

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

House Bill 2002

BY DELEGATES KESSINGER, FAST, A. EVANS, R. ROMINE,

FRICH, ARVON, BUTLER, ROWAN, WILSON, PAYNTER AND

E. LANE

[Originating in the Committee on the Judiciary;

Reported on March 20, 2017]

1 A BILL to amend and reenact §16-2F-1, §16-2F-2, §16-2F-3, §16-2F-4, §16-2F-5, §16-2F-6, and
2 §16-2F-8 and of the Code of West Virginia, 1931, as amended; all relating to parental
3 notification of abortions performed on unemancipated minors; setting out legislative
4 findings; defining terms; clarifying parental notification requirements prior to performing an
5 abortion on an unemancipated minor; modifying waiver language; providing exceptions;
6 providing a judicial process to not permit parental notification; requiring reporting;
7 providing for disciplinary actions; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

1 That §16-2F-1, §16-2F-2, §16-2F-3, §16-2F-4, §16-2F-5, §16-2F-6 and §16-2F-8 of the
2 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.

1 (a) The Legislature finds that immature minors often lack the ability to make fully informed
2 choices that take into account both immediate and long-range consequences of their actions; that
3 the medical, emotional and psychological consequences of abortion are serious and of
4 indeterminate duration, particularly when the patient is immature; that in its current abortion policy
5 as expressed in *Bellotti v. Baird*, 443 U. S. 622 (1979), and *H. L. v. Matheson*, 450 U. S. 398
6 (1981), and *Hodgson v. Minnesota*, 497 U.S. 417, (1990), the United States Supreme Court
7 ~~clearly relies on physician's commitment to consider all factors, physical and otherwise, before~~
8 ~~performing abortions on minors~~ held that notification of a parent with a judicial waiver procedure
9 is Constitutional; that parents ordinarily possess information essential to a physician's exercise of
10 his or her best medical judgment concerning their child; and that parents who are aware that their
11 minor daughter has had an abortion may better ensure that the minor receives adequate medical
12 attention after her abortion.

13 **(b)** The Legislature further finds that parental consultation regarding abortion is usually
14 desirable and in the best interests of the minor.

15 **(c)** The Legislature further finds ~~in accordance with the U. S. Supreme Court's decision in~~
16 ~~Bellotti v. Baird, 443 U. S. 622 (1979), and H. L. v. Matheson, 450 U. S. 398 (1981), that there~~
17 exists important and compelling state interests:

18 **(i)** (1) in protecting minors against their own immaturity,

19 **(ii)** (2) in fostering the family structure and preserving it as a viable social unit, and

20 **(iii)** (3) in protecting the rights of parents to rear their own children in their own household.

21 **(d)** It is, therefore, the intent of the Legislature to further these important and compelling
22 state interests by enacting this parental notice provision.

§16-2F-2. Definitions.

1 For purposes of this article, unless the context in which used clearly requires otherwise:

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

4 ~~(2) "Unemancipated minor" means any minor who is neither married nor who has been~~
5 ~~emancipated as pursuant to applicable federal law or as provided by section twenty-seven, article~~
6 ~~seven, chapter forty-nine of this code.~~

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

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

10 ~~(5) "Abortion" means the use of any instrument, medicine, drug or any other substance or~~
11 ~~device with intent to terminate the pregnancy of a female known to be pregnant and with intent to~~
12 ~~cause the expulsion of a fetus other than by live birth: Provided, That nothing in this article shall~~
13 ~~be construed so as to prevent the prescription, sale or transfer of intrauterine contraceptive~~
14 ~~devices or other contraceptive devices or other generally medically accepted contraceptive~~
15 ~~devices, instruments, medicines or drugs for a female who is not known to be pregnant and for~~

16 ~~whom such contraceptive devices, instruments, medicines or drugs were prescribed by a~~
17 ~~physician solely for contraceptive purposes and not for the purpose of inducing or causing the~~
18 ~~termination of a known pregnancy.~~

19 As used in this article:

20 (1) "Abortion" means the use of any instrument, medicine, drug or any other substance or
21 device with intent to terminate the pregnancy of a female known to be pregnant and with intent to
22 cause the expulsion of a fetus other than by live birth. This article does not prevent the
23 prescription, sale or transfer of intrauterine contraceptive devices or other contraceptive devices
24 or other generally medically accepted contraceptive devices, instruments, medicines or drugs for
25 a female who is not known to be pregnant and for whom the contraceptive devices, instruments,
26 medicines or drugs were prescribed by a physician solely for contraceptive purposes and not for
27 the purpose of inducing or causing the termination of a known pregnancy.

