



1 providing for a waiver; requiring notice to minors of a right  
 2 to petition the court; allowing for appeal by the  
 3 unemancipated minor to circuit court if matter is initially  
 4 heard in family court; specifying that certain orders are not  
 5 appealable; mandating that the Supreme Court of Appeals make  
 6 available a form petition for the use of unemancipated minors  
 7 seeking relief; requiring physicians to file reports to the  
 8 Department of Health and Human Resources; setting forth what  
 9 those reports are to contain; providing remedies; specifying  
 10 when notice is not required; providing that court proceedings  
 11 are confidential; providing civil and criminal penalties;  
 12 authorizing rulemaking; and providing for severability.

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

14 That the Code of West Virginia, 1931, as amended, be amended  
 15 by adding thereto a new section, designated §16-2F-1a; and that  
 16 §16-2F-2, §16-2F-3, §16-2F-4, §16-2F-5, §16-2F-6, §16-2F-8 and  
 17 §16-2F-9 of said code be amended and reenacted, all to read as  
 18 follows:

19 **ARTICLE 2F. PARENTAL NOTIFICATION OF ABORTIONS PERFORMED ON**  
 20 **UNEMANCIPATED MINORS.**

21 **§16-2F-1a. Jurisdiction.**

22 The circuit and family courts have concurrent jurisdiction

1 over matters contained in this article.

2 **§16-2F-2. Definitions.**

3 For purposes of this article: ~~unless the context in which used~~  
4 ~~clearly requires otherwise~~

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

7 (2) "Unemancipated minor" means any minor who is neither  
8 married ~~nor~~ or who has not been emancipated pursuant to applicable  
9 federal law or as provided by section twenty-seven, article seven,  
10 chapter forty-nine of this code.

11 (3) "Actual notice" means the giving of notice directly in  
12 person. ~~or by telephone~~

13 (4) "Constructive notice" means the giving of notice by  
14 certified mail to the last known address of the parents or legal  
15 guardian, return receipt requested.

16 (5) "Abortion" means the use or prescription of any  
17 instrument, medicine, drug or any other substance or device ~~with~~  
18 ~~intent~~ to intentionally terminate the pregnancy of a female known  
19 to be pregnant, ~~and with intent to~~ knowledge that the termination  
20 with those means will, with reasonable likelihood, cause the  
21 expulsion of ~~a~~ any embryo or fetus other than by live birth:  
22 *Provided*, That nothing in this article ~~shall be construed so as to~~

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

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

17 (7) "Parent" means one parent of the pregnant female, or  
18 guardian or curator if the pregnant female has one.

19 **§16-2F-3. Required proof of age prior to performing an abortion;**  
20 **medical emergency; court orders; affidavits and record**  
21 **keeping.**

22 ~~(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~~

1 ~~section may be waived by a physician, other than the physician who~~  
2 ~~is to perform the abortion, if such other physician finds that the~~  
3 ~~minor is mature enough to make the abortion decision independently~~  
4 ~~or that notification would not be in the minor's best interest:~~  
5 ~~Provided, That such other physician shall not be associated~~  
6 ~~professionally or financially with the physician proposing to~~  
7 ~~perform the abortion.~~

8 (a) Except in the case of a medical emergency, a physician may  
9 not perform an abortion on a pregnant female unless:

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

15 (2) A circuit court or family court judge of the county in  
16 which the female resides or in which the abortion is to be  
17 performed has entered an order authorizing a physician to perform  
18 the abortion pursuant to a petition or motion filed by a female who  
19 is unable to produce satisfactory proof demonstrating that she is  
20 not a minor or that she is an emancipated minor and after a finding  
21 by the court that the female is not a minor or that she is an  
22 emancipated minor. This order is not subject to appeal. If the

1 judge denies the authorization that a decision is subject to review  
2 by the circuit court in an in-camera hearing. All hearings are  
3 subject to the procedural requirements of section five of this  
4 article; or

5 (3) The physician has complied with section four of this  
6 article.

7 (b) If the physician or his or her designee obtains proof of  
8 the age or emancipation of the female as provided in subdivision  
9 (1), subsection (a) of this section, the physician or his or her  
10 designee shall execute and sign for inclusion in the female's  
11 medical record an affidavit stating that, to the best information  
12 and belief, a reasonable and prudent person under similar  
13 circumstances would have relied upon the information presented as  
14 sufficient evidence of the identity of the person seeking the  
15 abortion and that she is not a minor or that she is an emancipated  
16 minor.

