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H. B. 2371

(By Delegates P. Smith, Perry, Hartman, Moye, Rodighiero,
Frich, Cowles, Sobonya, J. Nelson, Hamrick and Shott)

[Introduced January 26, 2015; referred to the
Committee on the Judiciary.]

A BILL to amend and reenact §16-2F-1 and §16-2F-4 of the Code of West Virginia, 1931, as amended, all relating to abortions performed on unemancipated minors; stating the state's public policy to protect unborn life as well as the intent of the Legislature to protect the rights of the minor mother; and providing for the appointment of a guardian ad litem to represent the interests of the unborn child during certain proceedings and payment for that service.

Be it enacted by the Legislature of West Virginia:

That §16-2F-1 and §16-2F-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

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

§16-2F-1. Legislative findings and intent.

The Legislature finds that immature minors often lack the ability to make fully informed choices that take into account both immediate and long-range consequences of their actions; that the medical, emotional and psychological consequences of abortion are serious and of indeterminate duration, particularly when the patient is immature; that in its current abortion policy as expressed

1 in **Bellotti v. Baird**, 443 U. S. 622 (1979) and **H. L. v. Matheson**, 450 U. S. 398 (1981), the
2 United States supreme court clearly relies on physician's commitment to consider all factors, physical
3 and otherwise, before performing abortions on minors; that parents ordinarily possess information
4 essential to a physician's exercise of his or her best medical judgment concerning their child; and that
5 parents who are aware that their minor daughter has had an abortion may better ensure that the minor
6 receives adequate medical attention after her abortion. The Legislature further finds that parental
7 consultation regarding abortion is usually desirable and in the best interests of the minor.

8 The Legislature further finds in accordance with the U. S. Supreme Court's decision in
9 **Bellotti v. Baird**, 443 U. S. 622 (1979), and **H. L. v. Matheson**, 450 U. S. 398 (1981), that there
10 exists important and compelling state interests (i) in protecting minors against their own immaturity,
11 (ii) in fostering the family structure and preserving it as a viable social unit, and (iii) in protecting
12 the rights of parents to rear their own children in their own household.

13 It is, therefore, the intent of the Legislature to further these interests by enacting this parental
14 notice provision.

15 The Legislature further finds the public policy of the State of West Virginia is to respect life
16 and provide safeguards to protect life in the criminal, health and other laws of the State of West
17 Virginia; that in respecting and protecting life, there is included the unborn life of a child whose life
18 may be subject to termination before birth by abortion and that when the mother of the unborn life
19 is a minor who seeks an abortion through the judicial by-pass procedure, it is the interest of the state
20 to not only establish and protect the rights of the minor mother, but also to protect the state's public
21 policy to protect unborn life; the protection of these interests is done, in part, by requiring judges to
22 make determinations pursuant to the judicial by-pass procedure and to require the judges be provided

1 with sufficient evidence and information upon which they may make informed and proper decisions.

2 West Virginia judges are called upon to make decisions not only respecting the lives of born
 3 persons, but also respecting the lives of unborn persons, such as in judicial by-pass cases for minor
 4 abortions; it is always the Legislature's intent to provide guidance to the courts on how life may be
 5 best protected.

6 It is not the intent of the Legislature to place an undue burden on the minor's otherwise legal
 7 right to make a decision on whether to obtain an abortion on her own of her unborn child; the
 8 Legislature's intent is to provide guidance and assistance to minors who find themselves in the
 9 unfortunate position of having to make such decisions and to courts who must act in the place of
 10 parents in providing an alternative by-pass mode for decision making.

11 **§16-2F-4. Waiver of notification; petition to circuit court; contents of petition; duties of**
 12 **Attorney General and circuit clerk; confidentiality of proceedings;**
 13 **appointment of counsel and limitation of compensation; findings required to**
 14 **be made by court; petition to supreme court; waiver of certain fees;**
 15 **appointment of guardian ad litem for unborn child.**

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

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

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

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

2 (iii) A brief statement of petitioner's reason or reasons for the desired waiver of notification
3 of the parent or guardian of such minor petitioner.

