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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 2002



ENROLLED

Committee Substitute for

SENATE BILL NO. 283

(By Senator Anderson, et al)



PASSED March 8, 2002

In Effect ninety days from Passage

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 283

(SENATORS ANDERSON, ROSS, KESSLER, MINARD,
EDGELL, BOLEY, BAILEY, FACEMYER, MINEAR, OLIVERIO,
SHARPE, LOVE, CRAIGO, BOWMAN, DEEM, MCKENZIE,
SPOUSE, UNGER, PREZIOSO, HELMICK,
PLYMALE AND FANNING, *original sponsors*)

[Passed March 8, 2002; 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-i, relating to creating the "Women's Right to Know Act"; requiring informed consent for an abortion to be performed; exception for a medical emergency; requiring the department of health and human resources to publish information and develop a website on alternatives to abortion; requiring physicians to report abortion statistics; and penalties.

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-i, to read as follows:

ARTICLE 2I. WOMEN'S RIGHT TO KNOW ACT.

§16-2I-1. Short title.

1 This article shall be known and may be cited as the
2 "Women's Right to Know Act".

§16-2I-2. Definitions.

1 As used in this article, the term:

2 (a) "Abortion" means the use or prescription of any
3 instrument, medicine, drug or any other substance or
4 device intentionally to terminate the pregnancy of a
5 female known to be pregnant with an intention other than
6 to increase the probability of a live birth, to preserve the
7 life or health of the child after live birth or to remove a
8 dead fetus.

9 (b) "Attempt to perform an abortion" means an act, or
10 an omission of a statutorily required act, that, under the
11 circumstances as the actor believes them to be, constitutes
12 a substantial step in a course of conduct planned to
13 culminate in the performance of an abortion in violation
14 of this article.

15 (c) "Health care professional" means a physician
16 licensed to practice in this state, a registered nurse, a
17 licensed practical nurse, a physician's assistant, or any
18 other health care professional licensed to practice in this
19 state.

20 (d) "Medical emergency" means any condition which, on
21 the basis of the physician's good faith clinical judgment, so
22 complicates the medical condition of a pregnant female as
23 to necessitate the immediate abortion of her pregnancy to
24 avert her death or for which a delay will create serious risk

25 of substantial and irreversible impairment of a major
26 bodily function.

27 (e) "Physician" means any medical doctor or osteopath
28 licensed to practice medicine in this state.

29 (f) "Probable gestational age of the unborn child" means
30 what, in the judgment of the physician, will with reason-
31 able probability be the gestational age of the unborn child
32 at the time the abortion is planned to be performed.

33 (g) "Stable internet website" means a website that, to
34 the extent reasonably practicable, is safeguarded from
35 having its content altered other than by the department of
36 health and human resources.

§16-2I-3. Informed consent.

1 No abortion may be performed in this state except with
2 the voluntary and informed consent of the female upon
3 whom the abortion is to be performed. Except in the case
4 of a medical emergency, consent to an abortion is volun-
5 tary and informed if and only if:

6 (a) *Information which must be provided by physician.* –
7 The female is told the following, by telephone or in person,
8 by the physician who is to perform the abortion or by a
9 referring physician, at least twenty-four hours before the
10 abortion:

11 (1) The name of the physician who will perform the
12 abortion;

13 (2) The particular medical risks associated with the
14 particular abortion procedure to be employed including,
15 when medically accurate, the risks of infection, hemor-
16 rhage, danger to subsequent pregnancies and infertility, or
17 any other medical risk;

18 (3) The probable gestational age of the unborn child at
19 the time the abortion is to be performed; and

20 (4) The medical risks associated with carrying her child
21 to term.

22 The information required by this subsection may be
23 provided by telephone without conducting a physical
24 examination or tests of the patient, in which case the
25 information required to be provided may be based on facts
26 supplied the physician by the female and whatever other
27 relevant information is reasonably available to the physi-
28 cian. It may not be provided by a tape recording, but must
29 be provided during a consultation in which the physician
30 is able to ask questions of the female and the female is able
31 to ask questions of the physician.

32 If a physical examination, tests or the availability of
33 other information to the physician subsequently indicate,
34 in the medical judgment of the physician, a revision of the
35 information previously supplied to the patient, that
36 revised information may be communicated to the patient
37 at any time prior to the performance of the abortion.

38 Nothing in this section may be construed to preclude
39 provision of required information in a language under-
40 stood by the patient through a translator.

41 (b) *Information which may be provided by agent of*
42 *physician.* – The female is informed, by telephone or in
43 person, by the physician who is to perform the abortion, by
44 a referring physician, or by an agent of either physician at
45 least twenty-four hours before the abortion:

46 (1) That medical assistance benefits may be available for
47 prenatal care, childbirth and neonatal care;

48 (2) That the father is liable to assist in the support of her
49 child, even in instances in which the father has offered to
50 pay for the abortion; and

51 (3) That she has the right to review the printed materials
52 described in section four of this article, that these materi-

53 als are available on a state-sponsored website and the
54 website address.

