

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5073

By Delegates Crouse, Steele, W. Clark, Burkhammer,
Kimble, Moore, Heckert, Jeffries, Kelly, McGeehan,
and Cannon

[Introduced ; referred
to the Committee on]

1 A BILL to amend and reenact §16-2R-2, §16-2R-6, §16-2R-7, §16-2R-8, and §16-2R-9 of the
 2 Code of West Virginia, 1931, as amended; and to amend said code by adding thereto four
 3 new sections, designated §16-2R-10, §16-2R-11, §16-2R-12, and §16-2R-13, all relating
 4 to modifying the Unborn Child Protection act; providing for definitions; creating a process
 5 of informed consent; providing for printed information; providing for the creation of an
 6 Internet website; providing for an informed consent procedure in case of medical
 7 emergency; providing for reporting; providing for licensure action; providing for protection
 8 of aborted fetuses born alive; and providing for severability.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2R. UNBORN CHILD PROTECTION ACT.

§16-2R-2. Definitions.

1 The definitions set forth in this section are controlling for purposes of this article and of this
 2 code, irrespective of terms used in medical coding, notations, or billing documents. For purposes
 3 of this article:

4 "Abortion" means the use of any instrument, medicine, drug, or any other substance or
 5 device with intent to terminate the pregnancy of a patient known to be pregnant and with intent to
 6 cause the death and expulsion or removal of an embryo or a fetus. This term does not include the
 7 terms "intrauterine fetal demise" or "stillbirth" or "miscarriage" as defined in this section.

8 "Attempt to perform or induce an abortion" means an act or the omission of an act that,
 9 under the circumstances as the person so acting or omitting to act believes them to be, constitutes
 10 a substantial step in a course of conduct intended to culminate in an abortion.

11 "Born alive" means the complete expulsion or extraction of the fetus, at any stage of
 12 development, who after such expulsion or extraction breathes or has a beating heart, pulsation of
 13 the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical
 14 cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of
 15 natural or induced labor, cesarean section, or induced abortion.

16 "Chemical abortion" means the use or prescription of an abortion-inducing drug dispensed
17 with the intent to cause an abortion.

18 "Commissioner" means the Commissioner of the Bureau for Public Health of the West
19 Virginia Department of Health and Human Resources.

20 "Contraception" or "contraceptive" means the prevention of pregnancy by interfering with
21 the process of ovulation, fertilization, or implantation.

22 "Designee" means a person licensed under Chapter 30 of this code practicing within his or
23 her scope of practice.

24 "Ectopic" means a fertilized egg which is developing outside the uterus, or a fertilized egg
25 is developing within parts of the uterus where it cannot be viable, including a cervical, cornual, or
26 cesarean section scar implantations.

27 "Embryo" means the developing human from the time of fertilization until the end of the
28 eighth week of gestation.

29 "Fertilization" means the fusion of a human spermatozoon with a human ovum.

30 "Fetal tissue research" means tissue or cells obtained from a dead embryo or fetus after a
31 miscarriage, abortion, or intrauterine fetal demise.

32 "Fetus" means the developing human in the postembryonic period from nine weeks after
33 fertilization until birth.

34 "Licensed medical professional" means a person licensed under §30-3-1 *et seq.*, or §30-
35 14-1 *et seq.*, of this code.

36 "Implantation" means when a fertilized egg has attached to the lining of the wall of the
37 uterus.

38 "Intrauterine fetal demise" or "stillbirth" means the unintended or spontaneous loss of a
39 fetus after the 19th week of pregnancy.

40 "In vitro fertilization" means a procedure or procedures intended to improve fertility or
41 prevent genetic problems and assist with conception.

42 "Medical emergency" means a condition or circumstance that so complicates the medical
43 condition of a patient as to necessitate an abortion to avert serious risk of the patient's death or
44 serious risk of substantial life-threatening physical impairment of a major bodily function, not
45 including psychological or emotional conditions. This term includes a circumstance in which it is
46 necessary to terminate a pregnancy of one or more fetuses to preserve the life of another fetus or
47 fetuses. A condition is not deemed a medical emergency if based on a claim or diagnosis that the
48 patient intends or may engage in conduct which results in the patient's death or in substantial and
49 irreversible physical impairment of a major bodily function.

50 "Miscarriage" means the unintended or spontaneous loss of an embryo or a fetus before
51 the 20th week of pregnancy. This term includes the medical terms "spontaneous abortion,"
52 "missed abortion," and "incomplete abortion".