28 (2) "Medical emergency" means the same as that term is defined in section two, article
29 two-m of this chapter.

30 (3) "Secretary" means the Secretary of the West Virginia Department of Health and Human
31 Resources.

32 (4) "Unemancipated minor" means any person less than eighteen years of age who is not,
33 or has not been, married or has not graduated from high school who is under the care custody
34 and control of the person's parent or parents, guardian or court of competent jurisdiction pursuant
35 to applicable federal law or as provided in section twenty-seven, article seven, chapter forty-nine
36 of this code.

§16-2F-3. Parental notification required for abortions performed on unemancipated minors.

1 ~~(a) No physician may perform an abortion upon an unemancipated minor unless such~~
2 ~~physician has given or caused to be given at least twenty-four hours actual notice to one of the~~
3 ~~parents or to the legal guardian of the pregnant minor of his intention to perform the abortion, or,~~

4 ~~if the parent or guardian cannot be found and notified after a reasonable effort to do so, without~~
5 ~~first having given at least forty-eight hours constructive notice computed from the time of mailing~~
6 ~~to the parent or to the legal guardian of the minor: *Provided,* That prior to giving the notification~~
7 ~~required by this section, the physician shall advise the unemancipated minor of the right of petition~~
8 ~~to the circuit court for waiver of notification: *Provided, however,* That any such notification may be~~
9 ~~waived by a duly acknowledged writing signed by a parent or the guardian of the minor.~~

10 ~~(b) Upon notification being given to any parent or to the legal guardian of such pregnant~~
11 ~~minor, the physician shall refer such pregnant minor to a counselor or caseworker of any church~~
12 ~~or school or of the department of human services or of any other comparable agency for the~~
13 ~~purpose of arranging or accompanying such pregnant minor in consultation with her parents. Such~~
14 ~~counselor shall thereafter be authorized to monitor the circumstances and the continued~~
15 ~~relationship of and between such minor and her parents.~~

16 ~~(c) Parental notification required by subsection (a) of this section may be waived by a~~
17 ~~physician, other than the physician who is to perform the abortion, if such other physician finds~~
18 ~~that the minor is mature enough to make the abortion decision independently or that notification~~
19 ~~would not be in the minor's best interest. *Provided,* That such The other physician shall not be~~
20 ~~associated professionally or financially with the physician proposing to perform the abortion.~~

21 (a) A physician may not perform an abortion upon an unemancipated minor until notice
22 of the pending abortion as required by this section is complete.

23 (b) A physician or his or her agent may personally give notice directly, in person, by
24 telephone or by letter to the parent, the guardian or conservator of the unemancipated minor at
25 their usual place of residence and shall be delivered personally by the physician or his or her
26 agent. Upon delivery of the notice, twenty-four hours shall pass until the abortion may be
27 performed.

28 (c) A physician or his or her agent may provide notice by certified mail addressed to the
29 parent, the guardian or conservator of the unemancipated minor at their usual place of residence,

30 return receipt requested. The delivery shall be sent restricted delivery assuring that the letter is
31 delivered only to the addressee. Time of delivery shall be deemed to occur at twelve o'clock noon
32 on the next day on which regular mail delivery takes place unless. Upon delivery of the notice,
33 twenty-four hours shall pass until the abortion may be performed.

34 (d) Parental notification required by subsections (b) and (c) of this section may be waived
35 by a physician, if the physician or his or her agent petitions the court on behalf of the
36 unemancipated minor as provided in section four.

37 (e) Parental notification required by subsections (b) and (c) of this section may be waived
38 by a psychiatrist or a licensed psychologist, if the psychiatrist or licensed psychologist finds that
39 that the minor is mature enough to make the abortion decision independently or that notification
40 would not be in the minor's best interest. The psychiatrist or licensed psychologist may not be
41 associated professionally or financially with the physician proposing to perform the abortion.