55 The physician or the physician's agent shall orally
56 inform the female that the materials have been provided
57 by the state of West Virginia and that they describe the
58 unborn child and list agencies which offer alternatives to
59 abortion.

60 If the female chooses to view the materials other than on
61 the website, then they shall either be given to her at least
62 twenty-four hours before the abortion or mailed to her at
63 least seventy-two hours before the abortion by certified
64 mail, restricted delivery to addressee, which means the
65 postal employee can only deliver the mail to the addressee.

66 The information required by this subsection may be
67 provided by a tape recording if provision is made to record
68 or otherwise register specifically whether the female does
69 or does not choose to have the printed materials given or
70 mailed to her.

71 (c) *Certification required.* – The female shall certify in
72 writing, prior to the abortion, that the information de-
73 scribed in subsections (a) and (b) of this section, has been
74 given to her, and that she has been informed of her oppor-
75 tunity to review the information referred to in subdivision
76 (3), subsection (b) of this section.

77 (d) *Copy of certification.* – Prior to performing the
78 abortion, the physician who is to perform the abortion or
79 the physician's agent shall receive a copy of the written
80 certification prescribed by subsection (c) of this section.

§16-2I-4. Printed information.

1 (a) *Alternatives to abortion and unborn development*
2 *data.* – Within ninety days after this article is enacted, the
3 department of health and human resources shall cause to
4 be published, in English and in each language which is the
5 primary language of two percent or more of the state's

6 population, and shall cause to be available on the state
7 website provided for in section five of this article, the
8 following printed materials in such a way as to ensure that
9 the information is easily comprehensible:

10 (1) Geographically indexed materials designed to inform
11 the female of public and private agencies and services
12 available to assist a female through pregnancy, upon
13 childbirth, and while the child is dependent, including
14 adoption agencies, which shall include a comprehensive
15 list of the agencies available, a description of the services
16 they offer, and a description of the manner, including
17 telephone numbers, in which they might be contacted or,
18 at the option of the department of health and human
19 resources, printed materials including a toll-free, twenty-
20 four hour a day telephone number which may be called to
21 obtain, orally, such a list and description of agencies in the
22 locality of the caller and of the services they offer; and

23 (2) Materials designed to inform the female of the
24 probable anatomical and physiological characteristics of
25 the unborn child at two-week gestational increments from
26 the time when a female can be known to be pregnant to
27 full term, including any relevant information on the
28 possibility of the unborn child's survival and pictures or
29 drawings representing the development of unborn children
30 at two-week gestational increments: *Provided*, That any
31 pictures or drawings must contain the dimensions of the
32 fetus and must be realistic and appropriate for the stage of
33 pregnancy depicted. The materials shall be objective,
34 nonjudgmental, and designed to convey only accurate
35 scientific information about the unborn child at the
36 various gestational ages. The material shall also contain
37 objective information describing the methods of abortion
38 procedures commonly employed, the medical risks com-
39 monly associated with each procedure, the possible
40 detrimental psychological effects of abortion, and the
41 medical risks commonly associated with carrying a child
42 to term.

43 (b) *Legibility.* – The materials referred to in subsection
44 (a) of this section shall be printed in a typeface large
45 enough to be clearly legible. The website provided for in
46 section five of this article shall be maintained at a mini-
47 mum resolution of seventy dots per inch. All pictures
48 appearing on the website shall be a minimum of 200x300
49 pixels. All letters on the website shall be a minimum of
50 eleven point font. All information and pictures shall be
51 accessible with an industry standard browser, requiring no
52 additional plug-ins.

53 (c) *Availability.* – The materials required under this
54 section shall be available at no cost from the department
55 of health and human resources upon request and in
56 appropriate number to any person, facility or hospital.

§16-2I-5. Internet website.

1 The department of health and human resources shall
2 develop and maintain a stable internet website to provide
3 the information described under section four of this
4 article. No information regarding who uses the website
5 may be collected or maintained. The department of health
6 and human resources shall monitor the website on a daily
7 basis to prevent and correct tampering.

§16-2I-6. Procedure in case of medical emergency.

1 When a medical emergency compels the performance of
2 an abortion, the physician shall inform the female, prior to
3 the abortion if possible, of the medical indications sup-
4 porting the physician's judgment that an abortion is
5 necessary to avert her death or that a twenty-four hour
6 delay will create serious risk of substantial and irrevers-
7 ible impairment of a major bodily function.

§16-2I-7. Reporting requirements.

