

**H. B. 2157**

(By Delegates Cann, Fragale, Kominar, Perry and Iaquina)

[Introduced January 12, 2011; referred to the  
Committee on the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-2F-1a; and to amend and reenact §16-2F-2, §16-2F-3, §16-2F-4, §16-2F-5, §16-2F-6, §16-2F-8 and §16-2F-9 of said code, all relating to parental notification requirements for abortions performed on unemancipated minors; providing that the circuit and family court have concurrent jurisdiction over the provisions of the article; defining terms; providing for a waiver; requiring notice to minors of a right to petition the court; allowing for appeal by the unemancipated minor to circuit court if matter is initially heard in family court; reporting requirements; providing remedies; specifying when notice is not required; providing penalties; and providing a severability clause.

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

1 That the Code of West Virginia, 1931, as amended, be amended  
 2 by adding thereto a new section, designated §16-2F-1a; and that  
 3 §16-2F-2, §16-2F-3, §16-2F-4, §16-2F-5, §16-2F-6, §16-2F-8 and §16-  
 4 2F-9 of said code be amended and reenacted, all to read as follows:

5 **ARTICLE 2F. PARENTAL NOTIFICATION OF ABORTIONS PERFORMED ON**  
 6 **UNEMANCIPATED MINORS.**

7 **§16-2F-1a. Jurisdiction.**

8 The circuit and family courts have concurrent jurisdiction  
 9 over matters contained in this article.

10 **§16-2F-2. Definitions.**

11 For purposes of this article: ~~unless the context in which used~~  
 12 ~~clearly requires otherwise~~

13 (1) "Minor" means any person under the age of eighteen years.  
 14 ~~who has not graduated from high school~~

15 (2) "Unemancipated minor" means any minor who is neither  
 16 married ~~nor~~ or who has not been emancipated pursuant to applicable  
 17 federal law or as provided by section twenty-seven, article seven,  
 18 chapter forty-nine of this code.

19 (3) "Actual notice" means the giving of notice directly in  
 20 person. ~~or by telephone~~

21 (4) "Constructive notice" means the giving of notice by  
 22 certified mail to the last known address of the parents or legal  
 23 guardian, return receipt requested.

24 (5) "Abortion" means the use or prescription of any

1 instrument, medicine, drug or any other substance or device ~~with~~  
2 ~~intent~~ to intentionally terminate the pregnancy of a female known  
3 to be pregnant, ~~and with intent to~~ knowledge that the termination  
4 with those means will, with reasonable likelihood, cause the  
5 expulsion of ~~a~~ any embryo or fetus other than by live birth:  
6 *Provided*, That nothing in this article ~~shall be construed so as to~~  
7 ~~prevent~~ prevents the prescription, sale or transfer of intrauterine  
8 contraceptive devices or other contraceptive devices or other  
9 generally medically accepted contraceptive devices, instruments,  
10 medicines or drugs for a female who is not known to be pregnant and  
11 for whom ~~such~~ the contraceptive devices, instruments, medicines or  
12 drugs were prescribed by a physician solely for contraceptive  
13 purposes and not for the purpose of inducing or causing the  
14 termination of a known pregnancy.

15       (6) "Medical emergency" means any condition that a reasonably  
16 prudent physician with knowledge of the case and treatment  
17 possibilities with respect to the medical conditions involved would  
18 determine that a condition exists that would so complicate the  
19 medical condition of a pregnant female as to necessitate the  
20 immediate termination of her pregnancy in order to avert her death  
21 or for which delay will create a serious risk of substantial and  
22 irreversible physical impairment of a major bodily function.

23       (7) "Parent" means one parent of the pregnant female, or  
24 guardian or curator if the pregnant female has one.

