

WEST VIRGINIA LEGISLATURE
2022 THIRD EXTRAORDINARY SESSION

Originating
House Bill 302

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[Originating in the Committee on Health and Human
Resources; Reported on July 25, 2022]

1 A BILL to amend and reenact §9-2-11 of the code of West Virginia, 1931, as amended; to amend
2 and reenact §16-2F-9 of said code; of said code; to amend and reenact §16-2I-9 of said
3 code; to amend and reenact §16-2O-1 of said code; to amend and reenact §16-2P-1 of
4 said code; to amend and reenact §16-2Q-1 of said code; to amend said code by adding
5 thereto a new article designated, §16-2R-1, §16-2R-2, §16-2R-3, §16-2R-4, §16-2R-5,
6 16-2R-6 and §16-2R-7; to amend and reenact §30-1-26 of said code; to amend and
7 reenact §33-42-8 of said code; to amend and reenact §61-2-8 of said code; all relating to
8 abortion.

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 ~~(a) No funds from the Medicaid program accounts may be used to pay for the performance~~
2 ~~of an abortion by surgical or chemical means unless the abortion is permitted by §16-2R-3.~~

3 ~~(1) On the basis of the physician's best clinical judgment, there is:~~

4 ~~(i) A medical emergency that so complicates a pregnancy as to necessitate an immediate~~
5 ~~abortion to avert the death of the mother or for which a delay will create grave peril of irreversible~~
6 ~~loss of major bodily function or an equivalent injury to the mother: *Provided*, That an independent~~
7 ~~physician concurs with the physician's clinical judgment; or~~

8 ~~(ii) Clear clinical medical evidence that the fetus has severe congenital defects or terminal~~
9 ~~disease or is not expected to be delivered; or~~

10 ~~(2) The individual is a victim of incest or the individual is a victim of rape when the rape is~~
11 ~~reported to a law enforcement agency.~~

12 ~~(b) The Legislature intends that the state's Medicaid program not provide coverage for~~
13 ~~abortion on demand and that abortion services be provided only as expressly provided for in this~~
14 ~~section.~~

CHAPTER 16. PUBLIC HEALTH.

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

§16-2F-9. Severability.

1 ~~The provisions of subsection (cc), section ten, article two, chapter two of this code shall~~
2 ~~apply to the provisions of this article to the same extent as if said subsection were set forth in~~
3 ~~extenso herein.~~

4 Effective from the date of passage, this article is no longer effective unless any provision
5 of §16-2R-1 et seq. or any provision of §61-2-8 is found to be unconstitutional as provided in §16-
6 2R-7.

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

§16-2I-9. Severability.

1 ~~If any one or more provision, section, subsection, sentence, clause, phrase or word of this~~
2 ~~article or the application thereof to any person or circumstance is found to be unconstitutional, the~~
3 ~~same is hereby declared to be severable and the balance of this article shall remain effective~~
4 ~~notwithstanding such unconstitutionality. The Legislature hereby declares that it would have~~
5 ~~passed this article, and each provision, section, subsection, sentence, clause, phrase or word~~
6 ~~thereof, irrespective of the fact that any one or more provision, section, subsection, sentence,~~
7 ~~clause, phrase or word be declared unconstitutional.~~

8 Effective from the date of passage, this article is no longer effective unless any provision
9 of §16-2R-1 et seq. or any provision of §61-2-8 is found to be unconstitutional as provided in §16-
10 2R-7.

**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 date of passage, this section is no longer effective unless any
55 provision of §16-2R-1 et seq. or any provision of §61-2-8 is found to be unconstitutional as
56 provided in §16-2R-7.

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 date of passage, this section is no longer effective unless any
39 provision of §16-2R-1 et seq. or any provision of §61-2-8 is found to be unconstitutional as
40 provided in §16-2R-7.

**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 date of passage, this article is no longer effective unless any
80 provision of §16-2R-1 et seq. or any provision of §61-2-8 is found to be unconstitutional as
81 provided in §16-2R-7.

