

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 2982**

BY DELEGATES KESSINGER, SYPOLT, HOLSTEIN, BRIDGES,  
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[Passed April 10, 2021; in effect ninety days from passage.]



1 AN ACT to amend and reenact §16-2I-1, §16-2I-2, and §16-2I-3 of the Code of West Virginia,  
2 1931, as amended, all relating to the informed consent; requiring that information about  
3 the process of chemical abortion be provided to a woman when a chemical abortion  
4 process is initiated and second drug is contemplated to be used at a later time; defining  
5 terms; specifying that the female be informed of the range of possibilities regarding the  
6 effects of a mifepristone chemical abortion; specifying that the female shall certify, as part  
7 of informed consent, that she has been informed about the possibilities regarding a  
8 chemical abortion; providing for liability protection for a physician acting in conformity with  
9 the informed consent provisions of this section; providing liability protection to a physician  
10 prescribing a non-Food and Drug Administration approved drug therapy to counteract a  
11 chemical abortion; and dictating minimum standards for printed materials.

*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 "Abortion" means the same as that term is defined in §16-2F-2 of this code.

4 "Attempt to perform an abortion" means the same as that term is defined in §16-2M-2 of  
5 this code.

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

8 "Licensed medical professional" means the same as that term is defined in §16-2P-1 of  
9 this code.

10 "Medical emergency" means any condition which, in the reasonable medical judgment of  
11 the patient's physician, so complicates the medical condition of a pregnant female as to  
12 necessitate the immediate termination of her pregnancy to avert her death or for which a delay

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

18 “Physician” means the same as that term is defined in §16-2M-2 of this code.

19 “Probable gestational age of the embryo or fetus” means what, in the judgment of the  
20 physician, will with reasonable probability be the gestational age of the embryo or fetus at the  
21 time the abortion is planned to be performed.

22 “Reasonable medical judgement” means the same as that term is defined in §16-2M-2 of  
23 this code.

24 “Stable Internet website” means a website that, to the extent reasonably practicable, is  
25 safeguarded from having its content altered by another other than the Department of Health and  
26 Human Resources.

**§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  
6 who 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  
15 be 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,  
28 but 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  
43 to be provided may be based on facts supplied by the female to the physician or other licensed  
44 health care professional to whom the responsibility has been delegated by the physician and  
45 whatever other relevant information is reasonably available to the physician or other licensed  
46 health care professional to whom the responsibility has been delegated by the physician. It may  
47 not be provided by a tape recording, but must be provided during a consultation in which the  
48 physician or licensed health care professional to whom the responsibility has been delegated by  
49 the physician is able to ask questions of the female and the female is able to ask questions of the  
50 physician or the licensed health care professional to whom the responsibility has been delegated  
51 by the 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  
56 the information previously supplied to the patient, that revised information may be communicated  
57 to 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  
59 a 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 §16-2I-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  
70 prior to the abortion procedure that is available pursuant to §16-2I-3 of this code, and that the  
71 form to be presented will inform her of the opportunity to view the ultrasound image and her right  
72 to view or 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 undergo any ultrasound imaging procedure  
85 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 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  
93 of 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  
96 of subsections (b) and (c) of this section.

**§16-21-3. 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 in §16-21-4 of this code the following printed materials in such  
6 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;

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 range of possibilities regarding the  
28 effects and risks of a mifepristone chemical abortion or an attempt to counteract it and information  
29 on and assistance with the resources that may be available.

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

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



The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within ..... this the.....  
day of ....., 2021.

.....  
*Governor*