1 **§16-2F-3. Required proof of age prior to performing an abortion.**

2       ~~(a) No physician may perform an abortion upon an unemancipated~~  
3 ~~minor unless such physician has given or caused to be given at~~  
4 ~~least twenty-four hours actual notice to one of the parents or to~~  
5 ~~the legal guardian of the pregnant minor of his intention to~~  
6 ~~perform the abortion, or, if the parent or guardian cannot be found~~  
7 ~~and notified after a reasonable effort to do so, without first~~  
8 ~~having given at least forty-eight hours constructive notice~~  
9 ~~computed from the time of mailing to the parent or to the legal~~  
10 ~~guardian of the minor: *Provided, That prior to giving the*~~  
11 ~~notification required by this section, the physician shall advise~~  
12 ~~the unemancipated minor of the right of petition to the circuit~~  
13 ~~court for waiver of notification: *Provided, however, That any such*~~  
14 ~~notification may be waived by a duly acknowledged writing signed by~~  
15 ~~a parent or the guardian of the minor.~~

16       ~~(b) Upon notification being given to any parent or to the~~  
17 ~~legal guardian of such pregnant minor, the physician shall refer~~  
18 ~~such pregnant minor to a counselor or caseworker of any church or~~  
19 ~~school or of the department of human services or of any other~~  
20 ~~comparable agency for the purpose of arranging or accompanying such~~  
21 ~~pregnant minor in consultation with her parents. Such counselor~~  
22 ~~shall thereafter be authorized to monitor the circumstances and the~~  
23 ~~continued relationship of and between such minor and her parents.~~

24       ~~(c) Parental notification required by subsection (a) of this~~

~~1 section may be waived by a physician, other than the physician who  
2 is to perform the abortion, if such other physician finds that the  
3 minor is mature enough to make the abortion decision independently  
4 or that notification would not be in the minor's best interest:  
5 Provided, That such other physician shall not be associated  
6 professionally or financially with the physician proposing to  
7 perform the abortion.~~

8       (a) Except in the case of a medical emergency, a physician may  
9 not perform an abortion on a pregnant female unless:

10       (1) The physician or his or her designee has obtained proof of  
11 age which a reasonably prudent person would think demonstrates that  
12 the female is eighteen years of age or older or proof which a  
13 reasonable and prudent person would think demonstrates that the  
14 minor is emancipated; or

15       (2) A circuit court or family court judge of the county in  
16 which the female resides or in which the abortion is to be  
17 performed has entered an order authorizing a physician to perform  
18 the abortion pursuant to a petition or motion filed by a female who  
19 is unable to produce satisfactory proof demonstrating that she is  
20 not a minor or that she is an emancipated minor and after a finding  
21 by the court that the female is not a minor or that she is an  
22 emancipated minor. This order is not subject to appeal. If the  
23 judge denies the authorization that a decision is subject to review  
24 by the circuit court in an in-camera hearing. All hearings are

1 subject to the procedural requirements of section five of this  
2 article; or

3 (3) The physician has complied with section four of this  
4 article.

5 (b) If the physician or his or her designee obtains proof of  
6 the age or emancipation of the female as provided in subdivision  
7 (1), subsection (a) of this section, the physician or his or her  
8 designee shall execute and sign for inclusion in the female's  
9 medical record an affidavit stating that, to the best information  
10 and belief, a reasonable and prudent person under similar  
11 circumstances would have relied upon the information presented as  
12 sufficient evidence of the identity of the person seeking the  
13 abortion and that she is not a minor or that she is an emancipated  
14 minor.

15 (c) To the extent applicable, the physician shall keep in the  
16 female patient's file a copy of all affidavits, proof of age and of  
17 any court order provided in this section for seven years following  
18 the date of the abortion or until five years after the minor  
19 reaches the age of majority, whichever is longer. If the female  
20 presents a government issued photographic identification showing  
21 her to have attained the age of eighteen or older, the provisions  
22 of this subsection do not apply.

23 **§16-2F-4. Parental notification required for abortions on**  
24 **unemancipated minors; exceptions; right of petition**

1                   **to family court.**

2           ~~(a) A minor who objects to such notice being given to her~~  
3 ~~parent or legal guardian may petition for a waiver of such notice~~  
4 ~~to the circuit court of the county in which the minor resides or in~~  
5 ~~which the abortion is to be performed, or to the judge of either of~~  
6 ~~such courts. Such minor may so petition and proceed in her own~~  
7 ~~right or, at her option, by a next friend.~~

8           ~~(b) Such petition need not be made in any specific form and~~  
9 ~~shall be sufficient if it fairly sets forth the facts and~~  
10 ~~circumstances of the matter, but shall contain the following~~  
11 ~~information:~~

12           ~~(i) The age of the petitioner and her educational level;~~

13           ~~(ii) The county and state in which she resides;~~

14           ~~(iii) A brief statement of petitioner's reason or reasons for~~  
15 ~~the desired waiver of notification of the parent or guardian of~~  
16 ~~such minor petitioner.~~

