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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2003

ENROLLED

Committee Substitute for Committee Substitute for
SENATE BILL NO. 170

(By Senator Kessler, et al)

PASSED February 24, 2003

In Effect ninety days from Passage

2003 11111 - 6

ENROLLED

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 170

(SENATORS KESSLER, PREZIOSO, ROSS, MINARD, SHARPE,
UNGER, PLYMALE, WEEKS, OLIVERIO, BOLEY, FACEMYER,
LOVE, BAILEY, MINEAR, HARRISON, MCKENZIE, SPROUSE,
BOWMAN, EDGELL, DEEM, GUILLS, DEMPSEY, HELMICK,
HUNTER, FANNING AND SMITH, *original sponsors*)

[Passed February 24, 2003; 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 a women's right to know act; requiring informed consent for an abortion to be performed; requiring certain information to be supplied to women considering abortion; establishing minimum waiting period for abortions

after having been supplied information; exception for a medical emergency; requiring physicians to report abortion statistics; requiring the secretary of the department of health and human resources to publish information and develop a website on alternatives to abortion; protecting privacy in court proceedings; exempting certain information from disclosure under the freedom of information act; administrative remedies; civil remedies; 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. Definitions.

1 For the purposes of this article, the words or phrases
2 defined in this section have these meanings ascribed to
3 them.

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

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

17 (c) "Medical emergency" means any condition which, on
18 the basis of a physician's good-faith clinical judgment, so
19 complicates the medical condition of a pregnant female as

20 to necessitate the immediate termination of her pregnancy
21 to avert her death or for which a delay will create serious
22 risk of substantial and irreversible impairment of a major
23 bodily function.

24 (d) "Physician" means any medical or osteopathic doctor
25 licensed to practice medicine in this state.

26 (e) "Probable gestational age of the embryo or fetus"
27 means what, in the judgment of the physician, will with
28 reasonable probability be the gestational age of the
29 embryo or fetus at the time the abortion is planned to be
30 performed.

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

§16-2I-2. 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) The female is told the following, by telephone or in
7 person, by the physician or the licensed health care
8 professional to whom the responsibility has been delegated
9 by the physician who is to perform the abortion at least
10 twenty-four hours before the abortion:

11 (1) The particular medical risks associated with the
12 particular abortion procedure to be employed, including,
13 when medically accurate, the risks of infection, hemor-
14 rhage, danger to subsequent pregnancies and infertility;

15 (2) The probable gestational age of the embryo or fetus
16 at the time the abortion is to be performed; and

17 (3) The medical risks associated with carrying her child
18 to term.

19 The information required by this subsection may be
20 provided by telephone without conducting a physical
21 examination or tests of the patient, in which case the
22 information required to be provided may be based on facts
23 supplied by the female to the physician or other licensed
24 health care professional to whom the responsibility has
25 been delegated by the physician and whatever other
26 relevant information is reasonably available to the physi-
27 cian or other licensed health care professional to whom the
28 responsibility has been delegated by the physician. It may
29 not be provided by a tape recording, but must be provided
30 during a consultation in which the physician or licensed
31 health care professional to whom the responsibility has
32 been delegated by the physician is able to ask questions of
33 the female and the female is able to ask questions of the
34 physician or the licensed health care professional to whom
35 the responsibility has been delegated by the physician.

36 If a physical examination, tests or the availability of
37 other information to the physician or other licensed health
38 care professional to whom the responsibility has been
39 delegated by the physician subsequently indicate, in the
40 medical judgment of the physician or the licensed health
41 care professional to whom the responsibility has been
42 delegated by the physician, a revision of the information
43 previously supplied to the patient, that revised informa-
44 tion may be communicated to the patient at any time prior
45 to the performance of the abortion procedure.

