

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 424

FISCAL
NOTE

BY SENATORS RUCKER, AZINGER, BLAIR, BOLEY, BOSO,
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[Introduced February 23, 2017; Referred
to the Committee on Health and Human Resources;
and then to the Committee on the Judiciary]

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 of the Code of West Virginia, 1931, as amended; and to amend said code by
 3 adding thereto a new section, designated §16-2F-6a, all relating generally to requirements
 4 and provisions for notice of requested abortions to parties responsible for care of
 5 unemancipated minors and other incompetent females; updating findings and definitions;
 6 prohibiting an abortion for an unemancipated minor patient in the absence of written notice
 7 to a responsible parent or other party; creating an exception and a documentation process
 8 in the event of a medical emergency; establishing a procedure for waiver of notice
 9 requirements through court petition; providing a right of appeal; requiring physicians to
 10 submit reports and documentation to the Secretary of the Department of Health and
 11 Human Resources; requiring the production of annual statistical reports; and creating a
 12 civil cause of action for knowing failure to provide required notice.

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; and to amend said code
 3 by adding thereto a new section, designated §16-2F-6a, all to read as follows:

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

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

1 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), the United States Supreme Court ~~clearly relies on physician's commitment to consider all~~

7 ~~factors, physical and otherwise, before performing abortions on minors~~ held that notification of a
 8 parent with a judicial waiver procedure is constitutional; that parents ordinarily possess
 9 information essential to a physician's exercise of his or her best medical judgment concerning
 10 their child; and that parents who are aware that their minor daughter has had an abortion may
 11 better ensure that the minor receives adequate medical attention after her abortion. The
 12 Legislature further finds that parental consultation regarding abortion is usually desirable and in
 13 the best interests of the minor.

14 The Legislature further finds in accordance with the U. S. Supreme Court's decision in
 15 Bellotti v. Baird, 443 U. S. 622 (1979), and H. L. v. Matheson, 450 U. S. 398 (1981), and Hodgson
 16 v. Minnesota, 497 U.S. 417 (1990), that there exists important and compelling state interests (i)
 17 in protecting minors against their own immaturity, (ii) in fostering the family structure and
 18 preserving it as a viable social unit, and (iii) in protecting the rights of parents to rear their own
 19 children in their own household.

20 It is, therefore, the intent of the Legislature to further these interests by enacting this
 21 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. Nothing in this article shall be construed so
23 as to prevent the prescription, sale or transfer of intrauterine contraceptive devices or other
24 contraceptive devices or other generally medically accepted contraceptive devices, instruments,
25 medicines or drugs for a female who is not known to be pregnant and for whom such contraceptive
26 devices, instruments, medicines or drugs were prescribed by a physician solely for contraceptive
27 purposes and not for the purpose of inducing or causing the termination of a known pregnancy.

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

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

32 (4) "Unemancipated minor" shall mean any person less than eighteen years of age who is
33 not, or has not been, married or who is under the care, custody and control of the person's parent
34 or parents, guardian or court of competent jurisdiction pursuant to applicable federal law or under
35 the custody of the West Virginia Department of Health and Human Resources pursuant to the
36 provisions of article four, chapter forty-nine of this code.

§16-2F-3. Parental notification required for abortions performed on unemancipated minors; waiver; notice to minor of right of petition to circuit court; minor to be referred for counseling.

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 other physician shall not be~~
20 ~~associated professionally or financially with the physician proposing to perform the abortion.~~

21 (a) No physician may perform an abortion upon an unemancipated minor or upon a female
22 who has had a guardian or conservator appointed on their behalf pursuant to the provisions of
23 chapter forty-four-a of this code due to the female's incompetency until such time as forty-eight

24 hours has passed following the delivery of written notice of the pending abortion as required by
25 this section and section five of this article.

26 (b) The notice shall be addressed and delivered to the parent of the unemancipated minor
27 or the guardian or conservator at their usual place of residence and shall be delivered personally
28 by the physician or his or her agent.

29 (c) In lieu of personal service, notice may be made by certified mail addressed to the
30 parent of the unemancipated minor or the guardian or conservator at their usual place of
31 residence, return receipt requested. The delivery shall be sent restricted delivery assuring that
32 the letter is delivered only to the addressee. Time of delivery shall be deemed to occur at twelve
33 o'clock noon on the next day on which regular mail delivery takes place.