4 No such petition ~~shall~~ may be dismissed nor ~~shall~~ may any hearing thereon be refused
5 because of any defect in the form of the petition.

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

11 (d) All proceedings held pursuant to this article ~~shall be~~ are confidential and the court shall
12 conduct all ~~such~~ proceedings in camera. The court shall inform the minor petitioner of her right to
13 be represented by counsel and that if she is without the requisite funds to retain the services of an
14 attorney, that the court will appoint an attorney to represent her interest in the matter. If the minor
15 petitioner desires the services of an attorney, an attorney shall be appointed to represent ~~such~~ the
16 minor petitioner, if she advises the court under oath or affidavit that she is financially unable to retain
17 counsel. Any attorney appointed to represent such minor petitioner shall be appointed and paid for
18 her services pursuant to the provisions of article twenty-one, chapter twenty-nine of this code:
19 *Provided*, That the pay to any ~~such~~ attorney pursuant to ~~such~~ appointment ~~shall~~ may not exceed the
20 sum of \$100.

21 (e) The court shall conduct a hearing upon the petition without delay, but in no event ~~shall~~
22 may the delay exceed the next succeeding judicial day, and the court shall render its decision

1 immediately upon its submission and, in any event, an order reflecting the findings of fact and
2 conclusions of law reached by the court and its judgement shall be endorsed by the judge thereof not
3 later than twenty-four hours following such submission and shall be forthwith entered of record by
4 the clerk of the court. All testimony, documents and other evidence presented to the court, as well
5 as the petition and any orders entered thereon and all records of whatsoever nature and kind relating
6 to the matter shall be sealed by the clerk and ~~shall~~ may not be opened to any person except upon
7 order of the court and, then, only upon good cause being shown therefor. A separate order book for
8 the purposes of this article shall be maintained by such clerk and shall likewise be sealed and not
9 open to inspection by any person save upon order of the court for good cause shown.

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

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

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

17 (g) If or when the circuit court, or the judge thereof, ~~shall~~ refuses to order the waiver of the
18 notification required by section three of this article, a copy of the petition and all orders entered in
19 the matter and all other documents and papers submitted to the circuit court, may be presented to the
20 Supreme Court of Appeals, or to any justice thereof if ~~such~~ that court then be in vacation, and ~~such~~
21 the court or justice if ~~deemed~~ considered proper, may thereupon order the waiver of notification
22 otherwise required by section three of this article. The Supreme Court of Appeals or justice thereof

1 shall hear and decide the matter without delay and shall enter such orders as such court or justice
2 may deem appropriate.

3 (h) If either the circuit court or the Supreme Court of Appeals, or any judge or justice thereof
4 if either of ~~such~~ these courts ~~be then~~ is in vacation, shall order a waiver of the notification required
5 by section three of this article, any physician to whom a certified copy of ~~said~~ order shall be
6 presented may proceed to perform the abortion to the same extent as if such physician were in
7 compliance with the provisions of said section three and, notwithstanding the fact that no notification
8 is given to either the parent or legal guardian of any such unemancipated minor, any such physician
9 shall not be subject to the penalty provisions which may be prescribed by this article for such failure
10 of notification.

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

13 Notwithstanding any other provision of this code to the contrary, the court may appoint a
14 guardian ad litem for the interests of the unborn child of the petitioner who shall also have the same
15 rights and obligations of participation in the proceeding as given to the Attorney General. The
16 guardian ad litem shall further have the responsibility of assisting and advising the court so the court
17 may make an informed decision and do substantial justice. The guardian ad litem shall be appointed
18 and paid for services pursuant to the provisions of article twenty-one, chapter twenty-nine of this
19 code.

NOTE: The purpose of this bill is to state the intent of the Legislature to protect unborn life as well as the state's public policy to protect the rights of the minor mother. The bill also provides

for the appointment of a guardian ad litem to represent the interests of the unborn child during certain proceedings.

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