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

49 (b) The female is informed, by telephone or in person, by
50 the physician who is to perform the abortion, or by an
51 agent of the physician, at least twenty-four hours before
52 the abortion procedure:

53 (1) That medical assistance benefits may be available for
54 prenatal care, childbirth and neonatal care through
55 governmental or private entities;

56 (2) That the father, if his identity can be determined, is
57 liable to assist in the support of her child based upon his
58 ability to pay even in instances in which the father has
59 offered to pay for the abortion; and

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

64 The physician or an agent of the physician shall orally
65 inform the female that the materials have been provided
66 by the state of West Virginia and that they describe the
67 embryo or fetus and list agencies and entities which offer
68 alternatives to abortion.

69 If the female chooses to view the materials other than on
70 the website, then they shall either be provided to her at
71 least twenty-four hours before the abortion or mailed to
72 her at least seventy-two hours before the abortion by first
73 class mail in an unmarked envelope.

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

79 (c) The female shall certify in writing, prior to the
80 abortion, that the information described in subsections (a)
81 and (b) of this section has been provided to her and that
82 she has been informed of her opportunity to review the
83 information referred to in subdivision (3), subsection (b) of
84 this section.

85 (d) Prior to performing the abortion procedure, the
86 physician who is to perform the abortion or the physician's
87 agent shall obtain a copy of the executed certification
88 required by the provisions of subsection (c) of this section.

§16-2I-3. Printed information.

1 (a) Within ninety days of the effective date of this article,
2 the secretary of the department of health and human
3 resources shall cause to be published, in English and in
4 each language which is the primary language of two
5 percent or more of the state's population, as determined by
6 the most recent decennial census performed by the U. S.
7 census bureau, and shall cause to be available on the
8 website provided for in section four of this article the
9 following printed materials in such a way as to ensure that
10 the information is easily comprehensible:

11 (1) Geographically indexed materials designed to inform
12 the reader of public and private agencies and services
13 available to assist a female through pregnancy, upon
14 childbirth and while the child is dependent, including
15 adoption agencies, which shall include a comprehensive
16 list of the agencies available, a description of the services
17 they offer and a description of the manner, including
18 telephone numbers. At the option of the secretary of
19 health and human resources, a 24-hour-a-day telephone
20 number may be established with the number being pub-
21 lished in such a way as to maximize public awareness of
22 its existence which may be called to obtain a list and
23 description of agencies in the locality of the caller and of
24 the services they offer; and

25 (2) Materials designed to inform the female of the
26 probable anatomical and physiological characteristics of
27 the embryo or fetus at two-week gestational increments
28 from the time when a female can be known to be pregnant
29 to full term, including any relevant information on the
30 possibility of the embryo or fetus's survival and pictures or
31 drawings representing the development of an embryo or
32 fetus at two-week gestational increments: *Provided*, That
33 any such pictures or drawings must contain the dimen-
34 sions of the embryo or fetus and must be realistic and
35 appropriate for the stage of pregnancy depicted. The
36 materials shall be objective, nonjudgmental and designed
37 to convey only accurate scientific information about the

38 embryo or fetus at the various gestational ages. The
39 material shall also contain objective information describ-
40 ing the methods of abortion procedures commonly em-
41 ployed, the medical risks commonly associated with each
42 procedure, the possible detrimental psychological effects
43 of abortion and the medical risks commonly associated
44 with carrying a child to term.

45 (b) The materials referred to in subsection (a) of this
46 section shall be printed in a typeface large enough to be
47 clearly legible. The website provided for in section four of
48 this article shall be maintained at a minimum resolution of
49 seventy dots per inch. All pictures appearing on the
50 website shall be a minimum of 200 x 300 pixels. All letters
51 on the website shall be a minimum of eleven-point font.
52 All information and pictures shall be accessible with an
53 industry standard browser requiring no additional plug-
54 ins.

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

§16-2I-4. Internet website.

1 Within ninety days of the effective date of this article,
2 the secretary of the department of health and human
3 resources shall develop and maintain a stable internet
4 website to provide the information required to be provided
5 pursuant to the provisions of section three of this article.
6 No information regarding persons visiting the website may
7 be collected or maintained. The secretary of the depart-
8 ment of health and human resources shall monitor the
9 website on a daily basis to prevent and correct tampering.