53 "Nonviable" means an embryo or a fetus has a lethal anomaly which renders it
54 incompatible with life outside of the uterus.

55 "Partial-birth abortion" means an abortion performed on a live fetus after partial vaginal
56 delivery.

57 "Pregnancy" means the period of gestation after which a fertilized egg has implanted in the
58 wall of a uterus.

59 "Probable gestational age of the embryo or fetus" means what, in the judgment of the
60 licensed medical professional, will with reasonable probability be the gestational age of the
61 embryo or fetus at the time the abortion is planned to be performed.

62 "Reasonable medical judgment" means a medical judgment that would be made by a
63 licensed medical professional who is knowledgeable about the case and the treatment
64 possibilities with respect to the medical conditions involved.

65 "Stable Internet website" means a website that, to the extent reasonably practicable, is
66 safeguarded from having its content altered by another other than the Department of Health and
67 Human Resources.

68 "Unemancipated minor" means a person younger than 18 years of age who is not, or has
69 not been, married or judicially emancipated.

§16-2R-6. Reporting by licensed medical professionals regarding abortion Informed consent.

1 ~~Any abortion performed or induced in this state is subject to the reporting requirements of~~
2 ~~§16-5-22.~~

3 An abortion may not be performed in this state except in compliance with the provisions set
4 forth in §16-2R-3 of this code and with the voluntary and informed consent of the female upon
5 whom the abortion is to be performed. Except in the case of a medical emergency, consent to an
6 abortion is voluntary and informed if, and only if:

7 (a) The female is told the following, by telephone or in person, by the licensed medical
8 professional or the designee to whom the responsibility has been delegated by the licensed
9 medical professional who is to perform the abortion at least 24 hours before the abortion:

10 (1) The particular medical risks associated with the particular abortion procedure to be
11 employed, including, among other things pertinent to informed consent, the risks of infection,
12 hemorrhage, danger to subsequent pregnancies, infertility and the possibility of reversing the
13 effects of a chemical abortion;

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

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

17 (4) That she has the opportunity to see the ultrasound of her fetus and it is her right to view
18 or decline to view the ultrasound image.

19 (b) The female is informed, by telephone or in person, by the licensed medical professional
20 who is to perform the abortion, or by an agent of the licensed medical professional, at least 24
21 hours before the abortion procedure:

22 (1) That medical assistance benefits may be available for prenatal care, childbirth, and

23 neonatal care through governmental or private entities;

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

27 (3) That she has the right to review the printed materials described in §16-2R-7 of this
28 code, that these materials are available on a state-sponsored website and the website address;
29 and

30 (4) That the female will be presented with a form which she will be required to execute prior
31 to the abortion procedure that is available pursuant to §16-2R-7 of this code and that the form to be
32 presented will inform her of the opportunity to view the ultrasound image and her right to view or
33 decline to view the ultrasound image, if an ultrasound is performed

34 The licensed medical professional, or an agent of the licensed medical professional shall
35 orally inform the female that the materials have been provided by the State of West Virginia and
36 that they describe the embryo or fetus and list agencies and entities which offer alternatives to
37 abortion.

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

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

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

46 (1) It is a female's decision whether or not to undergo any ultrasound imaging procedure in
47 consultation with her health care provider;

48 (2) If an ultrasound is performed in conjunction with the performance of an abortion

49 procedure, the female has the right to view or to decline to view the image; and

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

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

56 Before performing the abortion procedure, the licensed medical professional who is to
57 perform the abortion or the licensed medical professional's agent shall obtain a copy of the
58 executed certification required by the provisions of subsections (b) and (c) of this section.

59 (d) If a chemical abortion involving the two-drug process of mifepristone is recommended or
60 initiated and then a prostaglandin such as misoprostol is planned to be used at a later time, the
61 female shall be informed that:

62 (1) Studies suggest that it may be possible to counteract the intended effects of a
63 mifepristone chemical abortion by taking progesterone if the female changes her mind, before
64 taking the second drug.

65 (2) After the first drug involved in the two-drug process is dispensed in a mifepristone
66 chemical abortion, the licensed medical professional or agent of the licensed medical professional
67 shall provide written medical discharge instructions to the pregnant female which shall include the
68 statement:

69 "If you change your mind and decide to try to counteract the intended effects of a
70 mifepristone chemical abortion, if the second pill has not been taken, please consult with a
71 licensed medical professional knowledgeable about discontinuing a medical abortion or you can
72 get immediate help by going to website <https://www.abortionpillreversal.com>.