42 (f) Notice may be waived if the person entitled to notice certifies in writing that he or she
43 has been notified.

§16-2F-4. Process to obtain waiver of notification.

1 (a) ~~A minor~~ An unemancipated minor who objects to ~~such~~ the notice being given to her
2 parent or legal guardian or a physician on behalf of the unemancipated minor may petition for a
3 waiver of ~~such~~ the notice to the circuit court of the county in which the ~~minor~~ unemancipated minor
4 resides or in which the abortion is to be performed, or to the judge of either of such courts. ~~Such~~
5 ~~minor may so petition and proceed in her own right or, at her option, by a next friend.~~

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

- 9 (i) The age of the petitioner and her educational level;
10 (ii) The county and state in which she resides;

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

13 No such petition shall be dismissed nor shall any hearing thereon be refused because of
14 any defect in the form of the petition.

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

20 (d) ~~All~~ The proceedings held pursuant to this article shall be confidential and the court shall
21 conduct ~~all such~~ the proceedings in camera. The court shall inform the ~~minor~~ petitioner of her right
22 to be represented by counsel. ~~and that if she~~ the petitioner is without the requisite funds to retain
23 the services of an attorney, ~~that~~ the court will appoint an attorney to represent ~~her~~ the petitioner's
24 interest in the matter. If the ~~minor~~ petitioner desires the services of an attorney, an attorney shall
25 be appointed to represent ~~such~~ the ~~minor~~ petitioner, if ~~she~~ the petitioner advises the court under
26 oath or affidavit that ~~she~~ the petitioner is financially unable to retain counsel. ~~Any~~ An attorney
27 appointed to represent ~~such~~ the ~~minor~~ petitioner shall be appointed and paid for his or her services
28 pursuant to the provisions of article twenty-one, chapter twenty-nine of this code. ~~Provided, That~~
29 ~~The pay to any such attorney pursuant to such appointment shall not exceed the sum of \$100.~~

30 (e) The court shall conduct a hearing upon the petition without delay, but ~~in no event shall~~
31 ~~the delay~~ may not exceed the next succeeding judicial day. ~~and~~ The court shall render its decision
32 immediately upon its submission and, ~~in any event, an order reflecting the findings of fact and~~
33 ~~conclusions of law reached by the court and its judgement shall be endorsed by the judge thereof~~
34 its written order not later than twenty-four hours ~~following such submission and shall be forthwith~~
35 entered ~~of~~ in the record by the clerk of the court. All testimony, documents, ~~and other~~ evidence,
36 ~~presented to the court, as well as the petition, and any orders entered thereon and all records of~~

37 ~~whatsoever nature and kind~~ relating to the matter shall be sealed by the clerk and shall not be
38 opened to any person except upon order of the court ~~and, then, only~~ upon a showing of good
39 cause. ~~being shown therefor.~~ A separate order book for the purposes of this article shall be
40 maintained by ~~such~~ the clerk and shall ~~likewise~~ be sealed and not open to inspection by any
41 person save upon order of the court for good cause shown.

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

44 (1) That the ~~minor~~ petitioner is mature and well informed sufficiently to make the decision
45 to proceed with the abortion independently and without the notification or involvement of her
46 parent or legal guardian; or

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

49 ~~(g) If or when the circuit court, or the judge thereof, shall refuse to order the waiver of the~~
50 ~~notification required by section three of this article, a copy of the petition and all orders entered in~~
51 ~~the matter and all other documents and papers submitted to the circuit court, may be presented~~
52 ~~to the Supreme Court of Appeals, or to any justice thereof if such court then be in vacation, and~~
53 ~~such court or justice if deemed proper, may thereupon order the waiver of notification otherwise~~
54 ~~required by section three of this article. The Supreme Court of Appeals or justice thereof shall~~
55 ~~hear and decide the matter without delay and shall enter such orders as such court or justice may~~
56 ~~deem appropriate.~~