§16-2I-5. 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 24-hour delay will
6 create serious risk of substantial and irreversible impair-
7 ment of a major bodily function.

§16-2I-6. Protection of privacy in court proceedings.

1 In every civil or criminal proceeding or action brought
2 under this article, the court shall rule whether the ano-
3 nymity of any female upon whom an abortion has been
4 performed or attempted shall be preserved from public
5 disclosure if she does not give her consent to such disclo-
6 sure. The court, upon motion or sua sponte, shall make
7 such a ruling and, upon determining that her anonymity
8 should be preserved, shall issue orders to the parties,
9 witnesses and counsel and shall direct the sealing of the
10 record and exclusion of individuals from courtrooms or
11 hearing rooms to the extent necessary to safeguard her
12 identity from public disclosure. Each such order shall be
13 accompanied by specific written findings explaining why
14 the anonymity of the female should be preserved from
15 public disclosure, why the order is essential to that end,
16 how the order is narrowly tailored to serve that interest
17 and why no reasonable, less restrictive alternative exists.
18 In the absence of written consent of the female upon whom
19 an abortion has been performed or attempted, anyone,
20 other than a public official, who brings an action under
21 section nine of this article shall do so under a pseudonym.
22 This section may not be construed to conceal the identity
23 of the plaintiff or of witnesses from the defendant.

§16-2I-7. Reporting requirements.

1 (a) Within ninety days of the effective date of this article,
2 the secretary of the department of health and human
3 resources shall prepare a reporting form for physicians
4 containing a reprint of this article and listing:

5 (1) The number of females to whom the information
6 described in subsection (a), section two of this article was
7 provided;

8 (2) The number of females to whom the physician or an
9 agent of the physician provided the information described
10 in subsection (b), section two of this article;

11 (3) The number of females who availed themselves of the
12 opportunity to obtain a copy of the printed information
13 described in section three of this article other than on the
14 website;

15 (4) The number of abortions performed in cases involving
16 medical emergency; and

17 (5) The number of abortions performed in cases not
18 involving a medical emergency.

19 (b) The secretary of the department of health and human
20 resources shall ensure that copies of the reporting forms
21 described in subsection (a) of this section are provided:

22 (1) Within one hundred twenty days after the effective
23 date of this article to all physicians licensed to practice in
24 this state;

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

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

33 (c) By the twenty-eighth day of February of each year
34 following a calendar year in any part of which this act was
35 in effect, each physician who provided, or whose agent
36 provided, information to one or more females in accor-
37 dance with section two of this article during the previous
38 calendar year shall submit to the secretary of the depart-
39 ment of health and human resources a copy of the form
40 described in subsection (a) of this section with the re-
41 quested data entered accurately and completely.

42 (d) Reports that are not submitted by the end of a grace
43 period of thirty days following the due date are subject to
44 a late fee of five hundred dollars for each additional
45 thirty-day period or portion of a thirty-day period they are
46 overdue. Any physician required to report in accordance
47 with this section who has not submitted a report, or has
48 submitted only an incomplete report, more than one year
49 following the due date may, in an action brought by the
50 secretary of the department of health and human re-
51 sources, be directed by a court of competent jurisdiction to
52 submit a complete report within a period stated by court
53 order or be subject to sanctions for civil contempt.

54 (e) By the first day of August of each year, the secretary
55 of the department of health and human resources shall
56 issue a public report providing statistics for the previous
57 calendar year compiled from all of the reports covering
58 that year submitted in accordance with this section for
59 each of the items listed in subsection (a) of this section.
60 Each report shall also provide the statistics for all previous
61 calendar years, adjusted to reflect any additional informa-
62 tion from late or corrected reports. The secretary of the
63 department of health and human resources shall prevent
64 any of the information from being included in the public
65 reports that could reasonably lead to the identification of
66 any physician who performed or treated an abortion, or
67 any female who has had an abortion, in accordance with
68 subsection (a), (b) or (c) of this section. Any information
69 that could reasonably lead to the identification of any
70 physician who performed or treated an abortion, or any
71 female who has had an abortion, in accordance with
72 subsection (a), (b) or (c) of this section is exempt from
73 disclosure under the freedom of information act, article
74 one, chapter twenty-nine-b of this code.

