

1 **H. B. 2289**

2
3 (By Delegate Ashley)

4 [Introduced January 12, 2011; referred to the
5 Committee on Health and Human Resources then the
6 Judiciary.]

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10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §16-2L-1, §16-2L-2,
12 §16-2L-3, §16-2L-4 and §16-2L-5, all relating to creating the
13 Abortion Complication Reporting Act; requiring physicians to
14 file regular reports with the Department of Health and Human
15 Resources regarding patients who require medical treatment as
16 a result of an abortion; and providing criminal penalties for
17 violation.

18 *Be it enacted by the Legislature of West Virginia:*

19 That the Code of West Virginia, 1931, as amended, be amended
20 by adding thereto a new article, designated §16-2L-1, §16-2L-2,
21 §16-2L-3, §16-2L-4 and §16-2L-5, all to read as follows:

22 **ARTICLE 2L. ABORTION COMPLICATION REPORTING ACT.**

23 **§16-2L-1. Short title.**

1 This article shall be known and may be cited as the Abortion
2 Complication Reporting Act.

3 **§16-2L-2. Definitions.**

4 As used in this article:

5 (1) "Department" means the state Department of Health and
6 Human Resources.

7 (2) "Medical treatment" means, but is not limited to,
8 hospitalization, laboratory tests, surgery or prescription of
9 drugs.

10 **§16-2L-3. Physician to file report.**

11 (a) A physician shall file a written report with the state
12 Department of Health and Human Resources regarding each patient who
13 comes under the physician's professional care and requires medical
14 treatment or suffers death that the attending physician has a
15 reasonable basis to believe is a primary, secondary or tertiary
16 result of an induced abortion.

17 (b) These reports shall be submitted within thirty days of
18 the discharge or death of the patient treated for the complication.

19 (c) The department shall summarize aggregate data from the
20 reports required under this section for purposes of inclusion into
21 the annual vital statistics report.

22 (d) The department shall develop and distribute or make
23 available online in a downloadable format a standardized form for
24 the report required under this section.

1 (e) The department shall communicate this reporting
2 requirement to all medical professional organizations, licensed
3 physicians, hospitals, emergency rooms, abortion facilities and
4 ambulatory surgical facilities operating in the state.

5 (f) The department shall destroy each individual report
6 required by this section and each copy of the report after
7 retaining the report for five years after the date the report is
8 received.

9 (g) The report required under this section may not contain the
10 name of the woman, common identifiers such as her social security
11 number or motor vehicle operator's license number or other
12 information or identifiers that would make it possible to identify
13 in any manner or under any circumstances an individual who has
14 obtained or seeks to obtain an abortion. A state agency may not
15 compare data in an electronic or other information system file with
16 data in another electronic or other information system that would
17 result in identifying in any manner or under any circumstances an
18 individual obtaining or seeking to obtain an abortion. Statistical
19 information that may reveal the identity of a woman obtaining or
20 seeking to obtain an abortion may not be maintained.

21 (h) The department or an employee of the department may not
22 disclose to a person or entity outside the department the reports
23 or the contents of the reports required under this section in a
24 manner or fashion as to permit the person or entity to whom the

1 report is disclosed to identify in any way the person who is the
2 subject of the report.

3 (i) Any person who discloses confidential identifying
4 information in violation of this section is guilty of a felony and,
5 upon conviction thereof, shall be fined not more than \$5,000 or
6 imprisoned in a state correctional facility for not more than three
7 years, or both fined and imprisoned.

8 **§16-2L-4. Information to be included in report.**

9 (a) Each report of medical treatment following abortion
10 required under section four of this article shall contain the
11 following information:

12 (1) The age and race of the patient;

13 (2) The characteristics of the patient, including residency
14 status, county of residence, marital status, education, number of
15 previous pregnancies, number of stillbirths, number of living
16 children and number of previous abortions;

17 (3) The date the abortion was performed and the method used if
18 known;

19 (4) The type of facility where the abortion was performed;

20 (5) The condition of the patient that led to treatment,
21 including, but not limited to, pelvic infection, hemorrhage, damage
22 to pelvic organs, renal failure, metabolic disorder, shock,
23 embolism, coma or death; and

24 (6) The amount billed to cover the treatment of the

1 complication, including whether the treatment was billed to
2 Medicaid, insurance, private pay or other method. This should
3 include charges for physician, hospital, emergency room,
4 prescription or other drugs, laboratory tests and any other costs
5 for the treatment rendered.

6 (b) Nothing in this article may be construed as an instruction
7 to discontinue collecting data currently being collected.

8 **§16-2L-5. Criminal penalties.**

9 Willful violation of the provisions of this article is a
10 misdemeanor and, punishable by a fine of \$100, except that
11 disclosure of confidential identifying information is a felony,
12 punishable by imprisonment in a state correctional facility for not
13 more than three years, or a fine of not more than \$5,000, or both
14 fine and imprisonment. A physician or hospital, its officers,
15 employees or medical and nursing personnel practicing in the
16 hospital is not civilly liable for violation of the provisions of
17 this article, except to the extent of liability for actual damages
18 in a civil action for willful or reckless and wanton acts or
19 omissions constituting that violation. However, that liability is
20 subject to any immunities or limitations of liability or damages
21 provided by law.

NOTE: The purpose of this bill is to require physicians to file regular reports with the Department of Health and Human Resources, regarding patients who require medical treatment as a

result of an abortion; providing criminal penalties for violation.

This article is new; therefore, it has been completely underscored.