

# **WEST VIRGINIA LEGISLATURE**

## **2026 REGULAR SESSION**

**Engrossed**

**Committee Substitute**

**for**

**Committee Substitute**

**for**

**Senate Bill 173**

BY SENATORS ROSE, HELTON, BARTLETT, M. MAYNARD,

RUCKER, AND WILLIS

[Reported February 10, 2026, from the Committee on

the Judiciary]



1 A BILL to amend and reenact §16-2R-2 of the Code of West Virginia, 1931, as amended; and to  
2 amend the code by adding three new sections, designated §5A-3-64, §16-2R-10, and §16-  
3 2R-11 relating to prohibiting abortifacients; defining terms; creating criminal penalties;  
4 providing for revocation of medical license in certain circumstances; creating civil cause  
5 of action; providing exceptions to applicability; requiring attestation; establishing findings  
6 of the Legislature; forbidding the State of West Virginia, any political subdivision thereof,  
7 and spending units of state government from entering into contracts with persons or  
8 entities that manufacture or distribute abortifacients; and providing for rulemaking.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 3. PURCHASING DIVISION.**

**§5A-3-64. Prohibition on contracting with companies that manufacture or distribute  
abortifacients.**

1 (a) The Legislature finds that:

2 (1) The State of West Virginia has a compelling interest in protecting the health, safety,  
3 and welfare of its citizens and in ensuring that drugs distributed within this state are lawfully  
4 prescribed, dispensed, and regulated in accordance with the laws of this state.

5 (2) The unlawful and unregulated distribution of prescription drugs, including  
6 abortifacients, presents significant risks to patient safety, and may impose significant public costs  
7 on the State of West Virginia, including increased health-care expenditures, emergency medical  
8 services, regulatory enforcement costs, and long-term public health impacts.

9 (3) The Legislature further finds that the interstate shipment and remote prescribing of  
10 prescription drugs in violation of West Virginia law undermines the state's ability to enforce its  
11 medical licensing, pharmaceutical, and public health laws and interferes with the state's authority  
12 to regulate the practice of medicine and the distribution of drugs within its borders.

13 (4) The Legislature finds that the unlawful and unregulated distribution of abortifacients is  
14 frequently conducted through interstate commercial channels, telemedicine platforms, and mail-

15 order distribution systems that operate outside of the jurisdiction and regulatory oversight of this  
16 state, thus making the enforcement of West Virginia law oftentimes unobtainable.

17 (5) The Legislature finds that the State of West Virginia has a legitimate and substantial  
18 interest in ensuring that public funds are not used to subsidize, support, or contract with persons  
19 or entities that knowingly engage in conduct that violates the laws of this state.

20 (6) The Legislature therefore declares that it is the public policy of the State of West  
21 Virginia to take reasonable and lawful measures to prevent, deter, and address the unlawful and  
22 unregulated distribution of abortifacients within this state and to ensure that state resources are  
23 not used to subsidize or support such conduct.

24 (b) For purposes of this section:

25 (1) "Manufacturer" means any person or entity who is engaged in manufacturing,  
26 preparing, propagating, compounding, processing, packaging, repackaging, or labeling of  
27 prescription or nonprescription drugs, whether within or outside this state.

28 (2) "Public entity" means the state of West Virginia, or any political subdivision thereof,  
29 and all spending units of state government including those otherwise excluded from applicability  
30 under § 5A-3-1 of this code.

31 (3) "Wholesale drug distributor" means any person or entity engaged in wholesale  
32 distribution of prescription or nonprescription drugs, including, but not limited to, manufacturers,  
33 repackers, own-label distributors, jobbers, private-label distributors, brokers, warehouses,  
34 including manufacturers' and distributors' warehouses, chain drug warehouses and wholesale  
35 drug warehouses, independent wholesale drug traders, prescription drug repackagers,  
36 physicians, dentists, veterinarians, birth control and other clinics, individuals, hospitals, nursing  
37 homes and/or their providers, health maintenance organizations and other health care providers,  
38 and retail and hospital pharmacies that conduct wholesale distributions. A wholesale distributor  
39 shall not include any motor carrier or freight forwarder as defined in 49 U.S.C. § 13102, an air

40 carrier as defined in 49 U.S.C. § 40102, a third-party logistics provider as defined in 21 U.S.C. §  
41 360eee, or person or entity hired solely to transport prescription drugs.

42 (c) Effective July 1, 2026, a public entity may not enter into a contract with a manufacturer  
43 or wholesale drug distributor for goods or services unless the contract includes a written  
44 certification that the person or entity is not currently engaged in, and will not for the duration of  
45 the contract, engage in the manufacturing or wholesale distribution of abortifacients.