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 to prohibit
2 abortion. As provided in §6-57 of the WV Constitution, "Nothing in this Constitution secures or
3 protects a right to abortion or requires the funding of abortion."

§16-2R-2. Definitions.

1 For purposes of this article:

2 "Abortion" means the use of any instrument, medicine, drug, or any other substance or
3 device with intent to terminate the pregnancy.

4 "Attempt to perform or induce an abortion" means an act or an omission of an act that,
5 under the circumstances as the person believes them to be, constitutes a substantial step in a
6 course of conduct planned to culminate in the performance or induction of an abortion.

7 "Contraceptive" means the prevention of pregnancy by interfering with the normal process
8 of ovulation, fertilization, and implantation.

9 “Ectopic pregnancy” means a pregnancy in which the fetus develops outside the uterus,
10 typically in a fallopian tube.

11 “Embryo” means the developing human pregnancy from the time of fertilization until the
12 end of the eighth week of gestation.

13 “Fertilization” means the fusion of a human spermatozoon with a human ovum.

14 “Fetal tissue research” means tissue or cells obtained from a dead human embryo or fetus
15 after a spontaneous or induced abortion or stillbirth.

16 “Fetus” means the developing young human in the uterus, specifically the unborn offspring
17 in the postembryonic period from nine weeks after fertilization until birth.

18 “Licensed Medical Professional” means a person licensed under §30-1-1 et seq. of this
19 code practicing within his or her scope of practice.

20 “Implantation” means when a fertilized egg has attached to the lining of the uterine wall.

21 “In vitro fertilization” means a complex series of procedures used to help with fertility or
22 prevent genetic problems and assist with the conception of a child.

23 “Medical emergency” means a condition that so complicates the medical condition of a
24 patient as to necessitate an immediate abortion to avert the patient’s death or for which a delay
25 will create serious risk of substantial and irreversible physical impairment of a major bodily
26 function, not including psychological or emotional conditions. A condition is not deemed a medical
27 emergency if based on a claim or diagnosis that the patient intends or may engage in conduct
28 which results in the patient’s death or in substantial and irreversible physical impairment of a
29 major bodily function.

30 “Miscarriage” means the spontaneous loss of a fetus before the 20th week of pregnancy.

31 “Nonmedically viable fetus” means a fetus that contains sufficient lethal fetal anomalies so
32 as to render the fetus medically futile or incompatible with life outside the womb.

33 “Partial-birth abortion” means an abortion in which the person performing the abortion
34 partially vaginally delivers a living fetus before killing the fetus and completing the delivery.

35 “Pregnancy” means when a fertilized egg has implanted in the wall of a uterus.

36 “Reasonable medical judgment” means a medical judgment that would be made by a
37 licensed medical professional, knowledgeable about the case and the treatment possibilities with
38 respect to the medical conditions involved.

39 “Stillbirth” means the loss of a fetus after the 19th week of pregnancy.

40 “Unemancipated minor” means any person less than 18 years of age who is not, or has
41 not been, married, who is under the care, custody, and control of the person’s parent or parents,
42 guardian, or court of competent jurisdiction pursuant to applicable federal law or as provided in
43 §49-4-115 of this code.

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

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

3 (A) there exists a nonmedically viable fetus;

4 (B) there exists an ectopic pregnancy; or

5 (C) there exists a medical emergency.

§16-2R-4. Not considered an abortion.

1 (a) An abortion does not include:

2 (1) A miscarriage;

3 (2) A stillbirth;

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

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

8 (5) In vitro fertilization; and

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.

11 (b) This article does not prevent the prescription, sale, transfer or use of contraceptive
12 devices, instruments, medicines or drugs.

§16-2R-5. Requirements if an abortion is performed.

1 (a) If an abortion is performed on an unemancipated minor pursuant to §16-2R-3(a)(1)(A)-
2 (B), the licensed medical professional may not perform an abortion until notice of the pending
3 abortion as required by this section is complete.

