

Senate Bill No. 23

(By Senators Green and Miller)

[Introduced January 8, 2014; referred to the Committee on Health and Human Resources; and then 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; permitting a birth certificate to be issued upon the death of a human embryo or fetus; setting forth what a certificate of birth resulting in stillbirth is to contain; establishing when a human being is live born; requiring a fetal death certificate be issued; defining terms; authorizing rulemaking; 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

1 **stillbirth, and induced termination of pregnancy**
2 **resulting in live birth; accommodation for grieving**
3 **parents.**

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

10 (1) When a fetal death occurs, the person in charge of the
11 institution or his or her designated representative shall prepare
12 and file the report. In obtaining the information required by the
13 report, all institutions shall use information gathering
14 procedures, including worksheets, provided or approved by the State
15 Registrar.

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

18 (3) When inquiry is required pursuant to article twelve,
19 chapter sixty-one, or other applicable provisions of this code, the
20 State Medical Examiner or designee or county medical examiner or
21 county coroner shall investigate the cause of fetal death and shall
22 prepare and file the report within five days. If after

1 investigation, the State Medical Examiner or designee or county
2 medical examiner or county coroner decline jurisdiction, the person
3 declining jurisdiction may direct the local health officer to
4 investigate the cause of fetal death and prepare and file the
5 report.

6 (4) When a fetal death occurs in a moving conveyance and the
7 fetus is first removed from the conveyance in this state, the place
8 where the fetus was first removed from the conveyance ~~will be~~ is
9 considered the place of fetal death.

10 (b) When a fetus is found in this state and the place of death
11 is unknown, the fetal death shall be recorded in this state, and
12 the place where the fetus was found ~~will be~~ is considered the place
13 of fetal death.

14 (c) Upon the occurrence of any spontaneous fetal death or
15 stillbirth and upon application of either parent, or their legal
16 designee, the death of a human embryo or fetus regardless of
17 gestational age or weight may be registered on a certificate of
18 birth resulting in stillbirth, except that the certificate of birth
19 resulting in stillbirth may not list the cause of death.

20 (d) For purposes of this section "spontaneous fetal death" or
21 "stillbirth" means the expulsion or extraction from its mother of
22 human embryo or fetus resulting in other than a live birth and when

1 the expulsion or extraction is not the result of an induced
2 termination of pregnancy.

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

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

9 (1) That the parent may request the preparation of a
10 certificate of birth resulting in stillbirth in addition to the
11 fetal death certificate;

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

15 (3) How the parent may contact the State Office of Vital
16 Records to request a certificate of birth resulting in stillbirth;
17 and

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

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

1 (h) The certificate of birth resulting in stillbirth shall
2 contain:

3 (1) The date of the stillbirth;

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

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

12 (4) The state file number of the corresponding fetal death
13 certificate; and

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

16 (i) The certificate of birth resulting in stillbirth shall
17 also contain:

18 (1) Gender;

19 (2) Place of delivery;

20 (3) Residence of mother;

21 (4) The attendant at delivery;

22 (5) Gestational age at delivery;

1 (6) Weight at delivery;

2 (7) Mother's name;

3 (8) Father's name;

4 (9) Time of delivery; and

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

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

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

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

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

21 (n) The State Registrar shall prescribe by rules the form,
22 content and process for the certificate of birth resulting in

1 stillbirth.

2 (o) When inquiry is required pursuant to article twelve, State
3 Medical Examiner or designee or county medical examiner or county
4 coroner shall investigate the cause of fetal death and shall
5 prepare and file the report within five days. If after
6 investigation, the State Medical Examiner or designee or county
7 medical examiner or county coroner decline jurisdiction, the person
8 declining jurisdiction may direct the local health officer to
9 investigate the cause of fetal death and prepare and file the
10 report.

11 (p) (1) Whenever an induced termination of pregnancy procedure
12 results in a live birth, a birth certificate shall be issued
13 certifying the birth of the born human being, even though the human
14 being may thereafter die. For the purposes of this section, a human
15 being is live born, or there is a live birth, whenever there is the
16 complete expulsion or extraction from its mother of a human embryo
17 or fetus, irrespective of the duration of pregnancy, which after
18 the separation, breathes or shows any other evidence of life, such
19 as beating of the heart, pulsation of the umbilical cord, or
20 movement of the voluntary muscles, whether or not the umbilical
21 cord has been cut or the placenta is attached. In the event death
22 does ensue after a short time, a death certificate shall be issued.

1 Both the birth and the death certificates shall be issued in
2 accordance with this chapter, or other applicable provisions of
3 this code, or by rule promulgated by the State Registrar.

4 (2) Each induced termination of pregnancy which occurs in this
5 state shall be reported to the vital records registry in accordance
6 with section twenty-two, article five, chapter sixteen of this
7 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. The bill permits a birth certificate to be issued upon the death of a human embryo or fetus. The bill sets forth what a certificate of birth resulting in stillbirth is to contain. The bill establishes when a human being is live born. The bill requires a fetal death certificate be issued. The bill defines terms. The bill authorizes rule-making. The 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.