46 (d) Any contract that violates the requirements of this section shall be void as against  
47 public policy.

48 (e) The Director of the Purchasing Division is authorized to promulgate legislative rules,  
49 including emergency rules, to implement the provisions of this section.

## **ARTICLE 2R. UNBORN CHILD PROTECTION ACT.**

### **§16-2R-2. Definitions.**

1 The definitions set forth in this section are controlling for purposes of this article and of this  
2 code, irrespective of terms used in medical coding, notations, or billing documents. For purposes  
3 of this article:

4 "Abortifacient" means any chemical or drug prescribed or dispensed with the intent of  
5 causing an abortion.

6 "Abortion" means the use of any instrument, medicine, drug, or any other substance or  
7 device with intent to terminate the pregnancy of a patient known to be pregnant and with intent to  
8 cause the death and expulsion or removal of an embryo or a fetus. This term does not include the  
9 terms "intrauterine fetal demise" or "stillbirth" or "miscarriage" as defined in this section.

10 "Attempt to perform or induce an abortion" means an act or the omission of an act that,  
11 under the circumstances as the person so acting or omitting to act believes them to be, constitutes  
12 a substantial step in a course of conduct intended to culminate in an abortion.

13 "Born alive" means the complete expulsion or extraction of the fetus, at any stage of  
14 development, who after such expulsion or extraction breathes or has a beating heart, pulsation of

15 the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical  
16 cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of  
17 natural or induced labor, cesarean section, or induced abortion.

18 ~~"Commissioner" means the Commissioner of the Bureau for Public Health of the West~~  
19 ~~Virginia Department of Health and Human Resources.~~

20 "Cabinet Secretary" means the Secretary of the West Virginia Department of Health.

21 "Contraception" or "contraceptive" means the prevention of pregnancy by interfering with  
22 the process of ovulation, fertilization, or implantation.

23 "Ectopic" means a fertilized egg which is developing outside the uterus, or a fertilized egg  
24 which is developing within parts of the uterus where it cannot be viable, including a cervical,  
25 cornual, or cesarean section scar implantations.

26 "Embryo" means the developing human from the time of fertilization until the end of the  
27 eighth week of gestation.

28 "Fertilization" means the fusion of a human spermatozoon with a human ovum.

29 "Fetal tissue research" means tissue or cells obtained from a dead embryo or fetus after  
30 a miscarriage, abortion, or intrauterine fetal demise.

31 "Fetus" means the developing human in the postembryonic period from nine weeks after  
32 fertilization until birth.

33 "Licensed medical professional" means a person licensed under §30-3-1 ~~et seq.~~, or §30-  
34 14-1 *et seq.* of this code.

35 "Implantation" means when a fertilized egg has attached to the lining of the wall of the  
36 uterus.

37 "Intrauterine fetal demise" or "stillbirth" means the unintended or spontaneous loss of a  
38 fetus after the 19th week of pregnancy.

39 "In vitro fertilization" means a procedure or procedures intended to improve fertility or  
40 prevent genetic problems and assist with conception.

41        "Medical emergency" means a condition or circumstance that so complicates the medical  
42    condition of a patient as to necessitate an abortion to avert serious risk of the patient's death or  
43    serious risk of substantial life-threatening physical impairment of a major bodily function, not  
44    including psychological or emotional conditions. This term includes a circumstance in which it is  
45    necessary to terminate a pregnancy of one or more fetuses to preserve the life of another fetus  
46    or fetuses. A condition is not deemed a medical emergency if based on a claim or diagnosis that  
47    the patient intends or may engage in conduct which results in the patient's death or in substantial  
48    and irreversible physical impairment of a major bodily function.

49        "Miscarriage" means the unintended or spontaneous loss of an embryo or a fetus before  
50    the 20th week of pregnancy. This term includes the medical terms "spontaneous abortion",  
51    "missed abortion", and "incomplete abortion".

52        "Nonviable" means an embryo or a fetus has a lethal anomaly which renders it  
53    incompatible with life outside of the uterus.

54        "Partial-birth abortion" means an abortion performed on a live fetus after partial vaginal  
55    delivery.

56        "Pregnancy" means the period of gestation after which a fertilized egg has implanted in  
57    the wall of a uterus.

58        "Reasonable medical judgment" means a medical judgment that would be made by a  
59    licensed medical professional who is knowledgeable about the case and the treatment  
60    possibilities with respect to the medical conditions involved.

61        "Unemancipated minor" means a person younger than 18 years of age who is not, or has  
62    not been, married or judicially emancipated.

