

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5665

By Delegate McGeehan

[Introduced February 13, 2024; Referred to the
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §16-2S-1, §16-2S-2, §16-2S-3, and §16-2S-4, all relating to regulating
 3 billboards displaying messages about the availability of abortions in states bordering West
 4 Virginia; setting forth legislative findings; defining terms; prohibiting billboards that display
 5 messages about the availability of abortion in bordering states or that reference any
 6 facilities, physicians, or other health-care providers that perform abortions in bordering
 7 states; making it unlawful to assist another person who is causing or attempting to cause a
 8 billboard displaying a prohibited message; providing for enforcement and penalties,
 9 including the permanent revocation of business licenses and permits; and granting the
 10 Secretary of State permission to promulgate legislative rules.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 2S. REGULATING BILLBOARDS DISPLAYING MESSAGES ABOUT THE
 AVAILABILITY OF ABORTIONS IN STATES BORDERING WEST VIRGINIA.**

§16-2S-1. Legislative Findings.

- 1 The Legislature finds the following:
- 2 (1) West Virginia has a compelling interest in the health and welfare of its citizens.
- 3 (2) West Virginia has a compelling interest in protecting prenatal life and the future children
 4 of its residents.
- 5 (3) West Virginia unquestionably has a compelling interest in assuring safe health care for
 6 the public.
- 7 (4) Ensuring the health and safety of West Virginia's residents is crucial to this state's
 8 police power, and this state has broad authority to regulate in this domain.
- 9 (5) This state has banned abortions from being performed in this state outside of certain
 10 narrow and statutorily defined circumstances.
- 11 (6) The greater power to completely ban abortions includes within it the lesser power to

12 ban advertising for abortions.

13 (7) Billboards have been and are continuing to be erected near the borders of this state.
14 These billboards advertise or otherwise reference the availability of abortions in one or more
15 bordering states that have not enacted an abortion ban.

16 (8) These billboards, as well as any similar public advertisements, facilitate violating the
17 laws of this state and undermine the public policies of this state, and allowing them to target West
18 Virginia residents in such a manner erodes interstate comity.

19 (9) The placement of these billboards virtually guarantees that these messages are
20 conveyed, on a daily basis, to West Virginia residents who, although old enough to drive
21 unaccompanied by a parent or guardian, are still minors.

22 (10) These billboards implicitly encourage people who are pregnant to travel to another
23 state to undergo an abortion procedure.

24 (11) Banning such billboards and related displays, while not seeking to prohibit any other
25 forms of lawful speech advocating abortion, is a narrowly tailored way to directly advance all of the
26 aforementioned interests.

§16-2S-2. Definitions.

1 "Abortion" means use of any instrument, medicine, drug, or any other substance or device
2 with intent to terminate the pregnancy of a patient known to be pregnant and with intent to cause
3 the death and expulsion or removal of an embryo or a fetus. This term does not include the terms
4 "intrauterine fetal demise" or "stillbirth" or "miscarriage" as defined in W. Va. Code §16-2R-2.

5 "Billboard" means any available billboard, sign, or similar display used to advertise a
6 person, place, or product or to communicate a message to the public, regardless of whether that
7 message has a commercial purpose.

8 "Commissioner" means the Commissioner of the Division of Highways.

9 "Secretary" means the Secretary of State.

§16-2S-3. Prohibitions.

1 (a) No person may create, erect, design, maintain, upkeep, lease, permit, or fund
2 billboards which display any of the following:

3 (1) Statements concerning the availability of abortions in states that border West Virginia;

4 (2) The name, location, or any other identifying information of any facility in a bordering
5 state at which an abortion could be obtained;

6 (3) The name, location, or any other identifying information of any physician in a bordering
7 state who could perform an abortion; or

8 (4) Statements that encourage, explicitly or implicitly, individuals to undergo an abortion
9 procedure.

10 (b) No person shall cause or attempt to cause the creation, erection, designing,
11 maintaining, upkeeping, leasing, or funding of billboards containing any of the content prohibited in
12 subsection (a) of this section.

§16-2S-4. Penalties and enforcement.

1 (a) The commissioner shall report any suspected violation of this article to the secretary
2 within 30 days of identifying the suspected violation.

3 (b) Any resident of this state may report suspected violations of this article to the secretary.

4 (c) The secretary shall investigate all reports of suspected violations. The secretary shall
5 permanently revoke all business licenses and permits held by any person found to have violated a
6 provision of this article.

7 (d) The secretary shall afford any applicant an opportunity to be heard in person or by
8 counsel when a determination is made to revoke an applicant's license or application for license,
9 including a renewal of a license. The applicant has 15 days from the date of receiving written
10 notice of the secretary's adverse determination to request a hearing on the matter of revocation.
11 The action of the secretary in denying a license or permit is subject to review by the circuit court of
12 Kanawha County or other court of competent jurisdiction.

13 (e) The secretary shall inform the Attorney General of every license revoked under this

14 section and make all documents related to the revocation available to the Attorney General.

15 (f) The Attorney General may take any additional appropriate actions upon determining
16 that a civil complaint is warranted, including, but not limited to, actions based on its *parens patriae*
17 authority.

18 (g) For purposes of enforcing the provisions of this article, and notwithstanding any other
19 provision of this code to the contrary, the commissioner, secretary, Attorney General, or any of
20 their authorized representatives may access information maintained by any other state agency for
21 the limited purposes of identifying the person or persons who have violated the provisions of this
22 article.

23 (h) The secretary may promulgate legislative rules pursuant to §29A-1-1 et seq. of this
24 code that are necessary for the administration and enforcement of this article, including, but not
25 limited to, regulations relating to the investigation of potential violations, related hearings, and any
26 subsequent revocations of licenses or permits.

NOTE: The purpose of this bill is to prohibit persons from erecting, maintaining, funding, leasing, or otherwise facilitating billboard advertisements or statements that display messages concerning the availability of abortions in bordering states.

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