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2010 APR -2 PM 4: 07

WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2010

WEST VIRGINIA
SECRETARY OF STATE

SB 597

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ENROLLED

COMMITTEE SUBSTITUTE

FOR

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FOR

Senate Bill No. 597

(SENATORS KESSLER, PREZIOSO,
BOLEY AND GREEN, *original sponsors*)

[Passed March 13, 2010; in effect ninety days from passage.]

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AN ACT to repeal §16-2I-10 of the Code of West Virginia, 1931, as amended, and to amend and reenact §16-2I-2, §16-2I-8 and §16-2I-9 of said code, all relating to physician assisted abortions; requiring prior notice to the patient of the opportunity to view any ultrasound image utilized and in conjunction with the abortion procedure; providing the contents of a form to be provided to and signed by the female undergoing the abortion relating to her right to view or not view the ultrasound image; revising administrative remedies for physicians and their agents that do not comply with the provisions of the Woman's Right to Know Act; removing civil liability and civil remedies associated with failure to comply with the Woman's Right to Know Act; and providing for severability.

Be it enacted by the Legislature of West Virginia:

That §16-2I-10 of the Code of West Virginia, 1931, as amended, be repealed, that §16-2I-2, §16-2I-8 and §16-2I-9 be amended and reenacted, all to read as follows:

§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
45 before 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;

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 and

65 (4) That the female will be presented with a form which
66 she will be required to execute prior to the abortion
67 procedure that is available pursuant to section three of
68 this article, and that the form to be presented will inform
69 her of the opportunity to view the ultrasound image and
70 her right to view or decline to view the ultrasound image,
71 if an ultrasound is performed.

72 The physician or an agent of the physician shall orally
73 inform the female that the materials have been provided
74 by the State of West Virginia and that they describe the
75 embryo or fetus and list agencies and entities which offer
76 alternatives to abortion.

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

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

87 (c) The form required pursuant to subdivision (4),
88 subsection (b) of this section shall include the following
89 information: (1) It is a female's decision whether or not to
90 undergo any ultrasound imaging procedure in consultation
91 with her health care provider; (2) If an ultrasound is
92 performed in conjunction with the performance of an
93 abortion procedure, the female has the right to view or to
94 decline to view the image; and (3) That the woman has

95 been previously informed of her opportunity to view the
96 ultrasound image and her right to view or decline to view
97 the ultrasound image. The woman shall certify her choice
98 on this form prior to the abortion procedure being per-
99 formed.

100 The female shall certify in writing, before the abortion,
101 that the information described in subsections (a) and (b) of
102 this section has been provided to her and that she has been
103 informed of her opportunity to review the information
104 referred to in subdivision (3), subsection (b) of this section.

105 Before performing the abortion procedure, the physician
106 who is to perform the abortion or the physician's agent
107 shall obtain a copy of the executed certification required
108 by the provisions of subsections (b) and (c) of this section.

§16-2I-8. Administrative remedies.

1 Any physician or agent thereof who willfully violates the
2 provisions of this article may be subject to sanctions as
3 levied by the licensing board governing his or her profes-
4 sion.

§16-2I-9. 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
5 severable and the balance of this article shall remain
6 effective notwithstanding such unconstitutionality. The
7 Legislature hereby declares that it would have passed this
8 article, and each provision, section, subsection, sentence,
9 clause, phrase or word thereof, irrespective of the fact that
10 any one or more provision, section, subsection, sentence,
11 clause, phrase or word be declared unconstitutional.

Enr. Com. Sub. for Com. Sub. for S. B. No. 597] 6

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

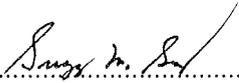

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Chairman Senate Committee

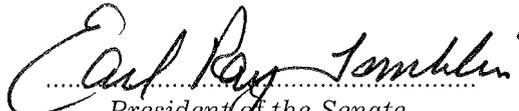

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

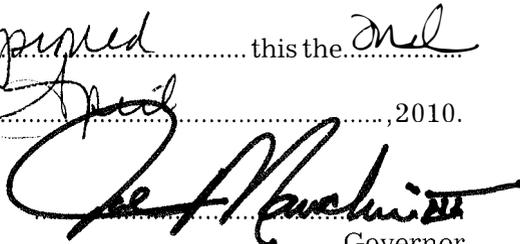

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Clerk of the Senate


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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 *is approved* this the *one*
Day of *April*, 2010.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 23 2010

Time 11:40am