

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 2982**

BY DELEGATES KESSINGER, SYPOLT, HOLSTEIN,  
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[Introduced March 8, 2021; referred to the Committee  
on Health and Human Resources then the Judiciary]



1 A BILL to amend and reenact §16-2I-1, §16-2I-2, and §16-2I-3 of the Code of West Virginia, 1931,  
2 as amended, all relating to the Second Chance at Life Act; requiring that information about  
3 the process of chemical abortion be provided to a woman prior to prescribing  
4 pharmaceuticals for, or administering, a chemical abortion except in certain emergency  
5 circumstances; updating definitions; specifying that the woman be informed of the  
6 possibility of reversal of a chemical abortion if undertaken within a critical time period;  
7 dictating minimum standards for printed materials; and requiring documentation of the  
8 procedures required hereby.

*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 ~~(a) “Abortion” means the use or prescription of any instrument, medicine, drug or any other~~  
4 ~~substance or device intentionally to terminate the pregnancy of a female known to be pregnant~~  
5 ~~with an intention other than to increase the probability of a live birth, to preserve the life or health~~  
6 ~~of the child after live birth or to remove a dead embryo or fetus.~~

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

8 ~~(b) “Attempt to perform an abortion” means an act, or an omission of a statutorily required~~  
9 ~~act, that, under the circumstances as the actor believes them to be, constitutes a substantial step~~  
10 ~~in a course of conduct planned to culminate in the performance of an abortion in West Virginia in~~  
11 ~~violation of this article. means the same as that term is defined in §16-2M-2 of this code.~~

12 “Chemical abortion” means the use or prescription of an abortion-inducing drug dispensed  
13 with the intent to cause the death of the unborn child.

14 “Licensed medical professional” means the same as that term is defined in §16-2P-1 of  
15 this code.

16           ~~(e) “Medical emergency” means any condition which, on the basis of a physician’s good-~~  
17 ~~faith clinical judgment, so complicates the medical condition of a pregnant female as to~~  
18 ~~necessitate the immediate termination of her pregnancy to avert her death or for which a delay~~  
19 ~~will create serious risk of substantial and irreversible impairment of a major bodily function.~~

20           means the same as that term is defined in §16-2M-2 of this code.

21           ~~(d) “Physician” means any medical or osteopathic doctor licensed to practice medicine in~~  
22 ~~this state.~~ means the same as that term is defined in §16-2M-2 of this code.

23           (e) “Probable gestational age of the embryo or fetus” means what, in the judgment of the  
24 physician, will with reasonable probability be the gestational age of the embryo or fetus at the  
25 time the abortion is planned to be performed.

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

28           (f) “Stable Internet website” means a website that, to the extent reasonably practicable, is  
29 safeguarded from having its content altered ~~other~~ by another than ~~by~~ the Department of Health  
30 and Human Resources.

**§16-2I-2. Informed consent.**

1           ~~No~~ 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 ~~health care~~ medical professional to whom the responsibility has been delegated by the  
6 physician 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; and

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 and then  
14 misoprostol the female shall be informed that:

15 (A) It may be possible to stop the intended effects of a chemical abortion utilizing  
16 mifepristone if the female changes her mind, but that time is of the essence; and

17 (B) After the first drug involved in the two-drug process is dispensed in a chemical abortion  
18 utilizing mifepristone, the physician or an agent of the physician shall provide written medical  
19 discharge instructions to the pregnant female which shall include the statement:

20 “If you change your mind, it may be possible to avoid, cease, or even to stop the intended  
21 effects of a chemical abortion utilizing mifepristone, if the second pill has not been taken. Please  
22 consult with a health care provider.”

23 The information required by this subsection may be provided by telephone without  
24 conducting a physical examination or tests of the patient, in which case the information required  
25 to be provided may be based on facts supplied by the female to the physician or other licensed  
26 health care professional to whom the responsibility has been delegated by the physician and  
27 whatever other relevant information is reasonably available to the physician or other licensed  
28 health care professional to whom the responsibility has been delegated by the physician. It may  
29 not be provided by a tape recording, but must be provided during a consultation in which the  
30 physician or licensed health care professional to whom the responsibility has been delegated by  
31 the physician is able to ask questions of the female and the female is able to ask questions of the  
32 physician or the licensed health care professional to whom the responsibility has been delegated  
33 by the physician.

34 If a physical examination, tests or the availability of other information to the physician or  
35 other licensed health care professional to whom the responsibility has been delegated by the

36 physician subsequently indicate, in the medical judgment of the physician or the licensed health  
37 care professional to whom the responsibility has been delegated by the physician, a revision of  
38 the information previously supplied to the patient, that revised information may be communicated  
39 to the patient at any time before the performance of the abortion procedure.

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

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

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

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

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

51             (4) That the female will be presented with a form which she will be required to execute  
52 prior to the abortion procedure that is available pursuant to §16-2I-3 of this code, and that the  
53 form to be presented will inform her of the opportunity to view the ultrasound image and her right  
54 to view or decline to view the ultrasound image, if an ultrasound is performed.

55         The physician or an agent of the physician shall orally inform the female that the materials  
56 have been provided by the State of West Virginia and that they describe the embryo or fetus and  
57 list agencies and entities which offer alternatives to abortion.

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

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

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

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

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

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

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

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

79           (d) The female shall certify in writing, before the abortion, that the information described  
80 in §16-21-2(a)(4) has been provided to her and that she has been notified about the possibility of  
81 stopping the intended effects of a chemical abortion.

**§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 2% or more of the state's population, as determined by the most recent  
4 decennial census performed by the U.S. census bureau, and shall cause to be available on the

5 website provided for in ~~section four of this article~~ §16-21-4 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; ~~and~~

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 possibility of stopping the effects of a  
28 chemical abortion utilizing mifepristone, if she changes her mind, and information on and  
29 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.

NOTE: The purpose of this bill is to require that information about the process of chemical abortion be provided to a woman prior to prescribing pharmaceuticals for, or administering, a chemical abortion except in certain emergency circumstances.

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