

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2321

By Delegate C. Pritt

[Introduced January 11, 2023; Referred to the
Committee on Health and Human Resources then the
Judiciary]

1 A BILL to amend and reenact §16-2I-2 of the Code of West Virginia, 1931, as amended, relating to
2 mandating an ultrasound imaging procedure prior to an abortion.

Be it enacted by the Legislature of West Virginia:

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

§16-2I-2. Informed consent.

1 An abortion may not be performed in this state except with the voluntary and informed
2 consent 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 medical professional to whom the responsibility has been delegated by the physician who
6 is to perform the abortion at least 24 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;

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

13 (4) If a chemical abortion involving the two-drug process of mifepristone is initiated and
14 then a prostaglandin such as misoprostol is planned to be used at a later time, the female shall be
15 informed that:

16 (A) Some suggest that it may be possible to counteract the intended effects of a
17 mifepristone chemical abortion by taking progesterone if the female changes her mind, before
18 taking the second drug, but this process has not been approved by the Food and Drug
19 Administration.

20 (B) After the first drug involved in the two-drug process is dispensed in a mifepristone
21 chemical abortion, the physician or agent of the physician shall provide written medical discharge

22 instructions to the pregnant female which shall include the statement:

23 “If you change your mind and decide to try to counteract the intended effects of a
24 mifepristone chemical abortion, if the second pill has not been taken, please consult with your
25 physician.

26 (i) You might experience a complete abortion without ever taking misoprostol;

27 (ii) You might experience a missed abortion, which means the fetus is no longer viable, but
28 the fetus did not leave your body; or

29 (iii) It is possible that your pregnancy may continue; and

30 (iv) You should consult with your physician.”

31 (C) The female shall certify, as part of the informed consent process for any medical
32 procedure, that she has been informed about the above possibilities regarding a chemical
33 abortion.

34 (D) Notwithstanding any law to the contrary, a physician acting in conformity with the
35 informed consent provisions of this section relating to the possibility of counteracting the intended
36 effects of a chemical abortion, or a physician prescribing a non-Food and Drug Administration
37 approved drug therapy to counteract a chemical abortion is not liable for any loss, damage,
38 physical injury, or death arising from any information provided by the physician related to
39 counteracting the intended effects of a chemical abortion or arising from prescribing a non-Food
40 and Drug Administration approved drug therapy to counteract a chemical abortion.

41 The information required by this subsection may be provided by telephone without
42 conducting a physical examination or tests of the patient, in which case the information required to
43 be provided may be based on facts supplied by the female to the physician or other licensed health
44 care professional to whom the responsibility has been delegated by the physician and whatever
45 other relevant information is reasonably available to the physician or other licensed health care
46 professional to whom the responsibility has been delegated by the physician. It may not be
47 provided by a tape recording, but must be provided during a consultation in which the physician or

48 licensed health care professional to whom the responsibility has been delegated by the physician
49 is able to ask questions of the female and the female is able to ask questions of the physician or
50 the licensed health care professional to whom the responsibility has been delegated by the
51 physician.

52 If a physical examination, tests or the availability of other information to the physician or
53 other licensed health care professional to whom the responsibility has been delegated by the
54 physician subsequently indicate, in the medical judgment of the physician or the licensed health
55 care professional to whom the responsibility has been delegated by the physician, a revision of the
56 information previously supplied to the patient, that revised information may be communicated to
57 the patient at any time before the performance of the abortion procedure.

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

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

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

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

67 (3) That she has the right to review the printed materials described in §16-21-3 of this code,
68 that these materials are available on a state-sponsored website and the website address; and

69 (4) That the female will be presented with a form which she will be required to execute prior
70 to the abortion procedure that is available pursuant to §16-21-3 of this code, and that the form to be
71 presented will inform her of the opportunity to view the ultrasound image and her right to view or
72 decline to view the ultrasound image, if an ultrasound is performed.

73 The physician or an agent of the physician shall orally inform the female that the materials

74 have been provided by the State of West Virginia and that they describe the embryo or fetus and
75 list agencies and entities which offer alternatives to abortion.

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

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

82 (c) The form required pursuant to subdivision (b)(4) of this section shall include the
83 following information:

84 (1) ~~It is a female's decision whether or not to~~ The female shall undergo any ultrasound
85 imaging procedure in consultation with her health care provider;

86 (2) ~~If an ultrasound is performed in conjunction with the performance of an abortion~~
87 ~~procedure, the~~ The female has the right to view or to decline to view the image; and

88 (3) That the female has been previously informed of her opportunity to view the ultrasound
89 image and her right to view or decline to view the ultrasound image. The female shall certify her
90 choice on this form prior to the abortion procedure being performed.

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

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

NOTE: The purpose of this bill is to mandate ultrasound imaging procedure prior to an
abortion.

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