

# WEST VIRGINIA LEGISLATURE **FILED**

2016 MAR 15 P 4: 29

## 2016 REGULAR SESSION

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

SB 10 (veto override)

### Enrolled Committee Substitute for Senate Bill 10

BY SENATORS SYPOLT, FERNS, GAUNCH, KARNES,  
LEONHARDT, TRUMP, WALTERS, BOLEY, BOSO, TAKUBO  
AND BLAIR, *original sponsors*

[Passed February 29, 2016; in effect 90 days from passage]

**Certified Copy**



Stephen J. Harrison  
Clerk of the House of Delegates  
and Keeper of the Rolls of the Legislature

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Enrolled**

**Committee Substitute**

**for**

**Senate Bill 10**

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1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §16-2O-1, relating to prohibiting certain abortions; defining terms; prohibiting  
3 dismemberment abortions; deeming violations by physicians and other licensed medical  
4 practitioners to be a breach of the standard of care and outside the scope of practice that  
5 is permitted by law; providing an exception; allowing for discipline from the applicable  
6 licensure board for that conduct, including, but not limited to, loss of professional license  
7 to practice for violation; constituting violations for nonphysician and nonlicensed medical  
8 practitioners as unauthorized practice of medicine and subject to criminal penalties;  
9 preserving existing legal remedies for violations; clarifying that no penalty may be  
10 assessed against a patient; and providing for certain construction of this section.

*Be it enacted by the Legislature of West Virginia:*

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
2 article, designated §16-2O-1, to read as follows:

**ARTICLE 20. UNBORN CHILD PROTECTION FROM DISMEMBERMENT ABORTION  
ACT.**

**§16-2O-1. Unborn Child Protection from Dismemberment Abortion Act.**

1 (a) *Definitions.* — For purposes of this section:

2 (1) “Abortion” means the same as that term is defined in section two, article two-f, chapter  
3 sixteen of this code.

4 (2) “Attempt to perform an abortion” means the same as that term is defined in section  
5 two, article two-m, chapter sixteen of this code.

6 (3) “Dismemberment abortion” means, with the purpose of causing the death of an unborn  
7 child, purposely to dismember a living unborn child and extract him or her one piece at a time  
8 from the uterus through use of clamps, grasping forceps, tongs, scissors or similar instruments  
9 that, through the convergence of two rigid levers, slice, crush or grasp a portion of the unborn

10 child's body to cut or rip it off. The term "dismemberment abortion" includes an abortion in which  
11 a dismemberment abortion is performed to cause the death of an unborn child but suction is  
12 subsequently used to extract fetal parts after the death of the unborn child. The term  
13 "dismemberment abortion" does not include an abortion which uses suction to dismember the  
14 body of the unborn child by sucking fetal parts into a collection container, an abortion following  
15 fetal demise which uses a suction curette, suction curettage or forceps to dismember the body of  
16 a dead unborn child, or when forceps are used following an induced fetal demise by other  
17 means.

18 (4) "Medical emergency" means the same as that term is defined in section two, article  
19 two-m, chapter sixteen of this code.

20 (5) "Physician" means the same as that term is defined in section two, article two-m,  
21 chapter sixteen of this code.

22 (6) "Reasonable medical judgement" means the same as that term is defined in section  
23 two, article two-M, chapter sixteen of this code.

24 (7) "Woman" means a female human being whether or not she has reached the age of  
25 majority.

26 (b) *Prohibition.* —

27 No person may perform, or attempt to perform, a dismemberment abortion as defined in  
28 this section, unless in reasonable medical judgment the woman has a condition that, on the basis  
29 of reasonable medical judgment, so complicates her medical condition as to necessitate the  
30 abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible  
31 physical impairment of a major bodily function, not including psychological or emotional  
32 conditions. No condition may be deemed a medical emergency if based on a claim or diagnosis  
33 that the woman will engage in conduct which she intends to result in her death or in substantial  
34 and irreversible physical impairment of a major bodily function.

35 (c) *Enforcement.* —

36 (1) Any physician or other licensed medical practitioner who intentionally or recklessly  
37 performs or induces an abortion in violation of this article is considered to have acted outside the  
38 scope of practice permitted by law or otherwise in breach of the standard of care owed to patients,  
39 and is subject to discipline from the applicable licensure board for that conduct, including, but not  
40 limited to, loss of professional license to practice.

41 (2) Any person, not subject to subdivision (1) of this subsection, who intentionally or  
42 recklessly performs or induces an abortion in violation of this article is considered to have engaged  
43 in the unauthorized practice of medicine in violation of section thirteen, article three, chapter thirty  
44 of this code, and, upon conviction, subject to the penalties contained in that section.