17           ~~No such petition shall be dismissed nor shall any hearing~~  
18 ~~thereon be refused because of any defect in the form of the~~  
19 ~~petition.~~

20           ~~(c) Upon the effective date of this article or as soon~~  
21 ~~thereafter as may be, the Attorney General shall prepare suggested~~  
22 ~~form petitions and accompanying instructions and shall make the~~  
23 ~~same available to the several clerks of the circuit courts. Such~~  
24 ~~clerks shall see that a sufficient number of such suggested form~~

~~1 petitions and instructions are available in the clerk's office for  
2 the use of any person desiring to use the same for the purposes of  
3 this section.~~

~~4 (d) All proceedings held pursuant to this article shall be  
5 confidential and the court shall conduct all such proceedings in  
6 camera. The court shall inform the minor petitioner of her right  
7 to be represented by counsel and that if she is without the  
8 requisite funds to retain the services of an attorney, that the  
9 court will appoint an attorney to represent her interest in the  
10 matter. If the minor petitioner desires the services of an  
11 attorney, an attorney shall be appointed to represent such minor  
12 petitioner, if she advises the court under oath or affidavit that  
13 she is financially unable to retain counsel. Any attorney  
14 appointed to represent such minor petitioner shall be appointed and  
15 paid for her services pursuant to the provisions of article twenty-  
16 one, chapter twenty-nine of this code: *Provided, That the pay to*  
17 *any such attorney pursuant to such appointment shall not exceed the*  
18 *sum of one hundred dollars.*~~

~~19 (e) The court shall conduct a hearing upon the petition  
20 without delay, but in no event shall the delay exceed the next  
21 succeeding judicial day, and the court shall render its decision  
22 immediately upon its submission and, in any event, an order  
23 reflecting the findings of fact and conclusions of law reached by  
24 the court and its judgement shall be endorsed by the judge thereof~~



~~1 not later than twenty-four hours following such submission and  
2 shall be forthwith entered of record by the clerk of the court.  
3 All testimony, documents and other evidence presented to the court,  
4 as well as the petition and any orders entered thereon and all  
5 records of whatsoever nature and kind relating to the matter shall  
6 be sealed by the clerk and shall not be opened to any person except  
7 upon order of the court and, then, only upon good cause being shown  
8 therefor. A separate order book for the purposes of this article  
9 shall be maintained by such clerk and shall likewise be sealed and  
10 not open to inspection by any person save upon order of the court  
11 for good cause shown.~~

~~12 (f) Notice as required by section three of this article shall  
13 be ordered waived by the court if the court finds either:~~

~~14 (1) That the minor petitioner is mature and well informed  
15 sufficiently to make the decision to proceed with the abortion  
16 independently and without the notification or involvement of her  
17 parent or legal guardian, or~~

~~18 (2) That notification to the person or persons to whom such  
19 notification would otherwise be required would not be in the best  
20 interest of the minor petitioner.~~

~~21 (g) If or when the circuit court, or the judge thereof, shall  
22 refuse to order the waiver of the notification required by section  
23 three of this article, a copy of the petition and all orders  
24 entered in the matter and all other documents and papers submitted~~

~~1 to the circuit court, may be presented to the Supreme Court of  
2 Appeals, or to any justice thereof if such court then be in  
3 vacation, and such court or justice if deemed proper, may thereupon  
4 order the waiver of notification otherwise required by section  
5 three of this article. The Supreme Court of Appeals or justice  
6 thereof shall hear and decide the matter without delay and shall  
7 enter such orders as such court or justice may deem appropriate.~~

~~8 (h) If either the circuit court or the Supreme Court of  
9 Appeals, or any judge or justice thereof if either of such courts  
10 be then in vacation, shall order a waiver of the notification  
11 required by section three of this article, any physician to whom a  
12 certified copy of said order shall be presented may proceed to  
13 perform the abortion to the same extent as if such physician were  
14 in compliance with the provisions of said section three and,  
15 notwithstanding the fact that no notification is given to either  
16 the parent or legal guardian of any such unemancipated minor, any  
17 such physician shall not be subject to the penalty provisions which  
18 may be prescribed by this article for such failure of notification.~~

~~19 (i) No filing fees may be required of any minor who avails  
20 herself of any of the procedures provided by this section.~~