4 (b) A licensed medical professional or his or her agent may personally give notice directly,
5 in person or by telephone to the parent, the guardian or conservator of the unemancipated minor
6 at their usual place of residence. Upon delivery of the notice, forty-eight hours shall pass until the
7 abortion may be performed.

8 (c) A licensed medical professional or his or her agent may provide notice by certified mail
9 addressed to the parent, the guardian or conservator of the unemancipated minor at their usual
10 place of residence, return receipt requested. The delivery shall be sent restricted delivery assuring
11 that the letter is delivered only to the addressee. Time of delivery shall be deemed to occur at
12 twelve o'clock noon on the next day on which regular mail delivery takes place unless. Upon
13 delivery of the notice, forty-eight hours shall pass until the abortion may be performed.

14 (d) Notice may be waived if the person entitled to notice certifies in writing that he or she
15 has been notified.

16 (e) An unemancipated minor who objects to the notice being given to a parent or legal
17 guardian may petition for a waiver of the notice to the circuit court of the county in which the
18 unemancipated minor resides or in which the abortion is to be performed, or to the judge of either
19 of such courts.

20 (f) The petition need not be made in any specific form and shall be sufficient if it fairly sets
21 forth the facts and circumstances of the matter, but shall contain the following information:

- 22 (1) The age and educational level of the unemancipated minor;
23 (2) The county and state in which the unemancipated minor resides; and
24 (3) A brief statement of the unemancipated minor's reason or reasons for the desired
25 waiver of notification of the parent or guardian of such unemancipated minor.

26 A patient petition may not be dismissed nor may any hearing thereon be refused because
27 of any defect in the form of the petition.

28 (g) The Attorney General shall prepare suggested form petitions and accompanying
29 instructions and shall make the same available to the clerks of the circuit courts. The clerks shall
30 make the form petitions and instructions available in the clerk's office.

31 (h) The proceedings held pursuant to this section shall be confidential and the court shall
32 conduct the proceedings in camera. The court shall inform the unemancipated minor of her right
33 to be represented by counsel. If the unemancipated minor is without the requisite funds to retain
34 the services of an attorney, the court will appoint an attorney to represent the unemancipated
35 minor's interest in the matter. If the unemancipated minor desires the services of an attorney, an
36 attorney shall be appointed to represent the unemancipated minor, if the unemancipated minor
37 advises the court under oath or affidavit that the unemancipated minor is financially unable to
38 retain counsel. An attorney appointed to represent the unemancipated minor shall be appointed
39 and paid for his services pursuant to the provisions of §29-21-1 et seq. . The pay shall not exceed
40 the sum of \$100.

41 (i) The court shall conduct a hearing upon the petition without delay, but may not exceed
42 the next succeeding judicial day. The court shall render its decision immediately upon its
43 submission and, its written order not later than twenty-four hours and entered in the record by the
44 clerk of the court. All testimony, documents, evidence, petition, orders entered thereon and all
45 records relating to the matter shall be sealed by the clerk and shall not be opened to any person
46 except upon order of the court upon a showing of good cause. A separate order book for the

47 purposes of this article shall be maintained by the clerk and shall be sealed and not open to
48 inspection by any person save upon order of the court for good cause shown.

49 (j) Notice as required by this section shall be ordered waived by the court if the court finds
50 either:

51 (1) That the unemancipated minor is mature and well informed sufficiently to make the
52 decision to proceed with the abortion independently and without the notification or involvement of
53 her parent or legal guardian; or

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

56 (k) A confidential appeal shall be available to any unemancipated minor to whom a court
57 denies an order authorizing an abortion without notification. An order authorizing an abortion
58 without notification may not be appealed. Access to the trial court and the Supreme Court of
59 Appeals shall be given to an unemancipated minor.

60 (l) Filing fees are not required of any unemancipated minor who avails herself of any of
61 the procedures provided by this section.