**§16-2R-10. Abortifacients.**

1        (a) Unless otherwise permitted under §16-2R-3 of this code, a person or entity is guilty of  
2    performing or attempting to perform an abortion with an abortifacient if a person or entity  
3    knowingly and willfully:

4        (1) Sends by courier, delivery, or mail service an abortifacient to a person in the State of  
5        West Virginia;

6        (2) Places an abortifacient into the stream of commerce when the person or entity knows  
7        that the abortifacient is to be used in this state or mailed or sent by courier, delivery, or mail  
8        service to a person in the State of West Virginia;

9        (3) Prescribes an abortifacient to a person in the State of West Virginia, regardless of  
10      whether the prescriber was in the State of West Virginia; or

11      (4) Disseminates an abortifacient in the State of West Virginia without a lawfully valid  
12      prescription.

13      (b)(1) Any person other than a licensed medical professional, as defined in §16-2R-2 of  
14      this code, who knowingly and willfully violates subsection (a) of this section is guilty of a felony  
15      and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate  
16      sentence of not less than three nor more than 10 years.

17      (2) Where a licensed medical professional, as defined in §16-2R-2 of this code, knowingly  
18      and willfully violates subsection (a) of this section, he or she is subject to disciplinary action by his  
19      or her applicable licensing board. If the licensing board finds that the licensed medical  
20      professional has knowingly and willfully violated subsection (a) of this section, the licensing board  
21      shall revoke the medical professional's license.

22      (3) This section does not authorize a woman to be charged with or convicted of a criminal  
23      offense in the death of her own unborn child.

24      (c) A pregnant woman who unlawfully receives an abortifacient or any family member of  
25      the pregnant woman who unlawfully received an abortifacient as defined in §48-27-204(7)(A)-(P)  
26      of this code or the spouse or father of the child may bring a civil action, which is not subject to any  
27      of the provisions of §55-7B-1 et seq. of this code, against a person or entity that knowingly and  
28      willfully violates subsection (a) of this section.

29        (d) Any individual bringing a civil action pursuant to subsection (c) of this section shall  
30    serve a copy of the complaint filed in the civil action on the Attorney General of West Virginia no  
31    later than 30 days after the institution of the action.

32        (e) The Attorney General of West Virginia may pursue a civil action against a person or  
33    entity that knowingly and willfully violates subsection (a) of this section in the circuit court where  
34    the abortion or attempted abortion occurred or in the circuit court of the county in which the  
35    abortifacient was received. In addition to injunctive relief, the Attorney General may recover  
36    against the person or entity the maximum amount of pecuniary relief permitted under West  
37    Virginia law and may also recover against the person or entity attorney's fees, costs, and  
38    expenses incurred in pursuing this claim. The Attorney General shall maintain records of the  
39    number of complaints it has received pursuant to subsection (d) of this section and shall provide  
40    a report containing the number of the complaints received and the number of civil actions in which  
41    it has sought relief on an annual basis to the Joint Committee on the Judiciary on or before  
42    December 31 each year.

43        (f) If a claimant, other than the Attorney General of West Virginia, prevails in a civil action  
44    alleging a violation of subsection (a) of this section, and in addition to any permissive relief the  
45    circuit court may award in law or equity, the circuit court shall award:

46        (1) Injunctive relief directing the person or entity to refrain from engaging in the prohibited  
47    conduct set forth in subsection (a) of this section; and

48        (2) Damages of \$10,000 for each abortion that the person or entity knowingly and willfully  
49    performed or attempted to perform.

50        (3) Neither an indictment nor a conviction is required for establishing liability against a  
51    person or entity in a civil action alleging a violation of subsection (a) of this section.

52        (g) This section shall not apply to:

53           (1) A pharmacy fulfilling a lawfully valid prescription issued by a licensed medical  
54 professional in this state;  
55           (2) A physician providing a medical procedure or service for a legitimate medical reason  
56 to a pregnant woman that results in the accidental or unintentional physical injury to or death of  
57 the unborn child;  
58           (3) A motor carrier or freight forwarder as defined in 49 U.S.C. § 13102;  
59           (4) An air carrier as defined in 49 U.S.C. § 40102; or  
60           (5) a third-party logistics provider as defined in 21 U.S.C. § 360eee.  
61           (6) A manufacturer or distributor sending an abortifacient for use in connection with a  
62 lawfully valid prescription issued by a licensed medical professional in this state in accordance  
63 with the provisions of §16-2R-3 of this code.

**§16-2R-11. Attestation.**

1           Within one year of initial licensure to practice as a licensed medical professional or other  
2 licensed professional entitled to prescribe or dispense an abortifacient pursuant to chapter 30 of  
3 this code, the licensed medical professional or other licensed professional entitled to prescribe or  
4 dispense an abortifacient pursuant to chapter 30 of this code, shall sign an affidavit attesting that  
5 they understand the abortion laws of the State of West Virginia.