17 (c) To the extent applicable, the physician shall keep in the  
18 female patient's file a copy of all affidavits, proof of age and of  
19 any court order provided in this section for seven years following  
20 the date of the abortion or until five years after the minor  
21 reaches the age of majority, whichever is longer. If the female  
22 presents a government issued photographic identification showing

1 her to have attained the age of eighteen or older, this subsection  
2 does not apply.

3 **§16-2F-4 Parental notification required for abortions on**  
4 **unemancipated minors; proof of identification;**  
5 **affidavits and record keeping; exceptions; right of**  
6 **petition to family court; rule-making.**

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

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

17 ~~(i) The age of the petitioner and her educational level;~~

18 ~~(ii) The county and state in which she resides;~~

19 ~~(iii) A brief statement of petitioner's reason or reasons for~~  
20 ~~the desired waiver of notification of the parent or guardian of~~  
21 ~~such minor petitioner.~~

22 ~~No such petition shall be dismissed nor shall any hearing~~



1 thereon be refused because of any defect in the form of the  
2 petition.

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

11       ~~(d) All proceedings held pursuant to this article shall be~~  
12 ~~confidential and the court shall conduct all such proceedings in~~  
13 ~~camera. The court shall inform the minor petitioner of her right~~  
14 ~~to be represented by counsel and that if she is without the~~  
15 ~~requisite funds to retain the services of an attorney, that the~~  
16 ~~court will appoint an attorney to represent her interest in the~~  
17 ~~matter. If the minor petitioner desires the services of an~~  
18 ~~attorney, an attorney shall be appointed to represent such minor~~  
19 ~~petitioner, if she advises the court under oath or affidavit that~~  
20 ~~she is financially unable to retain counsel. Any attorney~~  
21 ~~appointed to represent such minor petitioner shall be appointed and~~  
22 ~~paid for her services pursuant to the provisions of article~~

1 ~~twenty one, chapter twenty nine of this code: *Provided*, That the~~  
2 ~~pay to any such attorney pursuant to such appointment shall not~~  
3 ~~exceed the sum of one hundred dollars.~~

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

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

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

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

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

19       ~~(h) If either the circuit court or the Supreme Court of~~  
20 ~~Appeals, or any judge or justice thereof if either of such courts~~  
21 ~~be then in vacation, shall order a waiver of the notification~~  
22 ~~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 (a) A physician may not perform an abortion upon an  
11 unemancipated minor unless notice is given to the parent of the  
12 unemancipated pregnant minor prior to a physician performing an  
13 abortion. Notice shall be given at least forty-eight hours prior  
14 to the performance of the procedure and a copy of the notice shall  
15 be kept in the minor's medical records for at least seven years or  
16 until five years after she reaches the age of majority, whichever  
17 is longer. A parent may receive:

18 (1) Actual notice and may waive the forty-eight hour notice  
19 period, except that this waiver does not waive any period mandated  
20 by section two, article two-i of this chapter; or

21 (2) Constructive notice sent via the United States Post Office  
22 to the parent's last known address, restricted delivery, return

1 receipt requested. The information concerning the address of the  
2 parent must be such which a reasonable and prudent person, under  
3 similar circumstances, would have relied upon as sufficient  
4 evidence that the parent resides at that address. The  
5 forty-eight-hour period for written notice begins to run at twelve  
6 o'clock noon on the next day on which regular mail delivery takes  
7 place, subsequent to the date of the mailing.

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

17 (c) The physician performing the abortion, or his or her  
18 designee, shall execute an affidavit certifying the information  
19 presented by the female of her age or emancipation was such which  
20 a reasonable and prudent person, under similar circumstances would  
21 have relied upon as sufficient evidence of her age or emancipation.  
22 This affidavit shall be included in the female's medical records

1 for at least seven years, unless the female has presented a  
2 government-issued photograph identification showing her to have  
3 attained the age of eighteen or older.

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

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

22 (f) Notice to the parent is not required if:

1       (1) A circuit court or family court judge of the county in  
2 which the unemancipated minor resides or where the abortion is to  
3 be performed issues an order authorizing the unemancipated minor to  
4 consent to the abortion as provided by section five of this  
5 article; or

6       (2) The physician performing an abortion concludes a medical  
7 emergency exists. The physician is required to certify to the  
8 Department of Health and Human Resources, on a form provided by the  
9 department, the medical justification supporting the physician's  
10 judgment that a medical emergency existed. A copy of this form  
11 shall be maintained in the minor's medical records.

12       (g) The physician shall keep a copy of the medical records of  
13 a minor for five years past the minor's age of majority or for  
14 seven years following the date of the abortion, whichever is  
15 greater.