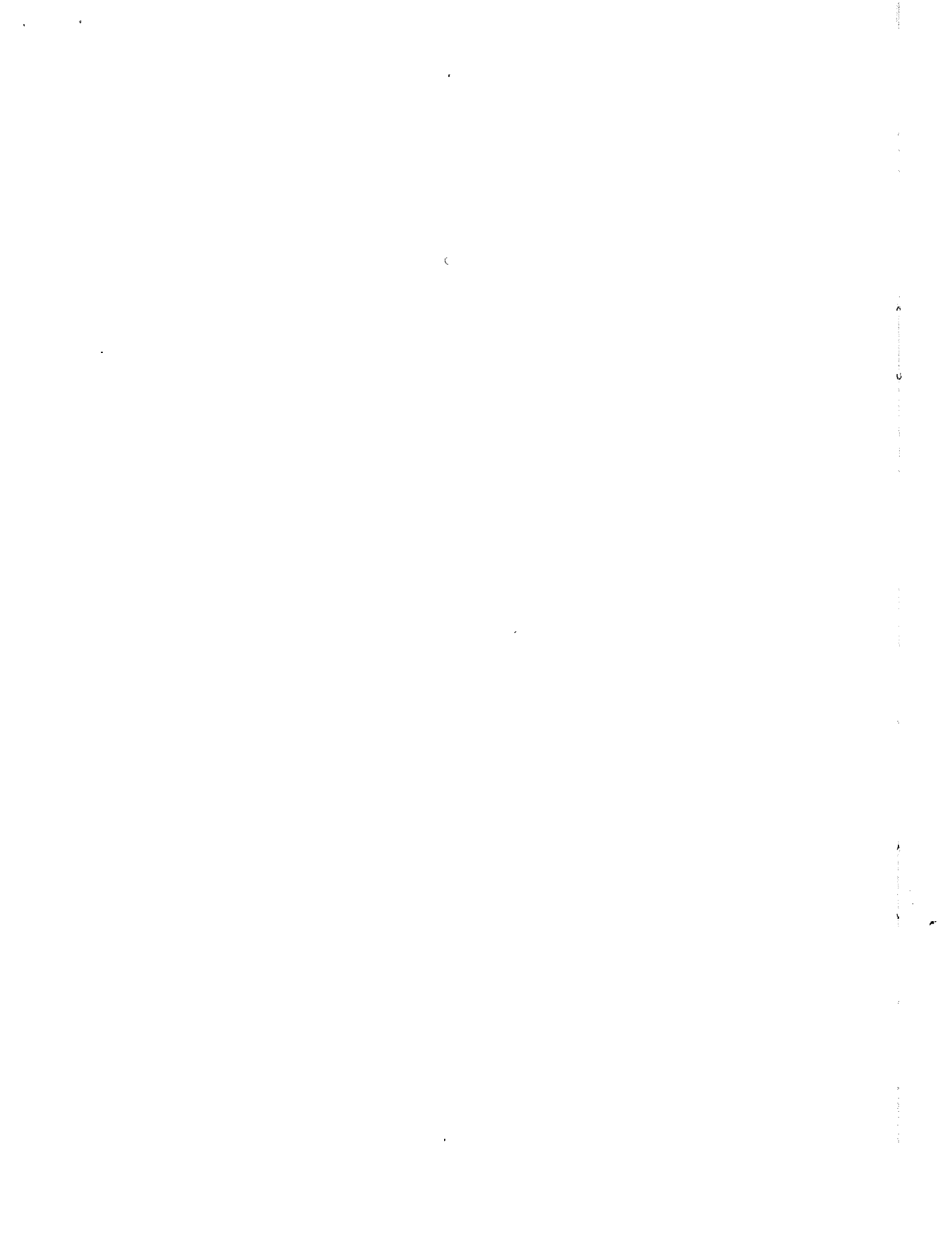
45 (3) In addition to the penalties set forth in subdivisions (1) and (2) of this section, a patient  
46 may seek any remedy otherwise available to such patient by applicable law.

47 (4) No penalty may be assessed against any patient upon whom an abortion is performed  
48 or induced or attempted to be performed or induced.

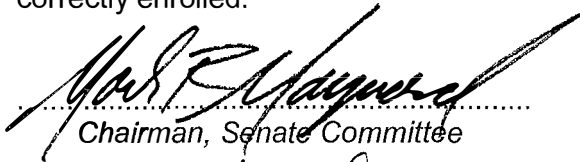
49 (d) *Miscellaneous Provisions.* —

50 (1) This section does not prevent an abortion by any other method for any reason  
51 including rape and incest.