34 (d) Delivery of notice may be waived if the person entitled to notice certifies in writing that
35 he or she has been notified.

§16-2F-4. Waiver of notification; petition to circuit court; contents of petition; duties of Attorney General and circuit clerk; confidentiality of proceedings; appointment of counsel and limitation of compensation; findings required to be made by court; petition to supreme court; waiver of certain fees.

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

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

- 8 (i) The age of the petitioner and her educational level;
- 9 (ii) The county and state in which she resides;
- 10 (iii) A brief statement of petitioner's reason or reasons for the desired waiver of notification

11 of the parent or guardian of such unemancipated minor petitioner.

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

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

19 (d) All proceedings held pursuant to this article shall be confidential and the court shall
20 conduct all such proceedings in camera. The court shall inform the unemancipated minor
21 petitioner of her right to be represented by counsel and that if she is without the requisite funds to
22 retain the services of an attorney, that the court will appoint an attorney to represent her interest
23 in the matter. If the unemancipated minor petitioner desires the services of an attorney, an
24 attorney shall be appointed to represent ~~such~~ the unemancipated minor petitioner, if she advises
25 the court under oath or affidavit that she is financially unable to retain counsel. Any attorney
26 appointed to represent such unemancipated minor petitioner shall be appointed and paid for his
27 or her services pursuant to the provisions of article twenty-one, chapter twenty-nine of this code.
28 ~~Provided, That the~~ The pay to any such attorney pursuant to such appointment shall not exceed
29 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 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 not later than twenty-four hours following such submission and shall be forthwith entered of record
35 by the clerk of the court. All testimony, documents and other evidence presented to the court, as
36 well as the petition and any orders entered thereon and all records of whatsoever nature and kind

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

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

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

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

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

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

63 ~~article for such failure of notification~~

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

68 ~~(i)~~ (h) No filing fees may be required of any minor who avails herself of any of the
 69 procedures provided by this section.

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

1 (a) 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~~ because a medical emergency exists and that a delay will create serious risk of
 7 substantial and irreversible physical impairment of a major bodily function, not including
 8 psychological or emotional conditions, and there is insufficient time to provide the required notice.
 9 Such writing shall be maintained with the other medical records relating to such minor ~~which are~~
 10 ~~maintained by the physician and the facility at which such abortion is performed.~~

11 (b) If the physician who is to perform the abortion concludes under subsection (a) of this
 12 section that a medical emergency exists and that there is insufficient time to provide the notice
 13 required by section three of this article, the physician shall make a reasonable effort to inform, in
 14 person or by telephone, the parent, managing conservator, or guardian of the unemancipated
 15 minor within 24 hours after the time a medical emergency abortion is performed on the minor of:

16 (1) The performance of the abortion; and

17 (2) The basis for the physician's determination that a medical emergency existed that
 18 required the performance of a medical emergency abortion without fulfilling the requirements of

19 section three.

20 (c) A physician who performs an abortion under the circumstances described in subsection
 21 (a) of this section shall, not later than 48 hours after the abortion is performed, send a written
 22 notice that a medical emergency occurred and that the parent, managing conservator, or guardian
 23 may contact the physician for more information and medical records, to the last known address
 24 of the parent, managing conservator, or guardian by certified mail, restricted delivery, return
 25 receipt requested. The physician may rely on last known address information if a reasonable and
 26 prudent person, under similar circumstances, would rely on the information as sufficient evidence
 27 that the parent, managing conservator, or guardian resides at that address. The physician shall
 28 keep in the minor's medical record:

- 29 (1) The return receipt from the written notice; or
- 30 (2) If the notice was returned as undeliverable, the notice.

31 (d) A physician who performs an abortion on an unemancipated minor during a medical
 32 emergency as described in subsection (a) of this section shall execute for inclusion in the medical
 33 record of the minor an affidavit that explains the specific medical emergency that necessitated
 34 the immediate abortion.

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

1 (a) Any physician performing an abortion upon an unemancipated minor shall provide the
 2 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 unemancipated minor receiving the abortion
 7 shall be included in such 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 unemancipated minor's parent or guardian, if
- 15 such notice was waived; and
- 16 (8) The city and county in which the abortion was performed.

17 Any such report shall not contain the name, address or other information by which the

18 minor receiving the abortion may be identified.

