

WEST VIRGINIA LEGISLATURE
2022 THIRD EXTRAORDINARY SESSION

ENROLLED

House Bill 302

BY DELEGATES JEFFRIES, JENNINGS, DEAN, HONAKER,
G. WARD, ROWAN, WORRELL, MALLOW, FORSHT, AND
MILLER

[Passed September 13, 2022; in effect from passage.]

1 AN ACT to amend and reenact §9-2-11 of the Code of West Virginia, 1931, as amended; to
2 amend and reenact §16-2F-9 of said code; to amend and reenact §16-2I-9 of said code;
3 to amend and reenact §16-2M-7 of said code; to amend and reenact §16-2O-1 of said
4 code; to amend and reenact §16-2P-1 of said code; to amend and reenact §16-2Q-1 of
5 said code; to amend said code by adding thereto a new article, designated §16-2R-1, §16-
6 2R-2, §16-2R-3, §16-2R-4, §16-2R-5, 16-2R-6, §16-2R-7, §16-2R-8, and §16-2R-9; to
7 amend and reenact §16-5-22 of said code; to amend and reenact §30-1-26 of said code;
8 to amend and reenact §33-42-8 of said code; and to amend and reenact §61-2-8 of said
9 code, all relating to abortion; clarifying that Medicaid funds may not be used to pay for
10 abortions not authorized by statute; declaring certain provisions of abortion-related code
11 are of no force or effect unless any provision of the Unborn Child Protection Act is judicially
12 determined to be unconstitutional; creating the Unborn Child Protection Act; setting forth
13 legislative findings; defining terms; clarifying effect of definitions in Unborn Child Protection
14 Act; prohibiting abortions generally; providing circumstances in which an abortion may be
15 performed or induced including certain medical conditions, medical emergency, rape and
16 incest; establishing predicate requirements before abortion based on rape or incest may
17 be performed; requiring reporting of sexual assault or incest against a minor to West
18 Virginia State Police Child Abuse and Neglect Investigations Unit; prohibiting partial birth
19 abortion procedure; limiting where surgical abortions may be performed; requiring that a
20 licensed medical professional have hospital privileges to perform an abortion; clarifying
21 what is not considered an abortion; clarifying that contraceptives are not prohibited; setting
22 forth notice requirements when an abortion is to be performed on an unemancipated
23 minor; authorizing judicially approved waiver of notice to parent, guardian, or custodian;
24 requesting Supreme Court of Appeals to prepare waiver related forms; authorizing
25 appointment of counsel for unemancipated minor and providing for confidentiality of
26 proceedings; setting forth criteria for waiver of notice; authorizing appeal to Supreme Court

27 of Appeals of denial of waiver of authorization for unemancipated minor to proceed with
28 abortion without notification; providing for waiver of filing fees in proceedings seeking
29 waiver of notice to proceed with abortion on unemancipated minor; clarifying that any
30 abortion performed or induced in this state shall comply with vital statistics reporting
31 requirements; declaring that a licensed medical professional who performs an
32 unauthorized abortion is subject to discipline by applicable licensure board; requiring
33 licensed medical professional to take certain actions with respect to child born alive during
34 abortion; declaring that a licensed medical professional who knowingly and willfully
35 violates requirements regarding a child born alive during an abortion is subject to discipline
36 by applicable licensure board; declaring that a person other than a licensed medical
37 professional who knowingly and willfully violates requirements regarding a child born alive
38 during an abortion is guilty of offense of unauthorized practice of medicine and
39 establishing penalties therefor; providing that if any provision of the Unborn Child
40 Protection Act is judicially determined to be unconstitutional, the Unborn Child Protection
41 Act is of no force and effect and provisions relating to parental notification of abortions
42 performed on unemancipated minors, Women's Right to Know Act, The Pain-Capable
43 Unborn Child Protection Act, The Unborn Child Protection from Dismemberment Abortion
44 Act, Born-Alive Abortion Survivors Protection Act, Unique Child With a Disability Protection
45 and Education Act, and Women's Access to Health Care Act become immediately
46 effective; requiring reporting of all abortions occurring in this state to the section of vital
47 registration of the Department of Health and Human Resources and setting forth
48 information to be collected; requiring the Department of Health and Human Resources
49 provide routine reports detailing abortions performed to certain licensing boards and the
50 Legislative Oversight Commission on Health and Human Resources Accountability;
51 requiring proposed legislative rule regulating telehealth practice by a telehealth
52 practitioner to include a prohibition on prescribing or dispensing an abortifacient via

53 telehealth; establishing the criminal offense of performing or inducing, or attempting to
54 perform or induce, an illegal abortion and creating penalties therefor.

