

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Enrolled

Committee Substitute

for

Committee Substitute

for

Senate Bill 468

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

[Passed March 12, 2022; in effect 90 days from passage]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §16-2Q-1, relating to restricting abortion; defining terms; requiring licensed
3 medical professional to provide certain information; requiring Department of Health and
4 Human Resources to make certain information available on website; prohibiting abortion
5 because of a disability; providing exceptions; requiring commissioner to create forms;
6 providing for professional sanctions; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

**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.

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

.....
Chairman, Senate Committee

.....
Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

.....
Clerk of the Senate

.....
Clerk of the House of Delegates

.....
President of the Senate

.....
Speaker of the House of Delegates

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

.....
Governor