

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2982

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[Introduced March 08, 2021; Referred to the
Committee on Health and Human Resources then the
Judiciary]

1 A BILL to amend and reenact §16-2I-1, §16-2I-2, and §16-2I-3 of the Code of West Virginia, 1931,
 2 as amended, all relating to the Second Chance at Life Act; requiring that information about
 3 the process of chemical abortion be provided to a woman prior to prescribing
 4 pharmaceuticals for, or administering, a chemical abortion except in certain emergency
 5 circumstances; updating definitions; specifying that the woman be informed of the
 6 possibility of reversal of a chemical abortion if undertaken within a critical time period;
 7 dictating minimum standards for printed materials; and requiring documentation of the
 8 procedures required hereby.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2I. WOMEN'S RIGHT TO KNOW ACT.

§16-2I-1. Definitions.

1 For the purposes of this article, the words or phrases defined in this section have these
 2 meanings ascribed to them.

3 (a) "Abortion" means the use or prescription of any instrument, medicine, drug or any other
 4 substance or device intentionally to terminate the pregnancy of a female known to be pregnant
 5 with an intention other than to increase the probability of a live birth, to preserve the life or health
 6 of the child after live birth or to remove a dead embryo or fetus.

7 (b) "Attempt to perform an abortion" means an act, or an omission of a statutorily required
 8 act, that, under the circumstances as the actor believes them to be, constitutes a substantial step
 9 in a course of conduct planned to culminate in the performance of an abortion in West Virginia in
 10 violation of this article.

11 (c) "Chemical abortion" means the use or prescription of an abortion-inducing drug
 12 dispensed with the intent to cause the death of the unborn child.

13 ~~(e)~~ (d) "Medical emergency" means any condition which, ~~on the basis of a physician's~~
 14 ~~good-faith clinical~~ in reasonable medical judgment, so complicates the medical condition of a
 15 pregnant female as to necessitate the immediate termination of her pregnancy to avert her death

16 or for which a delay will create serious risk of substantial and irreversible physical impairment of
17 a major bodily function, not including psychological or emotional conditions. No condition shall be
18 deemed a medical emergency if based on a claim or diagnosis that the woman will engage in
19 conduct which she intends to result in her death or in substantial and irreversible physical
20 impairment of a major bodily function.

21 ~~(d)~~ (e) “Physician” means any medical or osteopathic doctor licensed to practice medicine
22 in this state.

23 ~~(e)~~ (f) “Probable gestational age of the embryo or fetus” means what, in the judgment of
24 the physician, will with reasonable probability be the gestational age of the embryo or fetus at the
25 time the abortion is planned to be performed.

26 ~~(f)~~ (g) “Stable Internet website” means a website that, to the extent reasonably practicable,
27 is safeguarded from having its content altered other than by the Department of Health and Human
28 Resources.

§16-2I-2. Informed consent.

1 No abortion may be performed in this state except with the voluntary and informed consent
2 of the female upon whom the abortion is to be performed. Except in the case of a medical
3 emergency, consent to an abortion is voluntary and informed if, and only if:

4 (a) The female is told the following, by telephone or in person, by the physician or the
5 licensed health care professional to whom the responsibility has been delegated by the physician
6 who is to perform the abortion at least twenty-four hours before the abortion:

7 (1) The particular medical risks associated with the particular abortion procedure to be
8 employed, including, when medically accurate, the risks of infection, hemorrhage, danger to
9 subsequent pregnancies and infertility;

10 (2) The probable gestational age of the embryo or fetus at the time the abortion is to be
11 performed; and

12 (3) The medical risks associated with carrying her child to term; and

13 (4) Except in the case of a medical emergency, a chemical abortion involving the two-drug
14 process of dispensing mifepristone first and then misoprostol shall not be performed or induced
15 or attempted to be performed or induced unless the female is informed, by telephone or in person,
16 by the physician who is to perform the abortion, by a referring physician, or by an agent of either
17 physician at least 24 hours before the abortion, that:

