

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-

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

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

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

(b) For purposes of this section:

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

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

(3) "Wholesale drug distributor" means any person or entity engaged in wholesale distribution of prescription or nonprescription drugs, including, but not limited to, manufacturers, repackers, own-label distributors, jobbers, private-label distributors, brokers, warehouses, including manufacturers' and distributors' warehouses, chain drug warehouses and wholesale drug warehouses, independent wholesale drug traders, prescription drug repackagers, physicians, dentists, veterinarians, birth control and other clinics, individuals, hospitals, nursing homes and/or their providers, health maintenance organizations and other health care providers, and retail and hospital pharmacies that conduct wholesale distributions. A wholesale distributor 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§16-2R-10. Abortifacients.

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

(1) A pharmacy fulfilling a lawfully valid prescription issued by a licensed medical professional in this state;

(2) A physician providing a medical procedure or service for a legitimate medical reason to a pregnant woman that results in the accidental or unintentional physical injury to or death of the unborn child;

(3) A motor carrier or freight forwarder as defined in 49 U.S.C. § 13102;

(4) An air carrier as defined in 49 U.S.C. § 40102; or

(5) a third-party logistics provider as defined in 21 U.S.C. § 360eee.

(6) A manufacturer or distributor sending an abortifacient for use in connection with a lawfully valid prescription issued by a licensed medical professional in this state in accordance with the provisions of §16-2R-3 of this code.

§16-2R-11. Attestation.

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