Be it enacted by the Legislature of West Virginia:

CHAPTER 9. HUMAN SERVICES.

ARTICLE 2. COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

§9-2-11. Limitation on use of funds.

1 No funds from the Medicaid program accounts may be used to pay for the performance of
2 an abortion unless the abortion is permitted by §16-2R-3 of this code.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 2F. PARENTAL NOTIFICATION OF ABORTIONS PERFORMED ON UNEMANCIPATED MINORS.

§16-2F-9. Severability.

1 Effective from the reenactment of this section during the third extraordinary session of the
2 Legislature, 2022, this article is of no force or effect unless any provision of §16-2R-1 *et seq.* of
3 this code is judicially determined to be unconstitutional.

ARTICLE 2I. WOMEN'S RIGHT TO KNOW ACT.

§16-2I-9. Severability.

1 Effective from the reenactment of this section during the third extraordinary session of the
2 Legislature, 2022, this article is of no force or effect unless any provision of §16-2R-1 *et seq.* of
3 this code is judicially determined to be unconstitutional.

ARTICLE 2M. THE PAIN-CAPABLE UNBORN CHILD PROTECTION ACT.

§16-2M-7. Severability.

1 Effective from the reenactment of this section during the third extraordinary session of the
2 Legislature, 2022, this article is of no force or effect unless any provision of §16-2R-1 *et seq.* of
3 this code is judicially determined to be unconstitutional.

**ARTICLE 20. UNBORN CHILD PROTECTION FROM DISMEMBERMENT ABORTION
ACT.**

§16-20-1. Unborn Child Protection from Dismemberment Abortion Act.

1 (a) *Definitions.* — For purposes of this section:

2 (1) “Abortion” means the same as that term is defined in section two, article two-f, chapter
3 sixteen of this code.

4 (2) “Attempt to perform an abortion” means the same as that term is defined in section
5 two, article two-m, chapter sixteen of this code.

6 (3) “Dismemberment abortion” means, with the purpose of causing the death of an unborn
7 child, purposely to dismember a living unborn child and extract him or her one piece at a time
8 from the uterus through use of clamps, grasping forceps, tongs, scissors or similar instruments
9 that, through the convergence of two rigid levers, slice, crush or grasp a portion of the unborn
10 child’s body to cut or rip it off. The term “dismemberment abortion” includes an abortion in which
11 a dismemberment abortion is performed to cause the death of an unborn child but suction is
12 subsequently used to extract fetal parts after the death of the unborn child. The term
13 “dismemberment abortion” does not include an abortion which uses suction to dismember the
14 body of the unborn child by sucking fetal parts into a collection container, an abortion following
15 fetal demise which uses a suction curette, suction curettage or forceps to dismember the body of
16 a dead unborn child, or when forceps are used following an induced fetal demise by other
17 means.

18 (4) “Medical emergency” means the same as that term is defined in section two, article
19 two-m, chapter sixteen of this code.

20 (5) “Physician” means the same as that term is defined in section two, article two-m,
21 chapter sixteen of this code.

22 (6) “Reasonable medical judgement” means the same as that term is defined in section
23 two, article two-M, chapter sixteen of this code.

24 (7) “Woman” means a female human being whether or not she has reached the age of
25 majority.

26 (b) *Prohibition.* —

27 No person may perform, or attempt to perform, a dismemberment abortion as defined in
28 this section, unless in reasonable medical judgment the woman has a condition that, on the basis
29 of reasonable medical judgment, so complicates her medical condition as to necessitate the
30 abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible
31 physical impairment of a major bodily function, not including psychological or emotional
32 conditions. No condition may be deemed a medical emergency if based on a claim or diagnosis
33 that the woman will engage in conduct which she intends to result in her death or in substantial
34 and irreversible physical impairment of a major bodily function.

35 (c) *Enforcement.* —

36 (1) Any physician or other licensed medical practitioner who intentionally or recklessly
37 performs or induces an abortion in violation of this article is considered to have acted outside the
38 scope of practice permitted by law or otherwise in breach of the standard of care owed to patients,
39 and is subject to discipline from the applicable licensure board for that conduct, including, but not
40 limited to, loss of professional license to practice.

41 (2) Any person, not subject to subdivision (1) of this subsection, who intentionally or
42 recklessly performs or induces an abortion in violation of this article is considered to have engaged
43 in the unauthorized practice of medicine in violation of section thirteen, article three, chapter thirty
44 of this code, and, upon conviction, subject to the penalties contained in that section.