18 (A) It may be possible to reverse the intended effects of a chemical abortion utilizing
19 mifepristone if the woman changes her mind, but that time is of the essence;

20 (B) Information on and assistance with reversing the effects of a chemical abortion utilizing
21 mifepristone is available on the Department of Health and Human Resources website; and

22 (C) After the first drug involved in the two-drug process is dispensed in a chemical abortion
23 utilizing mifepristone, the physician or an agent of the physician shall provide written medical
24 discharge instructions to the pregnant woman which must include the statement:

25 “Recent developing research has indicated that mifepristone alone is not always effective
26 in ending a pregnancy. If you change your mind, it may be possible to avoid, cease, or even to
27 reverse the intended effects of a chemical abortion utilizing mifepristone if the second pill has not
28 been taken. Please consult with a knowledgeable health care provider regarding the abortion pill
29 reversal process or call the Abortion Pill Reversal Hotline at 877-558-0333 or visit
30 <https://www.abortionpillreversal.com/> as soon as possible.”

31 The information required by this subsection may be provided by telephone without
32 conducting a physical examination or tests of the patient, in which case the information required
33 to be provided may be based on facts supplied by the female to the physician or other licensed
34 health care professional to whom the responsibility has been delegated by the physician and
35 whatever other relevant information is reasonably available to the physician or other licensed
36 health care professional to whom the responsibility has been delegated by the physician. It may
37 not be provided by a tape recording, but must be provided during a consultation in which the
38 physician or licensed health care professional to whom the responsibility has been delegated by

39 the physician is able to ask questions of the female and the female is able to ask questions of the
40 physician or the licensed health care professional to whom the responsibility has been delegated
41 by the physician.

42 If a physical examination, tests or the availability of other information to the physician or
43 other licensed health care professional to whom the responsibility has been delegated by the
44 physician subsequently indicate, in the medical judgment of the physician or the licensed health
45 care professional to whom the responsibility has been delegated by the physician, a revision of
46 the information previously supplied to the patient, that revised information may be communicated
47 to the patient at any time before the performance of the abortion procedure.

48 Nothing in this section may be construed to preclude provision of required information in
49 a language understood by the patient through a translator.

50 (b) The female is informed, by telephone or in person, by the physician who is to perform
51 the abortion, or by an agent of the physician, at least 24 hours before the abortion procedure:

52 (1) That medical assistance benefits may be available for prenatal care, childbirth, and
53 neonatal care through governmental or private entities;

54 (2) That the father, if his identity can be determined, is liable to assist in the support of her
55 child based upon his ability to pay even in instances in which the father has offered to pay for the
56 abortion;

57 (3) That she has the right to review the printed materials described in §16-2I-3 of this code,
58 that these materials are available on a state-sponsored website and the website address; and

59 (4) That the female will be presented with a form which she will be required to execute
60 prior to the abortion procedure that is available pursuant to §16-2I-3 of this code, and that the
61 form to be presented will inform her of the opportunity to view the ultrasound image and her right
62 to view or decline to view the ultrasound image, if an ultrasound is performed.

63 The physician or an agent of the physician shall orally inform the female that the materials
64 have been provided by the State of West Virginia and that they describe the embryo or fetus and

65 list agencies and entities which offer alternatives to abortion.

66 If the female chooses to view the materials other than on the website, then they shall either
67 be provided to her at least 24 hours before the abortion or mailed to her at least 72 hours before
68 the abortion by first class mail in an unmarked envelope.

69 The information required by this subsection may be provided by a tape recording if
70 provision is made to record or otherwise register specifically whether the female does or does not
71 choose to have the printed materials given or mailed to her.