57 ~~(h) If either the circuit court or the Supreme Court of Appeals, or any judge or justice~~
58 ~~thereof if either of such courts be then in vacation, shall order a waiver of the notification required~~
59 ~~by section three of this article, any physician to whom a certified copy of said order shall be~~
60 ~~presented may proceed to perform the abortion to the same extent as if such physician were in~~
61 ~~compliance with the provisions of said section three and, notwithstanding the fact that no~~
62 ~~notification is given to either the parent or legal guardian of any such unemancipated minor, any~~

63 ~~such physician shall not be subject to the penalty provisions which may be prescribed by this~~
64 ~~article for such failure of notification.~~

65 (g) A confidential appeal shall be available to a petitioner to whom a court denies an order
66 authorizing an abortion without notification. An order authorizing an abortion without notification
67 may not be appealed. Access to the trial court and the Supreme Court of Appeals shall be given
68 to an unemancipated minor.

69 ~~(h) No~~ (h) No Filing fees ~~may be~~ are not required of any unemancipated minor who avails
70 herself of any of the procedures provided by this section.

§16-2F-5. Emergency exception from notification requirements.

1 The notification requirements of section three of this article do not apply where the
2 attending physician certifies that there is ~~an emergency~~ a need for an abortion to be performed if
3 ~~the continuation of the pregnancy constitutes an immediate threat and grave risk to the life or~~
4 ~~health of the pregnant minor and the attending physician so certifies in writing setting forth the~~
5 ~~nature of such threat or risk and the consequences which may be attendant to the continuation of~~
6 ~~the pregnancy~~ due to a medical emergency. Such writing A description of the medical emergency
7 shall be maintained with the ~~other~~ unemancipated minor's medical records. ~~relating to such minor~~
8 ~~which are maintained by the physician and the facility at which such abortion is performed.~~

§16-2F-6. Reporting requirements for physicians.

1 (a) Any A physician performing an abortion upon an unemancipated minor shall provide
2 ~~the department of health~~ secretary a written report of the procedure within thirty days after having
3 performed the abortion. ~~The department of health shall provide reporting forms for this purpose~~
4 ~~to all physicians and public health facilities required to be licensed pursuant to article five-b of this~~
5 ~~chapter.~~ The following information, in addition to any other information which may be required by
6 ~~the department of health~~ secretary, regarding ~~the minor~~ an unemancipated minor receiving the
7 abortion shall be included in ~~such~~ the reporting form:

8 (1) Age;

- 9 (2) Educational level;
- 10 (3) Previous pregnancies;
- 11 (4) Previous live births;
- 12 (5) Previous abortions;
- 13 (6) Complications, if any, of the abortion being reported;
- 14 (7) Reason for waiver of notification, ~~of the minor's parent or guardian~~, if such notice was
- 15 waived; and
- 16 (8) The city and county in which the abortion was performed.
- 17 ~~(b) Any such~~ The report shall not contain the name, address or other information by which
- 18 the ~~minor~~ unemancipated minor receiving the abortion may be identified.

§16-2F-8. Penalties.

1 ~~Any person who knowingly performs an abortion upon an unemancipated minor in~~

2 ~~violation of this article or who knowingly fails to conform to any requirement of this article shall be~~

3 ~~guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$500 nor more~~

4 ~~than \$1,000 or imprisoned in the county jail not more than thirty days, or both fined and~~

5 ~~imprisoned.~~

6 (a) Any physician or other licensed medical practitioner who intentionally or recklessly

7 performs or induces an abortion in violation of this article is considered to have acted outside the

8 scope of practice permitted by law or otherwise in breach of the standard of care owed to patients,

9 and is subject to discipline from the applicable licensure board for that conduct, including, but not

10 limited to, loss of professional license to practice.

11 (b) A person, not subject to subsection (a) of this section, who intentionally or recklessly

12 performs or induces an abortion in violation of this article is considered to have engaged in the

13 unauthorized practice of medicine in violation of section thirteen, article three, chapter thirty of

14 this code, and upon conviction, subject to the penalties contained in that section.

15 (c) In addition to the penalties set forth in subsections (a) and (b) of this section, a patient
16 may seek any remedy otherwise available to such patient by applicable law.

17 (d) No penalty may be assessed against any patient upon whom an abortion is performed
18 or induced or attempted to be performed or induced.

NOTE: The purpose of this bill is to modify the law requiring parental notification of abortions performed on unemancipated minors.

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