52 (2) Nothing in this section may be construed as creating or recognizing a right to abortion,  
53 nor a right to a particular method of abortion.



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

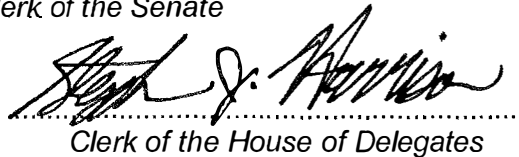
  
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Chairman, Senate Committee

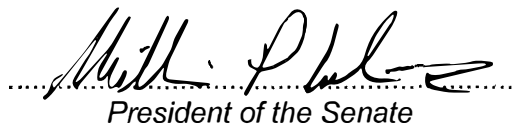
  
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Chairman, House Committee

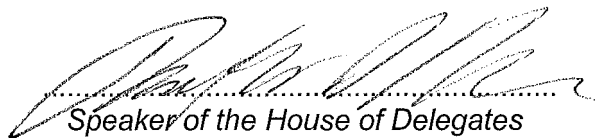
Originated in the Senate.

In effect 90 days from passage.

  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker of the House of Delegates

The within *is disapproved* this the *9th*.....  
*May*  
Day of ....., 2016.

  
.....  
Governor

PRESENTED TO THE GOVERNOR

MAR 03 2016

Time 9:26 am

*[Faint, illegible text or stamp]*



In accordance with Section 14, Article VII of the Constitution of West Virginia, the Senate repassed, without amendment, Enrolled Committee Substitute for Senate Bill No. 10, by a majority of those elected to the Senate, to take effect ninety days from passage, notwithstanding the objections of the Governor.


The Clerk of the Senate to the House of Delegates.

  
C. Baine  
Clerk of the Senate

March 10, 2016

In accordance with Section 14, Article VII of the Constitution, the House of Delegates reconsidered and again passed Enrolled Committee Substitute for Senate Bill 10, by a majority of those elected to the House, to take effect ninety days from passage, notwithstanding the objections of the Governor.

The Clerk of the House to the Senate.

  
Stephen J. Harrison  
Clerk of the House of Delegates

March 10, 2016

I, Stephen J. Harrison, Clerk of the House of Delegates, and as such Clerk, Keeper of the Rolls of the Legislature of West Virginia, hereby certify that the foregoing bill, Enrolled Committee Substitute for Senate Bill 10, disapproved by the Governor on the 9<sup>th</sup> Day of March, 2016, was subsequently repassed by the Legislature, notwithstanding the objections of the Governor, on the 10<sup>th</sup> day of March, 2016.



Stephen J. Harrison  
Clerk of the House of Delegates  
and Keeper of the Rolls of the Legislature



STATE OF WEST VIRGINIA  
OFFICE OF THE GOVERNOR  
1900 KANAWHA BOULEVARD, EAST  
CHARLESTON, WV 25305  
(304) 558-2000

EARL RAY TOMBLIN  
GOVERNOR

March 9, 2016

**VIA HAND DELIVERY**

The Honorable William P. Cole III  
President, West Virginia Senate  
Room 229M, Building 1  
State Capitol  
Charleston, West Virginia 25305

Re: Enrolled Committee Substitute for Senate Bill 10

Dear President Cole:

Pursuant to the provisions of section fourteen, article VII of the Constitution of West Virginia, I hereby disapprove and return the Enrolled Committee Substitute for Senate Bill 10.

I am advised this bill is overbroad and unduly burdens a woman's fundamental constitutional right to privacy. *See Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 879 (1992) (holding a state "may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability"). Among the bill's prohibitions is a leading pre-viability medical procedure (the "dilation & evacuation" method) that, for reasons of patient safety, is preferred by physicians. The Supreme Court of the United States and the United States District Court for the Southern District of West Virginia previously struck down similarly overbroad laws that unduly burdened a woman's right to choose this procedure. *See Stenberg v. Carhart*, 530 U.S. 914 (2000); *Daniel v. Underwood*, 102 F.Supp.2d 680 (S. D. W. Va. 2000) (declaring sections of WV's Women's Access to Health Care Act to be unconstitutional; ban at issue encompassed the common "dilation & evacuation" method and thus unduly burdened a woman's constitutional right of privacy). In these circumstances, a veto is appropriate.

Sincerely,

A handwritten signature in black ink that reads "Earl Ray Tomblin".

Earl Ray Tomblin  
Governor

OFFICE OF THE GOVERNOR

President Cole  
March 9, 2016  
Page 2

cc: The Hon. Tim Armstead  
Speaker of the House of Delegates

The Hon. Natalie E. Tennant  
Secretary of State