnancy which occurs in this
13 state shall be reported to the vital records registry in accordance
14 with section twenty-two, article five, chapter sixteen of this
15 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.