62 (m) (1) If a licensed medical professional performs or induces an abortion on a fetus, the
63 licensed medical professional shall, within 15 days of the procedure, cause to be filed with the
64 commissioner, on a form supplied by the commissioner, a report containing the following
65 information:

66 (A) Date the abortion was performed;

67 (B) Specific method of abortion used; and

68 (C) The exemption, under which, the abortion was performed;

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

71 (3) Reports required and submitted under this subsection may not contain the name of the
72 patient upon whom the abortion was performed or any other information or identifiers that would

73 make it possible to identify, in any manner or under any circumstances, a patient who obtained
74 or sought to obtain an abortion.

75 (n) An abortion performed pursuant to §16-2R-3 may not use the partial birth abortion
76 procedure.

77 (o) In addition to the requirements provided in this section, if an abortion is performed in
78 accordance with the provisions of §16-2R-3(a)(2), the licensed medical professional shall perform
79 an ultrasound. The licensed medical professional shall provide the patient with the opportunity to
80 view or decline to view an active ultrasound image of the fetus.

§16-2R-6. Penalties.

1 (a) The criminal penalty established in §61-2-8 applies to this section. This is subsection
2 is effective 90 days from passage.

3 (b) A licensed medical professional who violates the provisions of this article is considered
4 to have acted outside the scope of practice permitted by law or otherwise in breach of the standard
5 of care owed to a patient, and is subject to discipline from the applicable licensure board for that
6 conduct, including, but not limited to, loss of professional license to practice.

7 (c) A licensed medical professional charged pursuant to §61-2-8 may seek a hearing
8 before his or her licensure board on the issue of whether the licensed medical professional's act
9 was necessary to save the life of the patient. The findings of the licensure board are admissible
10 on this issue at the trial of the license medical professional. Upon a motion by the defendant, the
11 court shall delay the beginning of trial for not more than thirty days to permit the licensure board
12 hearing to take place.

13 (d) This article may not be construed to subject a mother to a criminal penalty for any
14 violation of this article and §61-2-8.

§16-2R-7. Severability.

1 If any provision of this article or any provision of §61-2-8 is found to be unconstitutional,
2 this entire article is deemed to be unconstitutional and the provisions of §16-2F-1 et seq., §16-2I-
3 1 et seq., §16-2O-1, §16-2P-1, §16-2Q-1, and §33-42-8 immediately become effective.

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 mifepristone, misoprostol or any other chemical or drug dispensed
3 with the intent of 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.

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 date of passage, this section is no longer effective unless any
15 provision of §16-2R-1 et seq. or any provision of §61-2-8 is found to be unconstitutional as
16 provided in §16-2R-7.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-8. Abortion; penalty.

1 ~~Any person who shall administer to, or cause to be taken by, a woman, any drug or other~~
2 ~~thing, or use any means, with intent to destroy her unborn child, or to produce abortion or~~
3 ~~miscarriage, and shall thereby destroy such child, or produce such abortion or miscarriage, shall~~

4 ~~be guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than three~~
5 ~~nor more than ten years; and if such woman die by reason of such abortion performed upon her,~~
6 ~~such person shall be guilty of murder. No person, by reason of any act mentioned in this section,~~
7 ~~shall be punishable where such act is done in good faith, with the intention of saving the life of~~
8 ~~such woman or child.~~

1 (a) A person who performs an abortion or attempts to perform or induces an abortion in
2 violation of this §16-2R-1 et seq. is guilty of a felony and, upon conviction thereof, shall be
3 imprisoned in a state correctional facility for not less than 3 years and not more than 10 years.

4 (b) If a woman dies during the performance of an abortion; the attempt of an abortion; or
5 the inducement of an abortion, the person doing such is subject to the provisions of §61-2-3,
6 unless the abortion is permitted under §16-2R-3.

7 (c) This section may not be construed to subject a mother to a criminal penalty for any
8 violation of this section.

9 (d) This section is effective 90 days from passage.

NOTE: The purpose of this bill is to clarify West Virginia's abortion laws.

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