45 (3) In addition to the penalties set forth in subdivisions (1) and (2) of this section, a patient
46 may seek any remedy otherwise available to such patient by applicable law.

47 (4) No penalty may be assessed against any patient upon whom an abortion is performed
48 or induced or attempted to be performed or induced.

49 (d) *Miscellaneous Provisions.* —

50 (1) This section does not prevent an abortion by any other method for any reason
51 including rape and incest.

52 (2) Nothing in this section may be construed as creating or recognizing a right to abortion,
53 nor a right to a particular method of abortion.

54 (e) Effective from the reenactment of this section during the third extraordinary session of
55 the Legislature, 2022, this article is of no force or effect unless any provision of §16-2R-1 *et seq.*
56 of this code is judicially determined to be unconstitutional.

ARTICLE 2P. BORN-ALIVE ABORTION SURVIVORS PROTECTION ACT.

§16-2P-1. Born-Alive Abortion Survivors Protection Act.

1 (a) *Definitions.* — For purposes of this section:

2 (1) “Abortion” has the same meaning as that set forth in §16-2F-2 of this code.

3 (2) “Attempt to perform an abortion” has the same meaning as that set forth in §16-2M-2
4 of this code.

5 (3) “Born alive” means the complete expulsion or extraction from its mother of the fetus,
6 at any stage of development, who after such expulsion or extraction breathes or has a beating
7 heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of
8 whether the umbilical cord has been cut, and regardless of whether the expulsion or extraction
9 occurs as a result of natural or induced labor, cesarean section, or induced abortion.

10 (4) “Fetus” has the same meaning as that set forth in §16-2M-2 of this code.

11 (5) “Licensed Medical Professional” means a person licensed under Chapter 30 of this
12 code practicing within his or her scope of practice.

13 (6) “Physician” has the same meaning as set forth in §16-2M-2 of this code.

14 (7) "Reasonable medical judgment" has the same meaning as set forth in §16-2M-2 of this
15 code.

16 (b) *Prohibition.* —

17 (1) If a physician performs or attempts to perform an abortion that results in a child being
18 born alive the physician shall:

19 (A) Exercise the same degree of reasonable medical judgment to preserve the life and
20 health of the child as a physician would render to any other child born alive at the same gestational
21 age; and

22 (B) Ensure that the child born alive is immediately transported and admitted to a hospital.

23 (2) A person who has knowledge of a failure to comply with the requirements of this
24 subsection shall report the failure to the applicable licensing board.

25 (c) *Enforcement.* —

26 (1) Any physician or other licensed medical professional who knowingly and willingly
27 violates subsection (b) of this section is considered to have breached the standard of care owed
28 to patients, and is subject to discipline from the applicable licensure board for that conduct,
29 including, but not limited to, loss of professional license to practice.

30 (2) Any person, not subject to subdivision (1) of this subsection, who knowingly and willfully
31 violates subsection (b) of this section is guilty of the unauthorized practice of medicine in violation
32 of §30-3-13 of this code, and, upon conviction thereof, is subject to the penalties contained in that
33 section.

34 (3) In addition to the penalties set forth in this section, a patient may seek any remedy
35 otherwise available to the patient by applicable law.

36 (4) No penalty may be assessed against any patient upon whom an abortion is performed
37 or attempted to be performed.

38 (d) Effective from the reenactment of this section during the third extraordinary session of
39 the Legislature, 2022, this article is of no force or effect unless any provision of §16-2R-1 *et seq.*
40 of this code is judicially determined to be unconstitutional.

**ARTICLE 2Q. UNBORN CHILD WITH A DISABILITY PROTECTION AND EDUCATION
ACT.**

**§16-2Q-1. Abortion may not be performed because of a disability, except in a medical
emergency.**

1 (a) As used in this article:

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

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

5 "Because of a disability" means on account of the presence or presumed presence of a
6 disability or diagnosis in a fetus including, but not limited to, chromosomal disorders or
7 morphological malformations occurring as the result of atypical gene expressions.

8 "Commissioner" means the Commissioner of the Bureau for Public Health.

9 "Licensed medical professional" means a person licensed under Chapter 30 of this code
10 practicing within his or her scope of practice.

11 "Medical emergency" means the same as that term is defined in §16-2I-1 of this code.

12 "Nonmedically viable fetus" means the same as that term is defined in §16-2M-2 of this
13 code.

14 "Reasonable medical judgment" means the same as that term is defined in §16-2M-2 of
15 this code.