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

74 (ii) You might experience a missed abortion, which means the fetus is no longer viable, but

75 the fetus did not leave your body; or

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

77 (iv) You should consult with your licensed medical professional."

78 (3) The female shall certify, as part of the informed consent process for any medical
79 procedure, that she has been informed about the above possibilities regarding a chemical
80 abortion.

81 (4) Notwithstanding any law to the contrary, a licensed medical profession acting in
82 conformity with the informed consent provisions of this section relating to the possibility of
83 counteracting the intended effects of a chemical abortion, or a licensed medical profession
84 prescribing a non-Food and Drug Administration approved drug therapy to counteract a chemical
85 abortion is not liable for any loss, damage, physical injury, or death arising from any information
86 provided by the licensed medical profession related to counteracting the intended effects of a
87 chemical abortion or arising from prescribing a non-Food and Drug Administration approved drug
88 therapy to counteract a chemical abortion

89 (e) Any licensed medical professional that administers, or causes to be administered, a
90 test for any disability in the fetus, when such tests account for the presence or presumed presence
91 of a disability or diagnosis in a fetus including, but not limited to, chromosomal disorders or
92 morphological malformations occurring as the result of atypical gene expressions then the
93 licensed medical professional or the designee shall provide the patient with educational
94 information made available by the bureau as provided in this section if the test result confirms the
95 presence of a disability.

96 (f) Any licensed medical professional that administers, or causes to be administered, a test
97 or ultrasound indicating that the fetus is nonviable as defined in §16-2R-2 of this code, the female
98 is informed, by telephone or in person, by the licensed medical professional or the licensed
99 medical professional's agent:

100 (1) That perinatal hospital and hospice services are available;

101 (2) This service is an alternative to abortion;

102 (3) That she has the right to review the printed materials described in §16-2R-7 of this
103 code;

104 (4) That these materials are available on a state sponsored website, and

105 (5) What the website address is where she can access this information.

106 If a physical examination, tests or the availability of other information to the licensed
107 medical professional or a designee to whom the responsibility has been delegated by the licensed
108 medical professional subsequently indicate, in the medical judgment of the licensed medical
109 professional or a designee to whom the responsibility has been delegated by the licensed medical
110 professional, a revision of the information previously supplied to the patient, that revised
111 information may be communicated to the patient at any time before the performance of the
112 abortion procedure.

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

§16-2R-7. ~~Licensure action~~ Printed information.

1 ~~A licensed medical professional who knowingly and willfully performs, induces, or attempts~~
2 ~~to perform or induce an abortion, with the intent to violate the provisions of §16-2R-3 of this code,~~
3 ~~is subject to disciplinary action by his or her applicable licensing board. If the licensing board finds~~
4 ~~that the licensed medical professional has knowingly and willfully performed, induced, or~~
5 ~~attempted to perform or induce an abortion, with the intent to violate the provisions of §16-2R-3 of~~
6 ~~this code, the licensing board shall revoke medical professional's license.~~

7 (a) Within 90 days of the effective date of this article, upon its reenactment during the 2024
8 Regular Session, the Secretary of the Department of Health and Human Resources shall cause to
9 be published, in English and in each language which is the primary language of two percent or
10 more of the state's population, as determined by the most recent decennial census performed by
11 the U.S. census bureau, and shall cause to be available on the website provided in §16-2R-8 of

12 this code the following printed materials in such a way as to ensure that the information is easily
13 comprehensible:

14 (1) Geographically indexed materials designed to inform the reader of public and private
15 agencies and services available to assist a female through pregnancy, upon childbirth and while
16 the child is dependent, including adoption agencies, which shall include a comprehensive list of
17 the agencies available, a description of the services they offer and a description of the manner,
18 including telephone numbers. At the option of the Secretary of Health and Human Resources, a A
19 24-hour-a-day telephone number may be established with the number being published in such a
20 way as to maximize public awareness of its existence which may be called to obtain a list and
21 description of agencies in the locality of the caller and of the services they offer;

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

34 (3) Materials designed to inform the female of the range of possibilities regarding the
35 effects and risks of a mifepristone chemical abortion or an attempt to counteract it and information
36 on and assistance with the resources that may be available.

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

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

§16-2R-8. Protection of aborted fetuses born alive Internet website.