75 (f) The secretary of the department of health and human
76 resources may propose rules for legislative approval in
77 accordance with the provisions of article three, chapter
78 twenty-nine-a of this code which alter the dates estab-

79 lished by subdivision (3), subsection (b) of this section or
80 subsection (c) or (e) of this section or consolidate the forms
81 or reports described in this section with other forms or
82 reports to achieve administrative convenience or fiscal
83 savings or to reduce the burden of reporting requirements,
84 so long as reporting forms are sent to all licensed physi-
85 cians in the state at least once every year and the report
86 described in subsection (e) of this section is issued at least
87 once every year.

§16-2I-8. Administrative remedies.

1 (a) Any person or entity may make a complaint to the
2 licensing board, if any, of a person whose conduct is
3 regulated by the provisions of this article and may charge
4 such person with a violation of this article.

5 (b) Any physician or agent thereof who willfully violates
6 the provisions of this article is subject to sanctions by the
7 licensing board governing his or her profession. For the
8 first violation, the licensing board shall issue a written
9 reprimand to the violator. For the second violation, the
10 licensing board shall revoke the violator's license.

11 (c) No penalty or civil liability may be assessed for
12 failure to comply with paragraph (3), subsection (b),
13 section two of this article or that portion of subsection (c)
14 of said section requiring a written certification that the
15 female has been informed of her opportunity to review the
16 information referred to in paragraph (3), of subsection (b)
17 of said section unless the department of health and human
18 resources has made the printed materials available at the
19 time the physician or the licensed health care professional
20 to whom the responsibility has been delegated by the
21 physician is required to inform the female of her right to
22 review them.

§16-2I-9. Civil remedies.

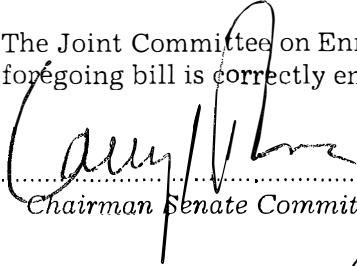
1 Any person upon whom an abortion has been attempted
2 or performed without section two of this article having

3 been complied with may maintain an action against the
4 person who attempted to perform or did perform the
5 abortion with a knowing or consciously, subjectively and
6 deliberately formed intention to violate this article for
7 compensatory damages. If the person upon whom an
8 abortion has been attempted or performed without section
9 two of this article having been complied with is a minor,
10 the legal guardian of the minor may maintain an action
11 against the person who attempted to perform or did
12 perform the abortion with a knowing or consciously,
13 subjectively and deliberately formed intention to violate
14 this article for compensatory damages.

§16-2I-10. Severability.

1 If any one or more provision, section, subsection, sen-
2 tence, clause, phrase or word of this article or the applica-
3 tion thereof to any person or circumstance is found to be
4 unconstitutional, the same is hereby declared to be sever-
5 able and the balance of this article shall remain effective
6 notwithstanding such unconstitutionality. The Legislature
7 hereby declares that it would have passed this article, and
8 each provision, section, subsection, sentence, clause,
9 phrase or word thereof, irrespective of the fact that any
10 one or more provision, section, subsection, sentence,
11 clause, phrase or word be declared unconstitutional.

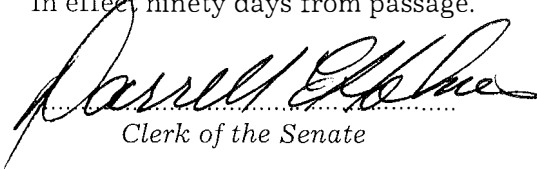
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

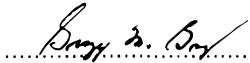

.....
Chairman Senate Committee


.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within..... this the.....
Day of, 2003.

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Governor

PRESENTED TO THE
GOVERNOR

Date 02-27-03

Time 10:30 Am.
BW