16 (b) Except in a medical emergency or a nonmedically viable fetus, a licensed medical
17 professional may not perform or attempt to perform or induce an abortion, unless the patient
18 acknowledges that the abortion is not being sought because of a disability. The licensed medical

19 professional shall document these facts in the patient's chart and report such with the
20 commissioner.

21 (c) Except in a medical emergency or a nonmedically viable fetus, a licensed medical
22 professional may not intentionally perform or attempt to perform or induce an abortion of a fetus,
23 if the abortion is being sought because of a disability.

24 (d) (1) If a licensed medical professional performs or induces an abortion on a fetus, the
25 licensed medical professional shall, within 15 days of the procedure, cause to be filed with the
26 commissioner, on a form supplied by the commissioner, a report containing the following
27 information:

28 (A) Date the abortion was performed;

29 (B) Specific method of abortion used;

30 (C) A statement from the patient confirming that the reason for the abortion was not
31 because of a disability;

32 (D) Probable health consequences of the abortion to the patient;

33 (E) Whether a medical emergency existed; and

34 (F) Whether the fetus was a nonmedically viable fetus.

35 (2) The licensed medical professional shall sign the form as his or her attestation under
36 oath that the information stated is true and correct to the best of his or her knowledge.

37 (3) Reports required and submitted under this section may not contain the name of the
38 patient upon whom the abortion was performed or any other information or identifiers that would
39 make it possible to identify, in any manner or under any circumstances, a woman who obtained
40 or sought to obtain an abortion.

41 (g) A licensed medical professional that administers, or causes to be administered, a test
42 for a disability or diagnosis to a fetus shall provide the patient with educational information made
43 available by the bureau as provided in this section, within a reasonable time, if the test result
44 confirms the presence of a disability.

45 (h) The Bureau for Public Health shall make the following available through the bureau's
46 publicly accessible internet website:

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

50 (A) Physical, developmental, educational, and psychosocial outcomes;

51 (B) Life expectancy;

52 (C) Clinical course;

53 (D) Intellectual and functional development;

54 (E) Treatment options; and

55 (F) Any other information the bureau deems necessary;

56 (2) Contact information regarding first call programs and support services, including the
57 following:

58 (A) Information hotlines specific to any in-utero fetal disabilities or conditions;

59 (B) Relevant resource centers or clearinghouses;

60 (C) Information about adoption specific to disabilities;

61 (D) National and local disability rights organizations; and

62 (E) Education and support programs.

63 (i) The information provided in accordance with this section shall conform to the applicable
64 standard or standards provided in the Enhanced National Standards for Culturally and
65 Linguistically Appropriate Services in Health and Health Care as adopted by the United States
66 Department of Health and Human Services and published in the Federal Register on September
67 24, 2013.

68 (j) A licensed medical professional who intentionally or recklessly performs or induces an
69 abortion in violation of this section is considered to have acted outside the scope of practice
70 permitted by law or otherwise in breach of the standard of care owed to a patient, and is subject

71 to discipline from the applicable licensure board for that conduct, including, but not limited to, loss
72 of professional license to practice.

73 (k) A person, not subject to subsection (f) of this section, who intentionally or recklessly
74 performs or induces an abortion in violation of this article is considered to have engaged in the
75 unauthorized practice of medicine in violation of §30-3-13 of this code, and upon conviction,
76 subject to the penalties contained in that section.

77 (l) A penalty may not be assessed against any patient upon whom an abortion is performed
78 or induced or attempted to be performed or induced.

79 (m) Effective from the reenactment of this section during the third extraordinary session of
80 the Legislature, 2022, this article is of no force or effect unless any provision of §16-2R-1 *et seq.*
81 of this code is judicially determined to be unconstitutional.

ARTICLE 2R. UNBORN CHILD PROTECTION ACT.

§16-2R-1. Legislative findings.

1 The Legislature finds that the State of West Virginia has a legitimate interest in protecting
2 unborn lives and prohibiting abortions in West Virginia except in the circumstances set forth in
3 this article.

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

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

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

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

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

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

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

30 "Licensed medical professional" means a person licensed under §30-3-1 *et seq.*, or §30-
31 14-1 *et seq.*, of this code.

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

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

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

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

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

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

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

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

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

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

§16-2R-3. Prohibition to perform an abortion.

1 (a) An abortion may not be performed or induced or be attempted to be performed or
2 induced unless in the reasonable medical judgment of a licensed medical professional:

3 (1) The embryo or fetus is nonviable;

4 (2) The pregnancy is ectopic; or

5 (3) A medical emergency exists.

