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
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 21. WOMEN'S RIGHT TO KNOW ACT.**

§16-21-1. Short title.

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

§16-21-2. Definitions.

As used in this article, the term:

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

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

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

(d) "Medical emergency" means any condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant female as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk
of substantial and irreversible impairment of a major bodily function.

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

(f) "Probable gestational age of the unborn child" means what, in the judgment of the physician, will with reasonable probability be the gestational age of the unborn child at the time the abortion is planned to be performed.

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

§16-21-3. Informed consent.

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

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

1. The name of the physician who will perform the abortion;

2. The particular medical risks associated with the particular abortion procedure to be employed including, when medically accurate, the risks of infection, hemorrhage, danger to subsequent pregnancies and infertility, or any other medical risk;

3. The probable gestational age of the unborn child at the time the abortion is to be performed; and
(4) The medical risks associated with carrying her child to term.

The information required by this subsection may be provided by telephone without conducting a physical examination or tests of the patient, in which case the information required to be provided may be based on facts supplied the physician by the female and whatever other relevant information is reasonably available to the physician. It may not be provided by a tape recording, but must be provided during a consultation in which the physician is able to ask questions of the female and the female is able to ask questions of the physician.

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

Nothing in this section may be construed to preclude provision of required information in a language understood by the patient through a translator.

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

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

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

(3) That she has the right to review the printed materials described in section four of this article, that these materi-
als are available on a state-sponsored website and the
website address.

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

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

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

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

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

§16-21-4. Printed information.

(a) Alternatives to abortion and unborn development
data. – Within ninety days after this article is enacted, the
department of health and human resources shall cause to
be published, in English and in each language which is the
primary language of two percent or more of the state's
population, and shall cause to be available on the state
website provided for in section five of this article, the
following printed materials in such a way as to ensure that
the information is easily comprehensible:

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

(2) Materials designed to inform the female of the
probable anatomical and physiological characteristics of
the unborn child at two-week gestational increments from
the time when a female can be known to be pregnant to
full term, including any relevant information on the
possibility of the unborn child's survival and pictures or
drawings representing the development of unborn children
at two-week gestational increments: Provided, That any
pictures or drawings must contain the dimensions of the
fetus and must be realistic and appropriate for the stage of
pregnancy depicted. The materials shall be objective,
nonjudgmental, and designed to convey only accurate
scientific information about the unborn child at the
various gestational ages. The material shall also contain
objective information describing the methods of abortion
procedures commonly employed, the medical risks com-
monly associated with each procedure, the possible
detrimental psychological effects of abortion, and the
medical risks commonly associated with carrying a child
to term.
(b) **Legibility.** – The materials referred to in subsection (a) of this section shall be printed in a typeface large enough to be clearly legible. The website provided for in section five of this article shall be maintained at a minimum resolution of seventy dots per inch. All pictures appearing on the website shall be a minimum of 200x300 pixels. All letters on the website shall be a minimum of eleven point font. All information and pictures shall be accessible with an industry standard browser, requiring no additional plug-ins.

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

§16-21-5. **Internet website.**

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

§16-21-6. **Procedure in case of medical emergency.**

When a medical emergency compels the performance of an abortion, the physician shall inform the female, prior to the abortion if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert her death or that a twenty-four hour delay will create serious risk of substantial and irreversible impairment of a major bodily function.

§16-21-7. **Reporting requirements.**

(a) **Reporting form.** – Within ninety days after this article is enacted, the department of health and human resources
shall prepare a reporting form for physicians containing a
reprint of this article and listing:

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

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

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

(4) The number of abortions performed by the physician
in which information otherwise required to be provided at
least twenty-four hours before the abortion was not so
provided because an immediate abortion was necessary to
avert the female's death, and the number of abortions in
which the information was not so provided because a delay
would create serious risk of substantial and irreversible
impairment of a major bodily function.
9  [Enr. Com. Sub. for S. B. No. 283

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

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

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

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

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

  (d) Failure to report as required. – Reports that are not
  submitted by the end of a grace period of thirty days
  following the due date are subject to a late fee of five
  hundred dollars for each additional thirty-day period or
  portion of a thirty-day period they are overdue. Any
  physician required to report in accordance with this
  section who has not submitted a report, or has submitted
  only an incomplete report, more than one year following
  the due date, may, in an action brought by the department
  of health and human resources, be directed by a court of
  competent jurisdiction to submit a complete report within
  a period stated by court order or be subject to sanctions
  for civil contempt.
(e) Public statistics. — By the first day of August of each year, the department of health and human resources shall issue a public report providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with this section for each of the items listed in subsection (a) of this section. Each report shall also provide the statistics for all previous calendar years, adjusted to reflect any additional information from late or corrected reports. The department of health and human resources shall take care to ensure that none of the information included in the public reports could reasonably lead to the identification of any individual providing information in accordance with subsection (a), (b) or (c) of this section.

(f) Modifications by legislative rule. — The department of health and human resources may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code which alter the dates established by subdivision (3), subsection (b), or subsections (c) or (e) of this section, or consolidate the forms or reports described in this section with other forms or reports to achieve administrative convenience or fiscal savings or to reduce the burden of reporting requirements, so long as reporting forms are sent to all licensed physicians in the state at least once every year and the report described in subsection (e) of this section is issued at least once every year.

§16-21-8. Violation remedies.

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

(b) Any physician who violates the provisions of this article is subject to sanctions by the board of medicine. For the first violation, the board of medicine shall issue a
written reprimand to the physician. For the second violation, the board of medicine shall suspend the physician's license for not less than thirty days. For the third violation, the board of medicine shall suspend the physician's license for not less than one year. For a subsequent violation, the board of medicine shall revoke the physician'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.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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

Governor