1 (a) *Reporting form.* – Within ninety days after this article
2 is enacted, the department of health and human resources

3 shall prepare a reporting form for physicians containing a
4 reprint of this article and listing:

5 (1) The number of females to whom the physician
6 provided the information described in subsection (a),
7 section three of this article; of that number, the number
8 provided by telephone and the number provided in person;
9 and of each of those numbers, the number provided in the
10 capacity of a referring physician and the number provided
11 in the capacity of a physician who is to perform the
12 abortion;

13 (2) The number of females to whom the physician or an
14 agent of the physician provided the information described
15 in subsection (b), section three of this article; of that
16 number, the number provided by telephone and the
17 number provided in person; of each of those numbers, the
18 number provided in the capacity of a referring physician
19 and the number provided in the capacity of a physician
20 who is to perform the abortion; and of each of those
21 numbers, the number provided by the physician and the
22 number provided by an agent of the physician;

23 (3) The number of females who availed themselves of the
24 opportunity to obtain a copy of the printed information
25 described in section four of this article other than on the
26 website, and the number who did not; and of each of those
27 numbers, the number who, to the best of the reporting
28 physician's information and belief, went on to obtain the
29 abortion; and

30 (4) The number of abortions performed by the physician
31 in which information otherwise required to be provided at
32 least twenty-four hours before the abortion was not so
33 provided because an immediate abortion was necessary to
34 avert the female's death, and the number of abortions in
35 which the information was not so provided because a delay
36 would create serious risk of substantial and irreversible
37 impairment of a major bodily function.

38 (b) *Distribution of forms.* – The division of health shall
39 ensure that copies of the reporting forms described in
40 subsection (a) of this section are provided:

41 (1) Within one hundred twenty days after this article is
42 enacted, to all physicians licensed to practice in this state;

43 (2) To each physician who subsequently becomes newly
44 licensed to practice in this state, at the same time as
45 official notification to that physician that the physician is
46 so licensed; and

47 (3) By the first day of December of each year, other than
48 the calendar year in which forms are distributed in
49 accordance with subdivision (1) of this subsection, to all
50 physicians licensed to practice in this state.

51 (c) *Reporting requirement.* – By the twenty-eighth day of
52 February of each year, each physician who provided, or
53 whose agent provided, information to one or more females
54 in accordance with section three of this article, during the
55 previous calendar year shall submit to the department of
56 health and human resources, a copy of the form described
57 in subsection (a) of this section, with the requested data
58 entered accurately and completely.

59 (d) *Failure to report as required.* – Reports that are not
60 submitted by the end of a grace period of thirty days
61 following the due date are subject to a late fee of five
62 hundred dollars for each additional thirty-day period or
63 portion of a thirty-day period they are overdue. Any
64 physician required to report in accordance with this
65 section who has not submitted a report, or has submitted
66 only an incomplete report, more than one year following
67 the due date, may, in an action brought by the department
68 of health and human resources, be directed by a court of
69 competent jurisdiction to submit a complete report within
70 a period stated by court order or be subject to sanctions
71 for civil contempt.

72 (e) *Public statistics.* – By the first day of August of each
73 year, the department of health and human resources shall
74 issue a public report providing statistics for the previous
75 calendar year compiled from all of the reports covering
76 that year submitted in accordance with this section for
77 each of the items listed in subsection (a) of this section.
78 Each report shall also provide the statistics for all previous
79 calendar years, adjusted to reflect any additional informa-
80 tion from late or corrected reports. The department of
81 health and human resources shall take care to ensure that
82 none of the information included in the public reports
83 could reasonably lead to the identification of any individ-
84 ual providing information in accordance with subsection
85 (a), (b) or (c) of this section.

86 (f) *Modifications by legislative rule.* – The department of
87 health and human resources may propose rules for legisla-
88 tive approval in accordance with the provisions of article
89 three, chapter twenty-nine-a of this code which alter the
90 dates established by subdivision (3), subsection (b), or
91 subsections (c) or (e) of this section, or consolidate the
92 forms or reports described in this section with other forms
93 or reports to achieve administrative convenience or fiscal
94 savings or to reduce the burden of reporting requirements,
95 so long as reporting forms are sent to all licensed physi-
96 cians in the state at least once every year and the report
97 described in subsection (e) of this section is issued at least
98 once every year.

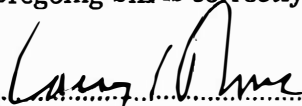
§16-2I-8. Violation remedies.

1 (a) Any person, medical peer review committee, firm,
2 corporation, member of the West Virginia board of medi-
3 cine or public officer may make a complaint to the board
4 of medicine charging a physician with a violation of this
5 article.

6 (b) Any physician who violates the provisions of this
7 article is subject to sanctions by the board of medicine.
8 For the first violation, the board of medicine shall issue a

9 written reprimand to the physician. For the second
10 violation, the board of medicine shall suspend the physi-
11 cian's license for not less than thirty days. For the third
12 violation, the board of medicine shall suspend the physi-
13 cian's license for not less than one year. For a subsequent
14 violation, the board of medicine shall revoke the physi-
15 cian's license.

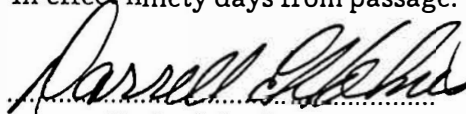
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee

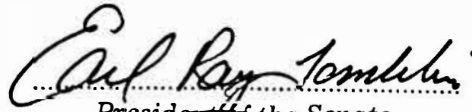

.....
Chairman House Committee


Originated in the Senate.

In effect ninety days from passage.



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Clerk of the Senate


.....
Clerk of the House of Delegates


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President of the Senate


.....
Speaker House of Delegates

The within is disapproved this the 22nd
Day of March, 2002.


.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/22/02

Time 9:50 am