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WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1984



ENROLLED

Com. Sub. for
HOUSE BILL No. 1278

(By ~~##~~ *Del. Manchin + Del. Smith*)



Passed February 23, 1984

In Effect Ninety Days From Passage



ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 1278

(By DELEGATE MANCHIN and DELEGATE SMITH)

(Originating in the House Committee on the Judiciary)

[Passed February 23, 1984; in effect ninety days from passage.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-f, relating to the performing of abortion upon unemancipated minors generally and requiring parental notification prior to performing any such abortion; certain legislative findings and a statement of legislative intent with respect thereto; providing for the definition of certain terms used; requiring parental notification prior to performing abortion upon unemancipated minor in certain cases; the manner of and the time which such notification is to be given; providing for the waiver of such notification in certain cases; waiver of notification when any such minor objects to notification and certain procedures relating to such waiver; petition to the circuit court for such waiver; the contents of such petition; the duties of the attorney general and of the clerk of the circuit court with respect thereto; requiring that such petition and the proceedings held thereon and all records relating thereto are to be confidential;

providing for the appointment of an attorney to represent the minors in certain cases; the payment of such attorney and limitation upon such payment; requiring that the hearing upon such petition be held without delay and for the speedy rendering and entry of judgment upon such petition; requiring a waiver to be issued by the court upon certain findings; establishing review procedures by the supreme court of appeals or by any justice thereof; the effect of any court-ordered waiver of such notification; filing fees not required in any such court proceedings; providing that notification requirements are not required in certain cases of emergency; requiring that certain reports with respect to abortions performed upon unemancipated minors are to be filed with the department of health and the contents of such reports; clarifying that no physician or other person may be required to perform or assist in any abortion; providing criminal penalties for the violation of said article and for exceptions thereto in certain cases; and the severability of the provisions of said article.

Be it enacted by the Legislature of West Virginia:

That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article two-f, to read as follows:

ARTICLE 2F. PARENTAL NOTIFICATION OF ABORTIONS PERFORMED ON UNEMANCIPATED MINORS.

§16-2F-1. Legislative findings and intent.

1 The Legislature finds that immature minors often lack the
2 ability to make fully informed choices that take into account
3 both immediate and long-range consequences of their actions;
4 that the medical, emotional and psychological consequences
5 of abortion are serious and of indeterminate duration, parti-
6 cularly when the patient is immature; that in its current
7 abortion policy, as expressed in *Bellotti v. Baird*, 443 U.S. 622
8 (1979) and *H. L. v. Matheson*, 450 U.S. 398 (1981), the
9 United States Supreme Court clearly relies on physicians'
10 commitment to consider all factors, physical and otherwise,
11 before performing abortions on minors; that parents ordinarily
12 possess information essential to a physician's exercise of his
13 best medical judgment concerning their child; and that par-

14 ents who are aware that their minor daughter has had an
15 abortion may better ensure that the minor receives adequate
16 medical attention after her abortion. The Legislature further
17 finds that parental consultation regarding abortion is usually
18 desirable and in the best interest of the minor.

19 The Legislature further finds in accordance with the U.S.
20 Supreme Court's decision in *Bellotti v. Baird*, 443 U.S.
21 622 (1979), and *H. L. v. Matheson*, 450 U.S. 398 (1981),
22 that there exists important and compelling state interests (i)
23 in protecting minors against their own immaturity, (ii) in
24 fostering the family structure and preserving it as a viable
25 social unit, and (iii) in protecting the rights of parents to
26 rear their own children in their own household.

27 It is, therefore, the intent of the Legislature to further
28 these interests by enacting this parental notice provision.

§16-2F-2. Definitions.

1 For purposes of this article, unless the context in which
2 used clearly requires otherwise:

3 (1) "Minor" means any person under the age of eighteen
4 years who has not graduated from high school.

5 (2) "Unemancipated minor" means any minor who is
6 neither married nor who has been emancipated pursuant to
7 applicable federal law or as provided by section twenty-seven,
8 article seven, chapter forty-nine of this code.

9 (3) "Actual notice" means the giving of notice directly, in
10 person or by telephone.

11 (4) "Constructive notice" means the giving of notice by
12 certified mail to the last known address of the parents or legal
13 guardian, return receipt requested.

14 (5) "Abortion" means the use of any instrument, medicine,
15 drug or any other substance or device with intent to terminate
16 the pregnancy of a female known to be pregnant and with
17 intent to cause the expulsion of a fetus other than by live
18 birth: *Provided*, That nothing in this article shall be construed
19 so as to prevent the prescription, sale or transfer of intrauterine

20 contraceptive devices or other contraceptive devices or other
21 generally medically accepted contraceptive devices, instru-
22 ments, medicines or drugs for a female who is not known to be
23 pregnant and for whom such contraceptive devices, instru-
24 ments, medicines or drugs were prescribed by a physician
25 solely for contraceptive purposes and not for the purpose of
26 inducing or causing the termination of a known pregnancy.