6 (b) The prohibition set forth in subsection (a) of this section shall not apply to an adult
7 within the first 8 weeks of pregnancy if the pregnancy is the result of sexual assault, as defined in
8 §61-8B-1 *et seq.* of this code, or incest, as defined in §61-8-12 of this code, and at least 48 hours
9 prior to the abortion the patient has reported the sexual assault or incest to a law enforcement
10 agency having jurisdiction to investigate the complaint and provided the report to the licensed
11 medical professional performing the abortion.(c) The prohibition set forth in subsection (a) of this
12 section shall not apply to a minor or an incompetent or incapacitated adult within the first 14 weeks
13 of pregnancy if the pregnancy is the result of sexual assault, as defined in §61-8B-1 *et seq.* of this
14 code, or incest, as defined in §61-8-12 of this code, and at least 48 hours prior to the abortion the
15 patient has:

16 (1) A report of the sexual assault or incest has been made to law enforcement having
17 jurisdiction to investigate the complaint; or

18 (2) The patient has obtained medical treatment for the sexual assault or incest or any
19 injury related to the sexual assault or incest from a licensed medical professional or in a hospital,
20 as defined in §16-5B-1 of this code, which is licensed by the Office of Health Facility Licensure
21 and Certification of the West Virginia Department of Health and Human Resources: *Provided,*
22 That the licensed medical professional or hospital, as defined in §16-5B-1 of this code, which is
23 licensed by the Office of Health Facility Licensure and Certification of the West Virginia
24 Department of Health and Human Resources, and which performed or provided such medical
25 treatment may not perform or provide the abortion arising from such sexual assault or incest.

26 (d) In all cases where a report of sexual assault or incest against a minor is made pursuant
27 this subsection (c), the agency or person to whom the report is made shall report the sexual
28 assault or incest to the Child Abuse and Neglect Investigations Unit of the West Virginia State
29 Police within 48 hours.

30 (e) An abortion performed pursuant to this section may not use the partial birth abortion
31 procedure.

32 (f) A surgical abortion performed or induced or attempted to be performed or induced
33 pursuant to this section shall be in a hospital, as defined in §16-5B-1 of this code, which is licensed
34 by the Office of Health Facility Licensure and Certification of the West Virginia Department of
35 Health and Human Resources.

36 (g) An abortion performed or induced or attempted to be performed or induced shall be
37 performed by a licensed medical professional who has West Virginia hospital privileges.

§16-2R-4. Not considered an abortion.

1 (a) Abortion does not include:

2 (1) A miscarriage;

3 (2) An intrauterine fetal demise or stillbirth;

4 (3) The use of existing established cell lines derived from aborted human embryos or
5 fetuses;

6 (4) Medical treatment provided to a patient by a licensed medical professional that results
7 in the accidental or unintentional injury or death of an embryo or a fetus;

8 (5) In vitro fertilization;

9 (6) Human fetal tissue research, when performed in accordance with Sections 498A and
10 498B of the PHS Act (42 U.S.C. 289g-1 and 289g-2) and 45 C.F.R. 46.204 and 46.206; or

11 (7) The prescription, sale, transfer, or use of contraceptive devices, instruments,
12 medicines, or drugs.

13 (b) This article does not prevent the prescription, sale, or transfer of intrauterine
14 contraceptive devices, other contraceptive devices, or other generally medically accepted
15 contraceptive devices, instruments, medicines, or drugs for a patient who is not known to be
16 pregnant and for whom the contraceptive devices, instruments, medicines, or drugs are
17 prescribed, sold, or transferred solely for contraceptive purposes and not for the purpose of
18 inducing or causing the termination of a known pregnancy.

§16-2R-5. Requirements when an abortion is performed on an unemancipated minor.

1 (a) If an abortion is performed on an unemancipated minor under the circumstances set
2 forth in §16-2R-3(a) of this code, the licensed medical professional or his or her agent shall
3 provide notice to the parent, guardian, or custodian of the unemancipated minor within 48 hours
4 after the abortion is performed:

5 (1) Directly, in person, or by telephone to the parent, guardian, or custodian of the
6 unemancipated minor; or

7 (2) By certified mail addressed to the parent, guardian, or custodian of the unemancipated
8 minor at their usual place of residence, return receipt requested. The delivery shall be sent
9 restricted delivery assuring that the letter is delivered only to the addressee. Time of delivery shall
10 be deemed occur at 12:00 p.m. on the next day on which regular mail delivery takes place.

11 (b) If an abortion is performed on an unemancipated minor under the circumstances set
12 forth in §16-2R-3(c) of this code, the licensed medical professional may not perform an abortion
13 until notice of the pending abortion as required by this section is complete.