16       (h) Unless the unemancipated minor gives notice of her intent  
17 to seek a judicial waiver, the attending physician or the  
18 physician's agent shall verbally inform the parent within  
19 twenty-four hours after the performance of a medical emergency  
20 abortion, that a medical emergency abortion was performed on the  
21 unemancipated minor and shall also send a written notice, in the  
22 manner described in subdivision (2), subsection (a) of this

1 section, of the performed medical emergency abortion. If the  
2 unemancipated minor, upon whom a medical emergency abortion was  
3 performed, elects not to allow the notification of her parent, any  
4 judge of a family court of the county in which the unemancipated  
5 minor resides or where the abortion was performed shall, upon  
6 petition or motion and after an appropriate hearing, authorize the  
7 waiving of the required notice of the performed abortion if the  
8 judge determines, by clear and convincing evidence, that the  
9 unemancipated minor is mature and capable of determining whether  
10 notification should be given or that the waiver would be in the  
11 unemancipated minor's best interest.

12 (i) The Department of Health and Human Resources may propose  
13 rules for legislative approval in accordance with article three,  
14 chapter twenty-nine-a of this code to propose all forms, affidavits  
15 and certifications required by this section.

16 (j) The Supreme Court of Appeals shall make available a form  
17 petition for the use of unemancipated minors seeking relief  
18 pursuant to section five of this article.

19 **§16-2F-5. Petition to circuit or family court; review by circuit**  
20 **court; confidentiality.**

21 ~~The notification requirements of section three of this article~~  
22 ~~do not apply where there is an emergency need for an abortion to be~~



~~1 performed if the continuation of the pregnancy constitutes an  
2 immediate threat and grave risk to the life or health of the  
3 pregnant minor and the attending physician so certifies in writing  
4 setting forth the nature of such threat or risk and the  
5 consequences which may be attendant to the continuation of the  
6 pregnancy. Such writing shall be maintained with the other medical  
7 records relating to such minor which are maintained by the  
8 physician and the facility at which such abortion is performed.~~

9       (a) If a circuit or family court judge of the county in which  
10 the minor resides or in which the abortion is to be performed hears  
11 a petition or motion filed by an unemancipated minor who elects not  
12 to allow notification of her parent, then the judge shall authorize  
13 a physician to perform the abortion without notice to the parent if  
14 the judge determines, by clear and convincing evidence, that the  
15 pregnant minor is mature and capable of giving informed consent to  
16 the abortion. If the judge determines that the pregnant minor is  
17 not mature, or if the pregnant minor does not claim to be mature,  
18 the judge shall determine, by clear and convincing evidence,  
19 whether the performance of an abortion upon her without  
20 notification of her parent would be in her best interest. The  
21 judge shall enter an order authorizing the physician to perform the  
22 abortion without notification if the judge concludes that the

1 pregnant minor's best interests would be served. This authorization  
2 is not subject to appeal. If a family court judge denies the  
3 authorization, that decision is subject to review by the circuit  
4 court in an in-camera hearing. All hearings are subject to the  
5 procedural requirements of section five of this article.

6 (b) A minor may file the petition or motion on her own behalf  
7 and the court may appoint a guardian ad litem for her. The court  
8 shall advise her that she has a right to court-appointed counsel  
9 and shall, upon her request, provide her with such counsel. The  
10 attorney shall be paid for his or her services in accordance with  
11 article twenty-one, chapter twenty-nine of this code.

12 (c) Proceedings under this section are confidential and shall  
13 be given precedence over other pending matters so that the judge  
14 may reach a decision promptly and without delay so as to serve the  
15 best interests of the pregnant minor. In no event may the  
16 proceeding be later than the third judicial day after the day that  
17 the complaint is filed. A judge who conducts proceedings under  
18 this section shall make written factual findings and legal  
19 conclusions supporting the decision and shall order a record of the  
20 evidence to be maintained including the judge's own findings and  
21 conclusions. All records of proceedings in these proceedings shall  
22 be kept in the office of the clerk of the circuit court in a sealed

1 file and shall be kept in a locked or sealed cabinet, vault or  
2 other container and may not be opened to inspection or copy by  
3 anyone unless upon court order for good cause shown.

4 (d) If the action is filed in family court and the proceeding  
5 is not held before a family court judge by the third judicial day  
6 after the complaint is filed, jurisdiction is transferred to the  
7 circuit court and the minor has the right to an immediate expedited  
8 confidential hearing to the circuit court.

9 **§16-2F-6. Reporting requirements for physicians and the Department**  
10 **of Health and Human Services; rule-making;**

11 **injunctions; penalties.**

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

1 reporting form:

2 (1) Age;

3 (2) Educational level;

4 (3) Previous pregnancies;

5 (4) Previous live births;

6 (5) Previous abortions;

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

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

10 ~~(8)~~ (7) The city and county in which the abortion was  
11 performed.