**§16-2F-3. Parental notification required for abortions performed
on unemancipated minors; waiver; notice to minor
of right of petition to circuit court; minor to be re-
ferred for counseling.**

1 (a) No physician may perform an abortion upon an un-
2 emancipated minor unless such physician has given or caused
3 to be given at least twenty-four hours actual notice to one of
4 the parents or to the legal guardian of the pregnant minor of
5 his intention to perform the abortion, or, if the parent or
6 guardian cannot be found and notified after a reasonable effort
7 so to do, without first having given at least forty-eight hours
8 constructive notice computed from the time of mailing to the
9 parent or to the legal guardian of the minor: *Provided*, That
10 prior to giving the notification required by this section, the
11 physician shall advise the unemancipated minor of the right of
12 petition to the circuit court for waiver of notification: *Pro-*
13 *vided, however*, That any such notification may be waived by
14 a duly acknowledged writing signed by a parent or the guard-
15 ian of the minor.

16 (b) Upon notification being given to any parent or to the
17 legal guardian of such pregnant minor, the physician shall
18 refer such pregnant minor to a counselor or caseworker of
19 any church or school or of the department of human services
20 or of any other comparable agency for the purpose of arrang-
21 ing or accompanying such pregnant minor in consultation with
22 her parents. Such counselor shall thereafter be authorized to
23 monitor the circumstances and the continued relationship of
24 and between such minor and her parents.

25 (c) Parental notification required by subsection (a) of this
26 section may be waived by a physician, other than the physician
27 who is to perform the abortion, if such other physician finds

28 that the minor is mature enough to make the abortion decision
29 independently or that notification would not be in the minor's
30 best interest: *Provided*, That such other physician shall not be
31 associated professionally or financially with the physician pro-
32 posing to perform the abortion.

**§16-2F-4. Waiver of notification; petition to circuit court; con-
tents of petition; duties of attorney general and cir-
cuit clerk; confidentiality of proceedings; appointment
of counsel and limitation of compensation; findings
required to be made by court; petition to supreme
court; waiver of certain fees.**

1 (a) A minor who objects to such notice being given to
2 her parent or legal guardian may petition for a waiver of
3 such notice to the circuit court of the county in which the
4 minor resides or in which the abortion is to be performed,
5 or to the judge of either of such courts. Such minor may so
6 petition and proceed in her own right or, at her option, by
7 a next friend.

8 (b) Such petition need not be made in any specific form
9 and shall be sufficient if it fairly sets forth the facts and
10 circumstances of the matter, but shall contain the following
11 information:

12 (i) The age of the petitioner and her educational level;

13 (ii) The county and state in which she resides; and

14 (iii) A brief statement of petitioner's reason or reasons for
15 the desired waiver of notification of the parent or guardian
16 of such minor petitioner.

17 No such petition shall be dismissed nor shall any hearing
18 thereon be refused because of any defect in the form of the
19 petition.

20 (c) Upon the effective date of this article or as soon
21 thereafter as may be, the attorney general shall prepare
22 suggested form petitions and accompanying instructions and
23 shall make the same available to the several clerks of the
24 circuit courts. Such clerks shall see that a sufficient number
25 of such suggested form petitions and instructions are avail-

26 able in the clerk's office for the use of any person desiring
27 to use the same for the purposes of this section.

28 (d) All proceedings held pursuant to this article shall be
29 confidential and the court shall conduct all such proceedings
30 in camera. The court shall inform the minor petitioner of
31 her right to be represented by counsel and that if she is
32 without the requisite funds to retain the services of an at-
33 torney, that the court will appoint an attorney to represent
34 her interest in the matter. If the minor petitioner desires
35 the services of an attorney, an attorney shall be appointed
36 to represent such minor petitioner, if she advises the court
37 under oath or affidavit that she is financially unable to retain
38 counsel. Any attorney appointed to represent such minor peti-
39 tioner shall be appointed and paid for his services pursuant
40 to the provisions of article twenty-one, chapter twenty-nine
41 of this code: *Provided*, That the pay to any such attorney
42 pursuant to such appointment shall not exceed the sum of
43 one hundred dollars.

44 (e) The court shall conduct a hearing upon the petition
45 without delay, but in no event shall the delay exceed the next
46 succeeding judicial day, and the court shall render its decision
47 immediately upon its submission and, in any event, an order
48 reflecting the findings of fact and conclusions of law reached
49 by the court and its judgment shall be endorsed by the judge
50 thereof not later than twenty-four hours following such sub-
51 mission and shall be forthwith entered of record by the clerk
52 of the court. All testimony, documents and other evidence
53 presented to the court, as well as the petition and any orders
54 entered thereon and all records of whatsoever nature and kind
55 relating to the matter shall be sealed by the clerk and shall
56 not be open to any person except upon order of the court
57 and, then, only upon good cause being shown therefor. A
58 separate order book for the purposes of this article shall be
59 maintained by such clerk and shall likewise be sealed and
60 not open to inspection by any person save upon order of the
61 court for good cause shown.