14 (1) A licensed medical professional or his or her agent may personally give notice directly,
15 in person, or by telephone to the parent, guardian, or custodian of the unemancipated minor.
16 Upon delivery of the notice, 48 hours shall pass until the abortion may be performed.

17 (2) A licensed medical professional or his or her agent may provide notice by certified mail
18 addressed to the parent, guardian, or custodian of the unemancipated minor at their usual place
19 of residence, return receipt requested. The delivery shall be sent restricted delivery assuring that

20 the letter is delivered only to the addressee. Time of delivery shall be deemed to occur at 12:00
21 p.m. on the next day on which regular mail delivery takes place. Forty-eight hours shall pass from
22 the date and time of presumed delivery until the abortion may be performed.

23 (3) Notice may be waived if the person entitled to notice certifies in writing that he or she
24 has been notified. Notice is waived if the certified mail is refused.

25 (4) An unemancipated minor who objects to the notice being given to a parent, guardian,
26 or custodian may petition for a waiver of the notice to the circuit court of the county in which the
27 unemancipated minor resides. The petition shall be filed under seal.

28 (5) The petition is not required to be in any specific form and shall be sufficient if it fairly
29 sets forth the facts and circumstances of the matter, but at a minimum shall contain the following
30 information:

31 (A) The age and educational level of the unemancipated minor;

32 (B) The county in which the unemancipated minor resides; and

33 (C) A brief statement of the unemancipated minor's reason or reasons for the desired
34 waiver of notification of the parent, guardian, or custodian of such unemancipated minor.

35 (6) A petition may not be dismissed nor may any hearing thereon be refused because of
36 any actual or perceived defect in the form of the petition.

37 (7) The Supreme Court of Appeals is requested to prepare suggested form petitions and
38 accompanying instructions and shall make the same available to the clerks of the circuit courts.
39 The clerks shall make the form petitions and instructions available in the clerk's office.

40 (8) The proceedings held pursuant to this subsection shall be confidential and the court
41 shall conduct the proceedings in camera. The court shall inform the unemancipated minor of her
42 right to be represented by counsel. If the unemancipated minor desires the services of an attorney,
43 an attorney shall be appointed to represent her, if the unemancipated minor advises the court
44 under oath or affidavit that she is financially unable to retain counsel.

45 (9) The court shall conduct a hearing upon the petition forthwith, but may not exceed the
46 next succeeding judicial day. The court shall render its decision immediately and enter its written
47 order not later than 24 hours. All testimony, documents, evidence, petition, orders entered thereon
48 and all records relating to the matter shall be sealed by the clerk and shall not be opened to any
49 person except upon order of the court upon a showing of good cause.

50 (10) Notice as required by this subsection (b) shall be ordered waived by the court if the
51 court finds either:

52 (A) That the unemancipated minor is sufficiently mature and informed to make the decision
53 to proceed with the abortion independently and without the notification or involvement of her
54 parent, guardian, or custodian; or

55 (B) That notification to the person or persons to whom notification would otherwise be
56 required would not be in the best interest of the unemancipated minor.

57 (11) A confidential appeal to the Supreme Court of Appeals shall be available to any
58 unemancipated minor to whom a court denies a petition under this subsection. An order
59 authorizing an abortion without notification is not appealable.

60 (12) Filing fees are not required in any proceeding under this subsection.

§16-2R-6. 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.

§16-2R-7. 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
6 of this code, the licensing board shall revoke medical professional's license.

§16-2R-8. 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
7 medical facility.

8 (b) Any licensed medical professional who knowingly and willfully violates subsection (a)
9 of 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.

§16-2R-9. Severability.

1 If any provision of §16-2R-1 *et seq.* of this code is judicially determined to be
2 unconstitutional, this entire article shall be of no force and effect and the provisions of §16-2F-1

3 *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 this
4 code shall become immediately effective.

ARTICLE 5. VITAL STATISTICS.

§16-5-22. Reports of abortions.

