Committee Substitute

for

House Bill 2002

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[Originating in the Committee on the Judiciary;
Reported on March 20, 2017]
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 §16-2F-8 and of the Code of West Virginia, 1931, as amended; all relating to parental notification of abortions performed on unemancipated minors; setting out legislative findings; defining terms; clarifying parental notification requirements prior to performing an abortion on an unemancipated minor; modifying waiver language; providing exceptions; providing a judicial process to not permit parental notification; requiring reporting; providing for disciplinary actions; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

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 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.

(a) 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 in Bellotti v. Baird, 443 U. S. 622 (1979), and H. L. v. Matheson, 450 U. S. 398 (1981), and Hodgson v. Minnesota, 497 U.S. 417, (1990), the United States Supreme Court clearly relies on physician’s commitment to consider all factors, physical and otherwise, before performing abortions on minors held that notification of a parent with a judicial waiver procedure is Constitutional; that parents ordinarily possess information essential to a physician’s exercise of his or her best medical judgment concerning their child; and that parents who are aware that their minor daughter has had an abortion may better ensure that the minor receives adequate medical attention after her abortion.
(b) The Legislature further finds that parental consultation regarding abortion is usually desirable and in the best interests of the minor.

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

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

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

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

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

§16-2F-2. Definitions.

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

(1) “Minor” means any person under the age of eighteen years who has not graduated from high school.

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

(3) “Actual notice” means the giving of notice directly, in person or by telephone.

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

(5) “Abortion” means the use of any instrument, medicine, drug or any other substance or device with intent to terminate the pregnancy of a female known to be pregnant and with intent to cause the expulsion of a fetus other than by live birth: Provided, That nothing in this article shall be construed so as to prevent the prescription, sale or transfer of intrauterine contraceptive devices or other contraceptives devices or other generally medically accepted contraceptive devices, instruments, medicines or drugs for a female who is not known to be pregnant and for
whom such contraceptive devices, instruments, medicines or drugs were prescribed by a physician solely for contraceptive purposes and not for the purpose of inducing or causing the termination of a known pregnancy.

As used in this article:

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

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

(3) “Secretary” means the Secretary of the West Virginia Department of Health and Human Resources.

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

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

(a) No physician may perform an abortion upon an unemancipated minor unless such physician has given or caused to be given at least twenty-four hours actual notice to one of the parents or to the legal guardian of the pregnant minor of his intention to perform the abortion, or,
if the parent or guardian cannot be found and notified after a reasonable effort to do so, without
first having given at least forty-eight hours constructive notice computed from the time of mailing
to the parent or to the legal guardian of the minor: Provided, That prior to giving the notification
required by this section, the physician shall advise the unemancipated minor of the right of petition
to the circuit court for waiver of notification: Provided, however, That any such notification may be
waived by a duly acknowledged writing signed by a parent or the guardian of the minor.

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

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

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

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

(c) A physician or his or her agent may provide notice by certified mail addressed to the
parent, the guardian or conservator of the unemancipated minor at their usual place of residence.
return receipt requested. The delivery shall be sent restricted delivery assuring that the letter is
delivered only to the addressee. Time of delivery shall be deemed to occur at twelve o’clock noon
on the next day on which regular mail delivery takes place unless. Upon delivery of the notice,
twenty-four hours shall pass until the abortion may be performed.

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

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

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

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

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

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

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

(ii) The county and state in which she resides;
(iii) A brief statement of petitioner’s reason or reasons for the desired waiver of notification of the parent or guardian of such minor petitioner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Age;
(2) Educational level;
(3) Previous pregnancies;
(4) Previous live births;
(5) Previous abortions;
(6) Complications, if any, of the abortion being reported;
(7) Reason for waiver of notification, of the minor’s parent or guardian, if such notice was waived; and
(8) The city and county in which the abortion was performed.

§16-2F-8. Penalties.

Any person who knowingly performs an abortion upon an unemancipated minor in violation of this article or who knowingly fails to conform to any requirement of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $500 nor more than $1,000 or imprisoned in the county jail not more than thirty days, or both fined and imprisoned.

(a) Any physician or other licensed medical practitioner who intentionally or recklessly performs or induces an abortion in violation of this article is considered to have acted outside the scope of practice permitted by law or otherwise in breach of the standard of care owed to patients, and is subject to discipline from the applicable licensure board for that conduct, including, but not limited to, loss of professional license to practice.

(b) A person, not subject to subsection (a) of this section, who intentionally or recklessly performs or induces an abortion in violation of this article is considered to have engaged in the unauthorized practice of medicine in violation of section thirteen, article three, chapter thirty of this code, and upon conviction, subject to the penalties contained in that section.
(c) In addition to the penalties set forth in subsections (a) and (b) of this section, a patient may seek any remedy otherwise available to such patient by applicable law.

(d) No penalty may be assessed against any patient upon whom an abortion is performed 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.