

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

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for

Senate Bill 468

BY SENATORS RUCKER, BOLEY, GRADY, KARNES,
MAYNARD, PHILLIPS, ROBERTS, SMITH, STOVER, SYPOLT,
TARR, WOODRUM, CLEMENTS, MARTIN, AZINGER AND
MARONEY

[Originating in the Committee on Finance; reported on
February 25, 2022]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §16-2Q-1, §16-2Q-2, §16-2Q-3, §16-2Q-4, §16-2Q-5, §16-2Q-6, §16-2Q-7,
3 §16-2Q-8, §16-2Q-9, §16-2Q-10, §16-2Q-11, and §16-2Q-12, all relating to creating the
4 Unborn Child with Down Syndrome Protection and Education Act; providing for a short
5 title; defining terms; creating dissemination of information on fetal disabilities; providing for
6 informational publications by department; providing that abortion may not be performed
7 because of a disability, including Down syndrome except in the case of a medical
8 emergency; providing reporting forms; providing professional sanctions and civil penalties;
9 providing for additional enforcement; providing for construction of the act; creating
10 severability; providing for the right of intervention; and providing for an effective date.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 2Q. UNBORN CHILD WITH DOWN SYNDROME PROTECTION AND
EDUCATION ACT.**

§16-2Q-1. Short title.

1 This article shall be known and cited as the Unborn Child with Down Syndrome Protection
2 and Education Act.

§16-2Q-2. Definitions.

1 As used in this article only:

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 genetic, physical, emotional, or intellectual disability or diagnosis in the unborn human being
7 including, but not limited to, chromosomal disorders or morphological malformations occurring as
8 the result of atypical gene expressions.

9 “Conception” means the fusion of human spermatozoon with a human ovum.

10 “Commissioner” means the commissioner of the Bureau for Public Health.

11 “Health care practitioner” means a person who is licensed, certified, or otherwise
12 authorized by law or regulation to provide or render health care services or genetic counseling to
13 expectant or new parents.

14 “Human being” means an individual member of the species Homo sapiens, from and after
15 the point of conception. *Planned Parenthood Minnesota, North Dakota, South Dakota v. Rounds,*
16 530 F.3d 724, 735-36 (8th Cir. 2008); *Planned Parenthood of Indiana, Inc. v. Commissioner of*
17 *Indiana State Dept. of Health*, 794 F.Supp.2d 892, 917-18 (S.Dist. Ind. 2011).

18 “Major bodily function” includes, but is not limited to, functions of the immune system;
19 normal cell growth; and bladder, bowel, brain, circulatory, digestive, endocrine, neurological,
20 reproductive, and respiratory functions.

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

22 “Physician” or “referring physician” means the same as that term is defined in §16-2M-2
23 of this code.

24 “Reasonable medical judgment” means the same as that term is defined in §16-2M-2(10)
25 of this code.

26 “Severe fetal condition” means a life-threatening physical condition that, in reasonable
27 medical judgment, regardless of the provision of life-saving medical treatment, is incompatible
28 with life outside the womb.

§16-2Q-3. Dissemination of information on fetal disabilities.

1 (a) Requirement. — A health care practitioner that administers, or causes to be
2 administered, a test for any physical, emotional, or intellectual disability or diagnosis to an
3 expectant or new parent shall, upon receiving a test result that confirms the presence of any
4 disability, provide the expectant or new parent with educational information made available by the
5 department under §16-2Q-4 of this code.

6 (b) Delivery of information prepared by the department in accordance with §16-2Q-4 of
7 this code at the time genetic results or diagnostic conclusions are provided shall constitute
8 compliance with this section.

§16-2Q-4. Informational publications by department.

1 General rule. —The Department of Health and Human Resources shall make the following
2 available to health care practitioners on the department’s publicly accessible internet website:

3 (a) Up-to-date, evidence-based information about any in-utero physical, emotional, or
4 intellectual disability or diagnosis that has been reviewed by medical experts and any national
5 disability rights organizations. The information provided shall include the following:

6 (1) Physical, developmental, educational, and psychosocial outcomes;

7 (2) Life expectancy;

8 (3) Clinical course;

9 (4) Intellectual and functional development;

10 (5) Treatment options; and

11 (6) Any other information the department deems necessary;

12 (b) Contact information regarding first call programs and support services, including the
13 following:

14 (1) Information hotlines specific to any in-utero fetal disabilities or conditions;

15 (2) Relevant resource centers or clearinghouses;

16 (3) National and local disability rights organizations; and

17 (4) Education and support programs.

18 The information provided in accordance with this article shall conform to the applicable
19 standard or standards provided in the Enhanced National Standards for Culturally and
20 Linguistically Appropriate Services in Health and Health Care as adopted by the United States
21 Department of Health and Human Services and published in the Federal Register on September
22 24, 2013.