1 (a) Each abortion, as defined in §16-2R-2 of this code, which occurs in this state, shall be
2 reported to the section of vital registration no later than the tenth day of the month following the
3 month the procedure was performed by the person in charge of the hospital in which the abortion
4 was performed. The State Registrar shall prepare a form or provide a suitable electronic process
5 for the transmission of the reports from the institution or physician to the section of vital
6 registration. Information to be collected shall include:

7 (1) The gestational age of the fetus;

8 (2) The state and county of residence of the patient;

9 (3) The age of the patient;

10 (4) The type of medical or surgical procedure performed;

11 (5) The method of payment for the procedure;

12 (6) Whether birth defects were known, and if so, what birth defects;

13 (7) The date the abortion was performed;

14 (8) The exception contained in §16-2R-3 of this code under which the abortion was
15 performed; and

16 (9) Related information as required by the commissioner, other applicable sections of this
17 code, or by the legislative rule: *Provided, That:*

18 (A) No personal identifiers, including, but not limited to, name, street address, city, zip
19 code, or social security number, will be collected; and

20 (B) Individual records may only be released for research purposes as approved by the
21 state Registrar and may be released in a format designed to further protect the confidentiality of
22 the woman as the state Registrar deems necessary.

23 (b) An analysis of the compiled information relating to induced terminations of pregnancy
24 shall be included in the annual report of vital statistics.

25 (c) An electronic report of the compiled information under this section shall be provided to
26 the licensing boards of the licensed medical professionals, as defined in §16-2R-2 of this code,
27 and the Legislative Oversight Commission on Health and Human Resources Accountability on a
28 quarterly basis.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-26. Telehealth practice.

1 (a) For the purposes of this section:

2 "Abortifacient" means any chemical or drug prescribed or dispensed with the intent of
3 causing an abortion.

4 "Established patient" means a patient who has received professional services, face-to-
5 face, from the physician, qualified health care professional, or another physician or qualified
6 health care professional of the exact same specialty and subspecialty who belongs to the same
7 group practice, within the past three years.

8 "Health care practitioner" means a person authorized to practice under §30-3-1 *et seq.*,
9 §30-3E-1 *et seq.*, §30-4-1 *et seq.*, §30-5-1 *et seq.*, §30-7-1 *et seq.*, §30-7A-1 *et seq.*, §30-8-1 *et*
10 *seq.*, §30-10-1 *et seq.*, §30-14-1 *et seq.*, §30-16-1 *et seq.*, §30-20-1 *et seq.*, §30-20A-1 *et seq.*,
11 §30-21-1 *et seq.*, §30-23-1 *et seq.*, §30-26-1 *et seq.*, §30-28-1 *et seq.*, §30-30-1 *et seq.*, §30-31-
12 1 *et seq.*, §30-32-1 *et seq.*, §30-34-1 *et seq.*, §30-35-1 *et seq.*, §30-36-1 *et seq.*, §30-37-1 *et seq.*
13 and any other person licensed under this chapter that provides health care services.

14 "Interstate telehealth services" means the provision of telehealth services to a patient
15 located in West Virginia by a health care practitioner located in any other state or commonwealth
16 of the United States.

17 “Registration” means an authorization to practice a health profession regulated by §30-1-
18 1 *et seq.* of this code for the limited purpose of providing interstate telehealth services within the
19 registrant’s scope of practice.

20 “Telehealth services” means the use of synchronous or asynchronous
21 telecommunications technology or audio only telephone calls by a health care practitioner to
22 provide health care services, including, but not limited to, assessment, diagnosis, consultation,
23 treatment, and monitoring of a patient; transfer of medical data; patient and professional health-
24 related education; public health services; and health administration. The term does not include
25 internet questionnaires, e-mail messages, or facsimile transmissions.

26 (b) Unless provided for by statute or legislative rule, a health care board, referred to in
27 §30-1-1 *et seq.* of this code, shall propose an emergency rule for legislative approval in
28 accordance with the provisions of §29A-3-15 *et seq.* of this code to regulate telehealth practice
29 by a telehealth practitioner. The proposed rule shall consist of the following:

30 (1) The practice of the health care service occurs where the patient is located at the time
31 the telehealth services are provided;

32 (2) The health care practitioner who practices telehealth shall be:

33 (A) Licensed in good standing in all states in which he or she is licensed and not currently
34 under investigation or subject to an administrative complaint; and

35 (B) Registered as an interstate telehealth practitioner with the appropriate board in West
36 Virginia;

37 (3) When the health care practitioner-patient relationship is established;

38 (4) The standard of care for the provision of telehealth services. The standard of care
39 shall require that with respect to the established patient, the patient shall visit an in-person health
40 care practitioner within 12 months of using the initial telemedicine service or the telemedicine
41 service shall no longer be available to the patient until an in-person visit is obtained. This
42 requirement may be suspended, in the discretion of the health care practitioner, on a case-by-

43 case basis, and it does not to the following services: acute inpatient care, post-operative follow-
44 up checks, behavioral medicine, addiction medicine, or palliative care;

45 (5) A prohibition of prescribing any controlled substance listed in Schedule II of the Uniform
46 Controlled Substance Act, unless authorized by another section: *Provided*, That the prescribing
47 limitations contained in this section do not apply to a physician or a member of the same group
48 practice with an established patient;

49 (6) Establish the conduct of a registrant for which discipline may be imposed by the board
50 of registration;

51 (7) Establish a fee, not to exceed the amount to be paid by a licensee, to be paid by the
52 interstate telehealth practitioner registered in the state;

53 (8) A reference to the Board's discipline process; and

54 (9) A prohibition of prescribing or dispensing an abortifacient.

