

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

Senate Bill 352

BY SENATORS RUCKER, AZINGER, BOLEY, CHAPMAN,
DEEDS, GRADY, MARTIN, MAYNARD, PHILLIPS, SMITH,
STOVER, STUART, TARR, TAYLOR, WOODRUM, KARNES,
AND ROBERTS

[Originating in the Committee on Health and Human
Resources; reported February 9, 2024]

1 A BILL to amend and reenact §16-2R-3 and §16-2R-8 of the Code of West Virginia, 1931, as
2 amended, relating to requiring voluntary and informed consent prior to performing an
3 abortion; defining voluntary and informed consent as providing the patient information or
4 availability of information on the associated medical risks, the opportunity to view an
5 ultrasound, the probable gestational age, that perinatal hospital services are available,
6 and that additional information is available on the Department of Health's website; and
7 making technical changes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2R. UNBORN CHILD PROTECTION ACT.

§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 eight weeks of pregnancy if the pregnancy is the result of sexual assault, as defined
8 in §61-8B-1 *et seq.* of this code, or incest, as defined in §61-8-12 of this code, and at least 48
9 hours prior to the abortion the patient has reported the sexual assault or incest to a law-
10 enforcement agency having jurisdiction to investigate the complaint and provided the report to the
11 licensed medical professional performing the abortion.

12 (c) The prohibition set forth in subsection (a) of this section shall not apply to a minor or
13 an incompetent or incapacitated adult within the first 14 weeks of pregnancy if the pregnancy is
14 the result of sexual assault, as defined in §61-8B-1 *et seq.* of this code, or incest, as defined in
15 §61-8-12 of this code, and at least 48 hours prior to the abortion the patient has:

16 (1) Made a report of the sexual assault or incest to law enforcement having jurisdiction to
17 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-4~~ §16B-3-1 of this code, which is licensed by the Office of Health Facility
21 Licensure and Certification of the ~~West Virginia Department of Health and Human Resources~~
22 Department of Health: *Provided*, That the licensed medical professional or hospital, as defined in
23 ~~§16-5B-4~~ §16B-3-1 of this code, which is licensed by the Office of Health Facility Licensure and
24 Certification of the ~~West Virginia Department of Health and Human Resources~~ Department of
25 Health, and which performed or provided such medical treatment, may not perform or provide the
26 abortion arising from such sexual assault or incest.

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

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

33 (f) A surgical abortion performed or induced, or attempted to be performed or induced,
34 pursuant to this section, shall be in a hospital, as defined in ~~§16-5B-4~~ §16B-3-1 of this code, which
35 is licensed by the Office of Health Facility Licensure and Certification of the ~~West Virginia~~
36 ~~Department of Health and Human Resources~~ Department of Health.

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

39 (h) An abortion performed pursuant to this section requires the voluntary and informed
40 consent of the patient. Consent to an abortion is voluntary and informed if, and only if, the licensed
41 medical professional:

42 (1) Informs the patient of the medical risks associated with the particular abortion
43 procedure to be employed, including, the risks of infection, hemorrhage, danger to subsequent
44 pregnancies, infertility, and reversal;

45 (2) Informs the patient of the medical risks associated with carrying her child to term;

46 (3) Informs the patient of the opportunity to view an ultrasound;

47 (4) Informs the patient of the probable gestational age of the embryo or fetus;

48 (5) In the case of a nonviable embryo or fetus, or decision to continue a viable pregnancy,
49 informs the patient that perinatal hospice services are available and that additional information
50 may be found on the Department of Health's website; and

51 (6) In the case of a chemical abortion, informs the patient of the risks associated with any
52 abortion medication prescribed to the patient and also information on reversal.

§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.