1 ~~(a) Whenever a licensed medical professional performs or induces, or attempts to perform~~
2 ~~or induce an abortion and the child is born alive, the licensed medical professional shall:~~

3 ~~(1) Exercise the same degree of reasonable medical judgment to preserve the life and~~
4 ~~health of the child in the same manner as the licensed medical professional would render to any~~
5 ~~child alive at birth of the same gestational age;~~

6 ~~(2) Ensure that the child is immediately transported and admitted to an appropriate medical~~
7 ~~facility.~~

8 ~~(b) Any licensed medical professional who knowingly and willfully violates subsection (a) of~~
9 ~~this section shall be considered to have breached the standard of care owed to patients and is~~
10 ~~subject to discipline from the appropriate licensure board for such conduct, including but not~~
11 ~~limited to loss of professional license to practice.~~

12 ~~(c) Any person, not subject to subsection (a) of this section, who knowingly and willfully~~
13 ~~violates subsection (a) of this section is guilty of the unauthorized practice of medicine in violation~~
14 ~~of §30-3-13 of this code and, upon conviction thereof, is subject to the penalties contained in that~~
15 ~~section: *Provided*, That the provisions of this subsection (c) enacted during the third extraordinary~~
16 ~~session of the Legislature, 2022, shall be effective 90 days from passage.~~

17 ~~(d) In addition to the penalties referenced in this section, a patient may seek any remedy~~
18 ~~otherwise available to the patient by applicable law.~~

19 ~~(e) This section shall not be construed to subject any patient upon whom an abortion is~~
20 ~~performed or induced or attempted to be performed or induced to a criminal penalty for any~~
21 ~~violation of this section as a principal, accessory or accomplice, conspirator, or aider and abettor.~~

22 (a) Within 90 days of the effective date of this article upon the reenactment of this article
23 during the 2024 Regular Session, the secretary of the Department of Health and Human
24 Resources shall develop and maintain a stable Internet website to provide the information
25 required to be provided pursuant to the provisions of §16-2R-7 of this code. No information
26 regarding persons visiting the website may be collected or maintained. The secretary of the
27 Department of Health and Human Resources shall monitor the website on a daily basis to prevent
28 and correct tampering.

29 (b) The Bureau for Public Health shall make the following available through the bureau's
30 publicly accessible internet website:

31 (1) Up-to-date evidence-based information about any in-utero disability or diagnosis that
32 has been peer reviewed by medical experts and any national disability rights organizations. The
33 information provided shall include the following:

34 (A) Physical, developmental, educational, and psychological outcomes;

35 (B) Life expectancy;

36 (C) Clinical course;

37 (D) Intellectual and functional development;

38 (E) Treatment options; and

39 (F) Any other information the bureau deems necessary.

40 (G) Contact information regarding first call programs and support services, including the
41 following:

42 (i) Information hotlines specific to any in-utero fetal disabilities or conditions;

- 43 (ii) Relevant resources centers or clearinghouses;
- 44 (iii) Information about adoption specific to disabilities;
- 45 (iv) National and local disability rights organizations; and
- 46 (v) Education and support programs.
- 47 (H) Information regarding perinatal hospice and palliative care as provided in section §16-
- 48 2R-6(f).

49 (c) The information provided in accordance with this section shall conform to the applicable
 50 standard or standards provided in the Enhanced National Standards for Culturally and
 51 Linguistically Appropriate Services in Health and Health Care as adopted by the United States
 52 Department of Health and Human Resources and published in the Federal Register on September
 53 24, 2013.

- 54 (d) The website:
- 55 (1) Must use enhanced, user-friendly search capabilities to ensure that the information
- 56 described in subsection seven of this article is easily accessible;
- 57 (2) Must use searchable terms by keywords and phrases, specifically to ensure that
- 58 entering the terms "abortion," "abortion pill reversal," "disability," "fetal abnormality," and "non-
- 59 medically viable fetus" yields the contents found in subsection seven of this article.
- 60 (3) Must ensure that the information set forth in subsection seven of this article is printable.
- 61 (4) Must give clear prominent instructions on how to receive the information in printed form;
- 62 and
- 63 (5) Must be accessible to the public without requiring registration or use of a username, a
- 64 password, or another user identification.

§16-2R-9. Severability Informed consent procedure in case of medical emergency.