19 (b) The secretary shall promulgate emergency rules pursuant to the provisions of section

20 fifteen, article three, chapter twenty-nine-a of this code to provide for a reporting form for

21 physicians. In addition to the form required by this section, these rules may also provide for

22 modification of the dates set forth in this section or for consolidation of any necessary forms for

23 administrative convenience, fiscal savings or to reduce reporting requirements.

24 These forms shall contain the following:

25 (1) The number of unemancipated minors for whom notice was required pursuant to this

26 article;

27 (2) The number of notices which were delivered personally and the number of notice which

28 were delivered by mail;

29 (3) Following the notice, the number of unemancipated minors who, based upon the

30 physician's information and belief, obtained an abortion;

31 (4) The number of abortions performed without providing notification as required by this

32 article and, of these, the number of abortions performed on emancipated minors and the number

33 of abortions performed due to a medical emergency;

34 (5) The number of abortions performed upon an unemancipated minor without parental

35 notification following a wavier being granted pursuant to section four of this article; and

36 (6) The number of abortions performed upon a female who has had a guardian or
37 conservator appointed for them pursuant to the provision of article forty-four-a of this code.

38 (c) The secretary shall distribute a copy of the provisions of this article and the forms
39 provided in this section as follows:

40 (1) Within one hundred and twenty days of the effective date of this article to all physicians
41 licensed to practice in this state;

42 (2) Upon licensure of every physician newly licensed to practice in this state; and

43 (3) After the initial distribution as provided in subdivision (1) of this section, by the first day
44 of December of every year to all physicians licensed to practice in this state.

45 (d) Commencing on February 28, 2018, and annually thereafter, each physician
46 responsible for notice as required in section three of this article and any physician who knowingly
47 performed an abortion upon an unemancipated minor or a female who has had a guardian or
48 conservator appointed pursuant to chapter forty-four-a of this code shall submit to the secretary
49 a completed copy of the form required by this section containing all of the reporting requirements
50 as set forth in this section.

51 (e) Any physician who does not submit a report within thirty days following the due date
52 set forth in subdivision (d) of this section shall be fined \$500.00 payable to the State of West
53 Virginia. An additional fine of \$500.00 shall be imposed for each additional thirty days, or portion
54 thereof, in which the physician is not in compliance. The secretary may file an enforcement action
55 in the circuit court in the court in which any physician resides who has not complied with the
56 reporting requirement of this article or has filed an incomplete report for a period greater than one
57 year following the due date set forth in this section.

§16-2F-6a. Statistical reporting.

1 (a) The secretary shall prepare an annual report by the last day of June of each year. This
2 report shall be available to the public and shall be submitted to the Joint Committee on
3 Government and Finance. The report is required to include:

4 (1) A statistical analysis of the information set forth in section six of this article; and

5 (2) Data on the number of petitions or motions filed with the circuit courts of this state
6 pursuant to the provisions of section four of this article. This data shall include, for each county
7 in which proceedings were initiated, the following;

8 (A) The number of actions which required the appointment of a guardian ad litem;

9 (B) The number of actions which required the appointment of counsel;

10 (C) The number of actions wherein the judge issued an order authorizing an abortion
11 without parental notification;

12 (D) The number of actions wherein the judge denied a request to proceed with an abortion
13 without parental notification;

14 (E) The number of appeals which were filed due to a denial;

15 (F) The number of appeals of a denial, which resulted in an affirming of the judge's order
16 to denial proceeding with an abortion without parental notification; and

17 (G) The number of appeals of a denial, which were overturned.

18 (b) Each annual report shall contain statistical data for all previous years if it is necessary
19 that previous data be adjusted to reflect additional information from late or corrected reports.

20 (c) Personal information shall be redacted in the report. The secretary shall ensure that
21 none of the data or information in the report reasonably lead to the identification of any individual
22 unemancipated minor or a female for whom a guardian or conservator has been appointed.

§16-2F-8. Penalties; civil cause of action.

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

28 (b) Performing an abortion upon an unemancipated minor in violation of this article or

29 knowingly failing to conform to any requirement of this article shall be grounds for a civil action by
30 a person, who being entitled to notice under this article, is wrongfully denied notification. No
31 cause of action may be brought by a plaintiff if the pregnancy resulted from the plaintiff's criminal
32 conduct.

NOTE: The purpose of this bill is to update provisions relating to notification of a parent, guardian or legal custodian of an unemancipated minor requesting abortions services. This bill specifies time periods and methods for providing written notice, requires statistical reporting and also creates a civil cause of action for knowingly failing to provide the required notice.

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