

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2371

2015 Carryover

(BY DELEGATES P. SMITH, PERRY, HARTMAN, MOYE,
RODIGHERO, FRICH, COWLES, SOBONYA, J. NELSON,
HAMRICK AND SHOTT)

[Introduced January 13, 2016; referred to the
Committee on the Judiciary.]

1 A BILL to amend and reenact §16-2F-1 and §16-2F-4 of the Code of West Virginia, 1931, as
2 amended, all relating to abortions performed on unemancipated minors; stating the state's
3 public policy to protect unborn life as well as the intent of the Legislature to protect the
4 rights of the minor mother; and providing for the appointment of a guardian ad litem to
5 represent the interests of the unborn child during certain proceedings and payment for
6 that service.

Be it enacted by the Legislature of West Virginia:

1 That §16-2F-1 and §16-2F-4 of the Code of West Virginia, 1931, as amended, be amended
2 and reenacted, 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.
6 S. 398 (1981), the United States supreme court clearly relies on physician's commitment to
7 consider all factors, physical and otherwise, before performing abortions on minors; that parents
8 ordinarily possess information essential to a physician's exercise of his or her best medical
9 judgment concerning their child; and that parents who are aware that their minor daughter has
10 had an abortion may better ensure that the minor receives adequate medical attention after her
11 abortion. The Legislature further finds that parental consultation regarding abortion is usually
12 desirable and in the best interests of the minor.

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

18 It is, therefore, the intent of the Legislature to further these interests by enacting this
19 parental notice provision.

20 The Legislature further finds the public policy of the State of West Virginia is to respect
21 life and provide safeguards to protect life in the criminal, health and other laws of the State of
22 West Virginia; that in respecting and protecting life, there is included the unborn life of a child
23 whose life may be subject to termination before birth by abortion and that when the mother of the
24 unborn life is a minor who seeks an abortion through the judicial by-pass procedure, it is the
25 interest of the state to not only establish and protect the rights of the minor mother, but also to
26 protect the state's public policy to protect unborn life; the protection of these interests is done, in
27 part, by requiring judges to make determinations pursuant to the judicial by-pass procedure and
28 to require the judges be provided with sufficient evidence and information upon which they may
29 make informed and proper decisions.

30 West Virginia judges are called upon to make decisions not only respecting the lives of
31 born persons, but also respecting the lives of unborn persons, such as in judicial by-pass cases
32 for minor abortions; it is always the Legislature's intent to provide guidance to the courts on how
33 life may be best protected.

34 It is not the intent of the Legislature to place an undue burden on the minor's otherwise
35 legal right to make a decision on whether to obtain an abortion on her own of her unborn child;
36 the Legislature's intent is to provide guidance and assistance to minors who find themselves in

37 the unfortunate position of having to make such decisions and to courts who must act in the place
38 of parents in providing an alternative by-pass mode for decision making.

§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; appointment of guardian ad litem for unborn child.

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

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

12 No such petition ~~shall~~ may be dismissed nor ~~shall~~ may any hearing thereon be refused
13 because of 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 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~~ The clerks shall see that a
17 sufficient number of ~~such~~ suggested form petitions and instructions are available in the clerk's

18 office for the 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~~ are confidential and the court shall
20 conduct all ~~such~~ proceedings in camera. The court shall inform the minor petitioner of her right
21 to be represented by counsel and that if she is without the requisite funds to retain the services
22 of an attorney, that the court will appoint an attorney to represent her interest in the matter. If
23 the minor petitioner desires the services of an attorney, an attorney shall be appointed to
24 represent ~~such~~ the minor petitioner, if she advises the court under oath or affidavit that she is
25 financially unable to retain counsel. Any attorney appointed to represent such minor petitioner
26 shall be appointed and paid for her services pursuant to the provisions of article twenty-one,
27 chapter twenty-nine of this code: *Provided, That the pay to any such attorney pursuant to such*
28 ~~appointment shall~~ may not exceed the sum of \$100.

29 (e) The court shall conduct a hearing upon the petition without delay, but in no event ~~shall~~
30 may the delay exceed the next succeeding judicial day, and the court shall render its decision
31 immediately upon its submission and, in any event, an order reflecting the findings of fact and
32 conclusions of law reached by the court and its judgement shall be endorsed by the judge thereof
33 not later than twenty-four hours following such submission and shall be forthwith entered of record
34 by the clerk of the court. All testimony, documents and other evidence presented to the court,
35 as well as the petition and any orders entered thereon and all records of whatsoever nature and
36 kind relating to the matter shall be sealed by the clerk and ~~shall~~ may not be opened to any person
37 except upon order of the court and, then, only upon good cause being shown therefor. A
38 separate order book for the purposes of this article shall be maintained by such clerk and shall
39 likewise be sealed and not open to inspection by any person save upon order of the court for
40 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 minor petitioner is mature and well informed sufficiently to make the decision
44 to proceed with the abortion independently and without the notification or involvement of her
45 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~~ refuses 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~~ that court then be in vacation,
52 and ~~such~~ the court or justice if ~~deemed~~ considered proper, may thereupon order the waiver of
53 notification otherwise required by section three of this article. The Supreme Court of Appeals or
54 justice thereof shall hear and decide the matter without delay and shall enter such orders as such
55 court or justice may 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~~ these courts ~~be then~~ is in vacation, shall order a waiver of the notification
58 required by section three of this article, any physician to whom a certified copy of ~~said~~ order shall
59 be presented may proceed to perform the abortion to the same extent as if such physician were
60 in 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 (i) No filing fees may be required of any minor who avails herself of any of the procedures
65 provided by this section.

66 Notwithstanding any other provision of this code to the contrary, the court may appoint
67 a guardian ad litem for the interests of the unborn child of the petitioner who shall also have the
68 same rights and obligations of participation in the proceeding as given to the Attorney General.
69 The guardian ad litem shall further have the responsibility of assisting and advising the court so
70 the court may make an informed decision and do substantial justice. The guardian ad litem shall
71 be appointed and paid for services pursuant to the provisions of article twenty-one, chapter
72 twenty-nine of this code.

NOTE: The purpose of this bill is to state the intent of the Legislature to protect unborn life as well as the state's public policy to protect the rights of the minor mother. The bill also provides for the appointment of a guardian ad litem to represent the interests of the unborn child during certain proceedings.

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