72 (c) The form required pursuant to subdivision (b)(4) of this section shall include the
73 following information: (1) It is a female's decision whether or not to undergo any ultrasound
74 imaging procedure in consultation with her health care provider; (2) if an ultrasound is performed
75 in conjunction with the performance of an abortion procedure, the female has the right to view or
76 to decline to view the image; and (3) that the woman has been previously informed of her
77 opportunity to view the ultrasound image and her right to view or decline to view the ultrasound
78 image. The woman shall certify her choice on this form prior to the abortion procedure being
79 performed.

80 The female shall certify in writing, before the abortion, that the information described in
81 subsections (a) and (b) of this section has been provided to her and that she has been informed
82 of her opportunity to review the information referred to in subdivision (b)(3) of this section.

83 Before performing the abortion procedure, the physician who is to perform the abortion or
84 the physician's agent shall obtain a copy of the executed certification required by the provisions
85 of subsections (b) and (c) of this section.

86 (d) The female shall certify in writing, before the abortion, that the information described
87 in subdivision (a)(4) of this section has been provided to her and that she has been notified about
88 the possibility of reversing the intended effects of a chemical abortion.

§16-2I-3. Printed information.

1 (a) Within 90 days of the effective date of this article, the secretary of the Department of

2 Health and Human Resources shall cause to be published, in English and in each language which
3 is the primary language of two percent or more of the state's population, as determined by the
4 most recent decennial census performed by the U.S. census bureau, and shall cause to be
5 available on the website provided for in section four of this article the following printed materials
6 in such a way as to ensure that the information is easily comprehensible:

7 (1) Geographically indexed materials designed to inform the reader of public and private
8 agencies and services available to assist a female through pregnancy, upon childbirth and while
9 the child is dependent, including adoption agencies, which shall include a comprehensive list of
10 the agencies available, a description of the services they offer and a description of the manner,
11 including telephone numbers. At the option of the Secretary of Health And Human Resources, a
12 24-hour-a-day telephone number may be established with the number being published in such a
13 way as to maximize public awareness of its existence which may be called to obtain a list and
14 description of agencies in the locality of the caller and of the services they offer; and

15 (2) Materials designed to inform the female of the probable anatomical and physiological
16 characteristics of the embryo or fetus at two-week gestational increments from the time when a
17 female can be known to be pregnant to full term, including any relevant information on the
18 possibility of the embryo or fetus's survival and pictures or drawings representing the development
19 of an embryo or fetus at two-week gestational increments: *Provided*, That any such pictures or
20 drawings must contain the dimensions of the embryo or fetus and must be realistic and
21 appropriate for the stage of pregnancy depicted. The materials shall be objective, nonjudgmental,
22 and designed to convey only accurate scientific information about the embryo or fetus at the
23 various gestational ages. The material shall also contain objective information describing the
24 methods of abortion procedures commonly employed, the medical risks commonly associated
25 with each procedure, the possible detrimental psychological effects of abortion and the medical
26 risks commonly associated with carrying a child to term; and

27 (3) Materials designed to inform the female of the possibility of reversing the effects of a

28 chemical abortion utilizing mifepristone if she changes her mind and information on and
29 assistance with the resources that may be available to help reverse the effects of a chemical
30 abortion.

31 (b) The materials referred to in subsection (a) of this section shall be printed in a typeface
32 large enough to be clearly legible. The website provided for in section four of this article shall be
33 maintained at a minimum resolution of seventy dots per inch. All pictures appearing on the website
34 shall be a minimum of 200 x 300 pixels. All letters on the website shall be a minimum of 11-point
35 font. All information and pictures shall be accessible with an industry standard browser requiring
36 no additional plug-ins.

37 (c) The materials required under this section shall be available at no cost from the
38 Department of Health and Human Resources upon request and in appropriate numbers to any
39 person, facility or hospital.

NOTE: The purpose of this bill is to require that information about the process of chemical abortion be provided to a woman prior to prescribing pharmaceuticals for, or administering, a chemical abortion except in certain emergency circumstances.

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