§16-2Q-5. Abortion may not be performed because of a disability, except in a medical emergency.

1 (a) Except in a medical emergency, or if the unborn child has a severe fetal condition, as
2 defined in §16-2Q-2 of this code, a person may not perform, induce, or attempt to perform or
3 induce an abortion unless the physician who is to perform or induce the abortion has first
4 confirmed that the abortion is not being sought because of a disability, as defined in §16-2Q-2 of
5 this code, including Down syndrome and documented these facts in the maternal patient's chart,
6 as well as in the report to be filed with the commissioner as set forth in subsection (c) of this
7 section.

8 (b) Except in a medical emergency, or if the child has a severe fetal condition, as defined
9 in §16-2Q-2 of this code, a person may not intentionally or knowingly perform, induce, or attempt
10 to perform or induce an abortion of an unborn human being if the abortion is being sought because
11 of a disability, a defined in §16-2Q-2 of this code, including Down syndrome.

12 (c) In every case in which a physician performs or induces an abortion on an unborn
13 human being, the physician shall, within 15 days of the procedure, cause to be filed with the
14 commissioner, on a form supplied by the commissioner, a report containing the following
15 information:

16 (1) Date the abortion was performed;

17 (2) Specific method of abortion used;

18 (3) Whether the presence or presumed presence of any disability in the unborn human
19 being had been detected at the time of the abortion by genetic testing or any other fetal testing,
20 such as maternal serum tests, or ultrasound, such as by nuchal translucency screening (NT), or
21 by other forms of testing;

22 (4) A statement confirming that the reason for the abortion, as stated by the maternal
23 patient, was not because of a disability, as defined in §16-2Q-2 of this code, including Down
24 syndrome;

25 (5) Probable health consequences of the abortion and specific abortion method used;

26 (6) Whether a medical emergency as defined in §16-2Q-3 existed which prevented
27 compliance with this Act; and

28 (7) Whether the unborn child had a severe fetal condition as defined in §16-2Q-3 which
29 prevented compliance with this Act.

30 The physician shall sign the form as his or her attestation under oath that the information
31 stated is true and correct to the best of his or her knowledge.

32 (d) Reports required and submitted under subsection (c) of this section may not contain
33 the name of the maternal patient upon whom the abortion was performed or any other information
34 or identifiers that would make it possible to identify, in any manner or under any circumstances,
35 a woman who obtained or sought to obtain an abortion.

§16-2Q-6. Reporting forms.

1 The commissioner shall create the forms required by this article within 30 days after the
2 effective date of this article. No provision of this article requiring the reporting of information on
3 forms published by the commissioner may be applicable until 10 days after the requisite forms
4 have been made available or the effective date of this article, whichever is later.

§16-2Q-7. Professional sanctions and civil penalties.

1 (a) A physician who intentionally or knowingly violates the prohibition in §16-2Q-5(b) of
2 this code commits an act of unprofessional conduct and his or her license to practice medicine in
3 the State of West Virginia shall be suspended or revoked pursuant to the West Virginia Board of
4 Medicine and pursuant to §30-3-1 *et seq.* of this code and the West Virginia Board of Osteopathic
5 Medicine and pursuant to §30-14-1 *et seq.* of this code.

6 (b) A physician who knowingly or intentionally delivers to the commissioner any report
7 required by §16-2Q-5(c) of this code, and known by him or her to be false, is subject to a civil
8 penalty or fine as determined by the West Virginia Board of Medicine and the West Virginia Board
9 of Osteopathic Medicine.

§16-2Q-8. Additional enforcement.

1 The Attorney General may bring an action in law or equity to enforce the provisions of this
2 article on behalf of the Commissioner of the Bureau for Public Health, the West Virginia Board of
3 Medicine, or the West Virginia Board of Osteopathic Medicine. The West Virginia Board of
4 Medicine or the West Virginia Board of Medicine may bring such action on its own behalf.

§16-2Q-9. Construction.

1 Nothing in this article may be construed as creating or recognizing a right to abortion or
2 as altering generally accepted medical standards. Further, it is not the intention of this article to
3 make lawful an abortion that is currently unlawful.

§16-2Q-10. Severability.

1 It is the intent of the Legislature that every provision of this article shall operate with equal
2 force and shall be severable one from the other. If any provision of this article is held invalid or
3 unenforceable by a court of competent jurisdiction, that provision shall be deemed severable, and
4 the remaining provisions of this article deemed fully enforceable.

§16-2Q-11. Right of intervention.

1 The Legislature, through one or more sponsors of this article duly appointed by resolution
2 of their respective chamber, may intervene as a matter of right in any case in which the
3 constitutionality of this article is challenged.

§16-2Q-12. Effective date.

1 This article shall take effect on July 1, 2022.