62 (f) Notice as required by section three of this article shall
63 be ordered waived by the court if the court finds either:

64 (1) That the minor petitioner is mature and well-informed

65 sufficiently to make the decision to proceed with the abortion
66 independently and without the notification or involvement
67 of her parent or legal guardian, or

68 (2) That notification to the person or persons to whom
69 such notification would otherwise be required would not be
70 in the best interest of the minor petitioner.

71 (g) If or when the circuit court, or the judge thereof,
72 shall refuse to order the waiver of the notification required
73 by section three of this article, a copy of the petition and
74 all orders entered in the matter and all other documents
75 and papers submitted to the circuit court, may be presented
76 to the supreme court of appeals, or to any justice thereof
77 if such court then be in vacation, and such court or justice
78 if deemed proper, may thereupon order the waiver of notifica-
79 tion otherwise required by section three of this article. The
80 supreme court of appeals or justice thereof shall hear and
81 decide the matter without delay and shall enter such orders
82 as such court or justice may deem appropriate.

83 (h) If either the circuit court or the supreme court of
84 appeals, or any judge or justice thereof if either of such
85 courts be then in vacation, shall order a waiver of the notifica-
86 tion required by section three of this article, any physician
87 to whom a certified copy of said order shall be presented may
88 proceed to perform the abortion to the same extent as if
89 such physician were in compliance with the provisions of said
90 section three and, notwithstanding the fact that no notification
91 is given to either the parent or legal guardian of any such
92 unemancipated minor, any such physician shall not be subject
93 to the penalty provisions which may be prescribed by this
94 article for such failure of notification.

95 (i) No filing fees may be required of any minor who
96 avails herself of any of the procedures provided by this section.

§16-2F-5. Emergency exception from notification requirements.

1 The notification requirements of section three of this article
2 do not apply where there is an emergency need for an abortion
3 to be performed if the continuation of the pregnancy consti-
4 tutes an immediate threat and grave risk to the life or health

5 of the pregnant minor and the attending physician so certifies
6 in writing setting forth the nature of such threat or risk and
7 the consequences which may be attendant to the continuation
8 of the pregnancy. Such writing shall be maintained with the
9 other medical records relating to such minor which are main-
10 tained by the physician and the facility at which such abortion
11 is performed.

§16-2F-6. Reporting requirements for physician.

1 Any physician performing an abortion upon an unemanci-
2 pated minor shall provide the department of health a written
3 report of the procedure within thirty days after having per-
4 formed the abortion. The department of health shall provide
5 reporting forms for this purpose to all physicians and health
6 facilities required to be licensed pursuant to article five-b of
7 this chapter. The following information, in addition to any
8 other information which may be required by the department
9 of health, regarding the minor receiving the abortion shall be
10 included in such reporting form:

- 11 (1) Age;
- 12 (2) Educational level;
- 13 (3) Previous pregnancies;
- 14 (4) Previous live births;
- 15 (5) Previous abortions;
- 16 (6) Complications, if any, of the abortion being reported;
- 17 (7) Reason for waiver of notification of the minor's parent
18 or guardian, if such notice was waived; and
- 19 (8) The city and county in which the abortion was per-
20 formed.

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21 Any such report shall not contain the name, address or
22 other information by which the minor receiving the abortion
23 may be identified.

§16-2F-7. Article not to be construed to require abortion.

1 Nothing in this article, nor in any order issued pursuant
2 thereto, shall require that a physician perform an abortion or

3 that any person be required to assist in the performance of an
4 abortion if such physician or person, for any reason, medical
5 or otherwise, does not wish to perform or assist in such
6 abortion.

§16-2F-8. Penalties.

1 Any person who knowingly performs an abortion upon an
2 unemancipated minor in violation of this article or who know-
3 ingly fails to conform to any requirement of this article shall
4 be guilty of a misdemeanor, and, upon conviction thereof,
5 shall be fined not less than five hundred dollars nor more
6 than one thousand dollars or imprisoned in the county jail not
7 more than thirty days, or both fined and imprisoned.

§16-2F-9. Severability.

1 The provisions of subsection (cc), section ten, article two,
2 chapter two of this code shall apply to the provisions of this
3 article to the same extent as if said subsection were set forth
4 in extenso herein.

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

James L. Davis
Chairman Senate Committee

Donald C. Hull
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Todd C. Hultin
Clerk of the Senate

Donald J. Hogg
Clerk of the House of Delegates
Warren R. McBrat
President of the Senate

W. W. M. Lee, Jr.
Speaker House of Delegates

The within *is opposed* this the *3*
day of *February* *March*, 1984.

James R. Royster
Governor

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