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

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

1       (1) The number of females whose parent was 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; and

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

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

20       (1) By December 1 of every year, other than the calendar year  
21 in which forms are distributed in accordance with this section, to  
22 all physicians licensed to practice in this state; and

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

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

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

1 more than one year following the due date, may, in an action  
2 brought by the Department of Health and Human Resources, be  
3 directed by a circuit court of the county in which the physician  
4 resides or practices to submit a complete report within a period  
5 stated by court order or be subject to sanctions for civil  
6 contempt.

7 (f) By June 30 of each year, the Department of Health and  
8 Human Resources shall issue a public report providing statistics  
9 for the previous calendar year compiled from all of the reports  
10 covering that year submitted in accordance with this article. The  
11 report shall also include statistics which shall be obtained from  
12 the Supreme Court of Appeals giving the total number of petitions  
13 or motions filed under subsection (a), section five of this  
14 article, including the number in which the court appointed a  
15 guardian ad litem, the number in which the court appointed counsel,  
16 the number in which the family court judge issued an order  
17 authorizing an abortion without notification, the number in which  
18 the family court judge denied such an order, the number of denials  
19 from which an appeal was filed, the number of appeals that resulted  
20 in the denials being affirmed and the number of appeals that  
21 resulted in reversals of denials. Each report shall provide the  
22 statistics from late or corrected reports for all previous calendar

1 years. The information included in the public reports may not  
2 personally identify any individual female.

3 (g) If the Department of Health and Human Resources fails to  
4 issue the public report required by subsection (f) of this section,  
5 any group of ten or more citizens of this state may seek an  
6 injunction in the circuit court of Kanawha County against the  
7 Secretary of the Department of Health and Human Resources requiring  
8 that a complete report be issued within a period stated by court  
9 order.

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

20 **§16-2F-8. Civil and criminal Penalties.**

21 ~~Any person who knowingly performs an abortion upon an~~  
22 ~~unemancipated minor in violation of this article or who knowingly~~



~~1 fails to conform to any requirement of this article shall be guilty  
2 of a misdemeanor, and, upon conviction thereof, shall be fined not  
3 less than five hundred dollars nor more than one thousand dollars  
4 or imprisoned in the county jail not more than thirty days, or both  
5 fined and imprisoned.~~

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

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

20 (c) Any person who knowingly or recklessly performs an  
21 abortion on a pregnant unemancipated minor in violation of this  
22 article is guilty of a felony and, upon conviction, shall be

1 imprisoned in a state correctional facility not less than three nor  
2 more than ten years.

3 (d) Any person who knowingly, recklessly or negligently  
4 performs an abortion on an unemancipated minor in violation of this  
5 article is civilly liable to the person or persons entitled to  
6 receive parental notice for pain and suffering and any subsequent  
7 costs of medical or psychiatric treatment a minor might require  
8 because of complications resulting from the abortion.

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

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

13 **§16-2F-9. Severability.**

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

18 If any one or more provision, section, subsection, sentence,  
19 clause, phrase or word of this article or its application to any  
20 person or circumstance is found to be unconstitutional, it is  
21 severable and the balance of this article remains effective  
22 notwithstanding the unconstitutionality. The Legislature declares

1 that it would have passed this article, and each provision,  
2 section, subsection, sentence, clause, phrase or word of this  
3 article, irrespective of the fact any one or more provision,  
4 section, subsection, sentence, clause, phrase or word is determined  
5 to be unconstitutional.

NOTE: The purpose of this bill relates to parental involvement in a minor's decision to obtain an abortion. The bill requires that the circuit and family court have concurrent jurisdiction. The bill provides that a physician may only perform a nonmedical emergency abortion if there is proof the woman is over eighteen, a court has issued an order authorizing the abortion or has parental consent if she is an unemancipated minor. The bill requires records be kept. The bill requires an affidavit be executed. The bill requires parental notification. The bill sets forth specifics of the notice. The bill defines terms. The bill provides for a waiver. The bill requires notice to minors of a right to petition the court. The bill allows for appeal by the unemancipated minor to circuit court if matter is initially heard in family court. The bill specifies that certain orders are not appealable. The bill requires physicians to file reports to the Department of Health and Human Services. The bill sets forth what those reports are to contain. The bill provides remedies. The bill specifies when notice is not required. The bill provides that court proceedings are confidential. The bill provides civil and criminal penalties. The bill authorizes rule-making. The bill provides for severability.

§16-2F-1a is new; therefore, strike-throughs and underscoring have been omitted.

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