55 (c) A registration issued pursuant to the provisions of or the requirements of this section
56 does not authorize a health care professional to practice from a physical location within this state
57 without first obtaining appropriate licensure.

58 (d) By registering to provide interstate telehealth services to patients in this state, a health
59 care practitioner is subject to:

60 (1) The laws regarding the profession in this state, including the state judicial system and
61 all professional conduct rules and standards incorporated into the health care practitioner's
62 practice act and the legislative rules of registering board; and

63 (2) The jurisdiction of the board with which he or she registers to provide interstate
64 telehealth services, including such board's complaint, investigation, and hearing process.

65 (e) A health care professional who registers to provide interstate telehealth services
66 pursuant to the provisions of or the requirements of this section shall immediately notify the board
67 where he or she is registered in West Virginia and of any restrictions placed on the individual's
68 license to practice in any state or jurisdiction.

69 (f) A person currently licensed in this state is not subject to registration but shall practice
70 telehealth in accordance with the provisions of this section and the rules promulgated thereunder.

CHAPTER 33. INSURANCE.

ARTICLE 42. WOMEN'S ACCESS TO HEALTH CARE ACT.

§33-42-8. Partial-birth abortions prohibited; criminal penalties; exceptions; hearings by state Board of Medicine.

1 (a) Any person who knowingly performs a partial-birth abortion and thereby kills a human
2 fetus is guilty of a felony and, shall be fined not less than \$10,000, nor more than \$50,000, or
3 imprisoned not more than two years, or both fined and imprisoned. This section does not apply to
4 a partial-birth abortion that is necessary to save the life of a mother when her life is endangered
5 by a physical disorder, illness or injury.

6 (b) A physician charged pursuant to this section may seek a hearing before the West
7 Virginia Board of Medicine on the issue of whether the physician's act was necessary to save the
8 life of a mother pursuant to the provisions of subsection (a) of this section. The findings of the
9 Board of Medicine are admissible on this issue at the trial of the physician. Upon a motion by the
10 defendant, the court shall delay the beginning of trial for not more than thirty days to permit the
11 Board of Medicine hearing to take place.

12 (c) No woman may be prosecuted under the provisions of this section for having a partial-
13 birth abortion, nor may she be prosecuted for conspiring to violate the provisions of this section.

14 (d) Effective from the reenactment of this section during the third extraordinary session of
15 the Legislature, 2022, this article is of no force or effect unless any provision of §16-2R-1 *et seq.*
16 of this code is judicially determined to be unconstitutional.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-8. Abortion; penalty.

1 (a) Any person other than a licensed medical professional, as defined in §16-2R-2 of this
2 code, who knowingly and willfully performs, induces, or attempts to perform or induce an abortion,
3 as defined in §16-2R-2 of this code, is guilty of a felony and, upon conviction thereof, shall be
4 imprisoned in a state correctional facility for a determinate sentence of not less than three nor
5 more than 10 years.

6 (b) A person who was formerly a licensed medical professional, as defined in §16-2R-2 of
7 this code and whose license has been revoked pursuant to the provisions of §16-2R-7 of this
8 code, and who knowingly and willfully performs, induces, or attempts to perform or induce a
9 subsequent abortion, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a
10 state correctional facility for a determinate sentence of not less than three nor more than 10 years.

11 (c) This section shall not be construed to subject any pregnant female upon whom an
12 abortion is performed or induced or attempted to be performed or induced to a criminal penalty
13 for any violation of this section as a principal, accessory, accomplice, conspirator, or aider and
14 abettor.

15 (d) The amendments to this section enacted during the third extraordinary session of the
16 Legislature, 2022, shall be effective 90 days from passage.

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

.....
Chairman, House Committee

.....
Chairman, Senate Committee

Originating in the House.

In effect from passage.

.....
Clerk of the House of Delegates

.....
Clerk of the Senate

.....
Speaker of the House of Delegates

.....
President of the Senate

The within this the.....
day of, 2022.

.....
Governor