1 Severability as provided in ~~§2-2-10(b)(7)~~ of this code is applicable to this article: *Provided,*
 2 That if this entire article is judicially determined to be unconstitutional, then the provisions of §16-
 3 2F-1 *et seq.*, §16-2I-1 *et seq.*, 16-2M-1 *et seq.*, §16-2O-1, §16-2P-1, §16-2Q-1, and §33-42-8 of

4 ~~this code shall become immediately effective: *Provided, however,* That if a provision or provisions~~
 5 ~~of §16-2R-1 *et seq.* of this code are judicially determined to be unconstitutional, then the~~
 6 ~~provisions of §16-2F-9, §16-2I-9, §16-2M-7, §16-2O-1(e), §16-2P-1(d), §16-2Q-1(m), and §33-42-~~
 7 ~~8(d) of this code are not effective.~~

8 When a medical emergency as defined in §16-2R-2 of this code compels the performance
 9 of an abortion in compliance with the provisions set forth in §16-2R-3 of this code, the licensed
 10 medical professional or designee shall inform the female, prior to the abortion if possible, of the
 11 medical indications supporting the condition or circumstance that an abortion is necessary to avert
 12 her death or that a delay will create serious risk of substantial and irreversible physical impairment
 13 of a major bodily function.

§16-2R-10. Reporting by licensed medical professionals regarding abortion.

1 Any abortion performed or induced in this state is subject to the reporting requirements of
 2 §16-5-22 of this code.

§16-2R-11. Licensure action.

1 A licensed medical professional who knowingly and willfully performs, induces, or attempts
 2 to perform or induce an abortion, with the intent to violate the provisions of §16-2R-3 of this code,
 3 is subject to disciplinary action by his or her applicable licensing board. If the licensing board finds
 4 that the licensed medical professional has knowingly and willfully performed, induced, or
 5 attempted to perform or induce an abortion, with the intent to violate the provisions of §16-2R-3 of
 6 this code, the licensing board shall revoke medical professional's license.

§16-2R-12. Protection of aborted fetuses born alive.

1 (a) Whenever a licensed medical professional performs or induces, or attempts to perform
 2 or induce an abortion and the child is born alive, the licensed medical professional shall:

3 (1) Exercise the same degree of reasonable medical judgment to preserve the life and
 4 health of the child in the same manner as the licensed medical professional would render to any
 5 child alive at birth of the same gestational age;

6 (2) Ensure that the child is immediately transported and admitted to an appropriate medical
7 facility.

8 (b) Any licensed medical professional who knowingly and willfully violates subsection (a) of
9 this section shall be considered to have breached the standard of care owed to patients and is
10 subject to discipline from the appropriate licensure board for such conduct, including but not
11 limited to loss of professional license to practice.

12 (c) Any person, not subject to subsection (a) of this section, who knowingly and willfully
13 violates subsection (a) of this section is guilty of the unauthorized practice of medicine in violation
14 of §30-3-13 of this code and, upon conviction thereof, is subject to the penalties contained in that
15 section: *Provided*, That the provisions of this subsection (c) enacted during the regular session of
16 the Legislature, 2024, shall be effective 90 days from passage.

17 (d) In addition to the penalties referenced in this section, a patient may seek any remedy
18 otherwise available to the patient by applicable law.

19 (e) This section shall not be construed to subject any patient upon whom an abortion is
20 performed or induced or attempted to be performed or induced to a criminal penalty for any
21 violation of this section as a principal, accessory or accomplice, conspirator, or aider and abettor.

§16-2R-13.

Severability.

1 Severability as provided in §2-2-10(b)(7) of this code is applicable to this article: *Provided*,
2 That if this entire article is judicially determined to be unconstitutional, then the provisions of §16-
3 2F-1 *et seq.*, §16-2I-1 *et seq.*, 16-2M-1 *et seq.*, §16-2O-1, §16-2P-1, §16-2Q-1, and §33-42-8 of
4 this code shall become immediately effective: *Provided, however*, That if a provision or provisions
5 of §16-2R-1 *et seq.* of this code are judicially determined to be unconstitutional, then the
6 provisions of §16-2F-9, §16-2I-9, §16-2M-7, §16-2O-1(e), §16-2P-1(d), §16-2Q-1(m), and §33-42-
7 8(d) of this code are not effective.

NOTE: The purpose of this bill is to modify the Unborn Child Protection act. The bill

provides for definitions. The bill creates a process of informed consent. The bill provides for printed information. The bill provides for the creation of an Internet website. The bill provides for an informed consent procedure in case of medical emergency. The bill provides for reporting. The bill provides for licensure action. The bill provides for protection of aborted fetuses born alive. Finally, the bill provides for severability.

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