~~21 (a) A physician may not perform an abortion upon an  
22 unemancipated minor unless notice is given to the parent of the  
23 unemancipated pregnant minor prior to a physician performing an  
24 abortion. Notice shall be given at least forty-eight hours prior~~

1 to the performance of the procedure and a copy of the notice shall  
2 be kept in the minor's medical records for at least seven years or  
3 until five years after she reaches the age of majority, whichever  
4 is longer. A parent may receive:

5 (1) Actual notice and may waive the forty-eight hour notice  
6 period, except that this waiver does not waive any period mandated  
7 by section two, article two-i of this chapter; or

8 (2) Constructive notice sent via the United States post office  
9 to the parent's last known address, restricted delivery, return  
10 receipt requested. The information concerning the address of the  
11 parent must be such which a reasonable and prudent person, under  
12 similar circumstances, would have relied upon as sufficient  
13 evidence that the parent resides at that address. The forty-eight-  
14 hour period for written notice begins to run at twelve o'clock noon  
15 on the next day on which regular mail delivery takes place,  
16 subsequent to the date of the mailing.

17 (b) Prior to performing an abortion, a physician, or his or  
18 her designee, shall obtain from the parent to whom actual notice is  
19 given, proof of identification which a reasonable and prudent  
20 person, under similar circumstances, would have relied upon as  
21 sufficient evidence that the person is the parent of the minor  
22 female. A copy of this information or specific details concerning  
23 the proof provided shall be included in the minor's medical records  
24 for at least seven years or until five years after the minor

1 reaches the age of majority, whichever is longer.

2       (c) The physician performing the abortion, or his or her  
3 designee, shall execute an affidavit certifying the information  
4 presented by the female of her age or emancipation was such which  
5 a reasonable and prudent person, under similar circumstances would  
6 have relied upon as sufficient evidence of her age or emancipation.  
7 This affidavit shall be included in the female's medical records  
8 for at least seven years, unless the female has presented a  
9 government-issued photograph identification showing her to have  
10 attained the age of eighteen or older.

11       (d) The physician performing the abortion, or his or her  
12 designee, shall execute an affidavit certifying the information  
13 presented by the parent receiving actual notice was sufficient  
14 evidence of his or her identity which a reasonable and prudent  
15 person, under similar circumstances, would have relied upon as  
16 sufficient evidence that the person is the parent of the minor.  
17 This affidavit shall be included in the minor's medical records for  
18 at least seven years or until five years after the minor reaches  
19 the age of majority, whichever is longer.

20       (e) The physician performing the abortion, or his or her  
21 designee, shall execute an affidavit certifying the information  
22 provided by the minor concerning the last known address of the  
23 parent for constructive notice was such which a reasonable and  
24 prudent person, under similar circumstances, would have relied upon

1 as sufficient evidence of the parent's last known address. This  
2 affidavit shall be included in the minor's medical records and kept  
3 for at least seven years or until five years after the minor  
4 reaches the age of majority, whichever is longer.

5 (f) Notice to the parent is not required if:

6 (1) A circuit court or family court judge of the county in  
7 which the unemancipated minor resides or where the abortion is to  
8 be performed issues an order authorizing the unemancipated minor to  
9 consent to the abortion as provided by section five of this  
10 article; or

11 (2) The physician performing an abortion concludes a medical  
12 emergency exists. The physician is required to certify to the  
13 Department of Health and Human Resources, on a form provided by the  
14 department, the medical justification supporting the physician's  
15 judgment that a medical emergency existed. A copy of this form  
16 shall be maintained in the minor's medical records.

17 (g) The physician shall keep a copy of the medical records of  
18 a minor for five years past the minor's age of majority or for  
19 seven years following the date of the abortion, whichever is  
20 greater.

21 (h) Unless the unemancipated minor gives notice of her intent  
22 to seek a judicial waiver, the attending physician or the  
23 physician's agent shall verbally inform the parent within twenty-  
24 four hours after the performance of a medical emergency abortion,

1 that a medical emergency abortion was performed on the  
2 unemancipated minor and shall also send a written notice, in the  
3 manner described in subdivision (2), subsection (a) of this  
4 section, of the performed medical emergency abortion. If the  
5 unemancipated minor, upon whom a medical emergency abortion was  
6 performed, elects not to allow the notification of her parent, any  
7 judge of a family court of the county in which the unemancipated  
8 minor resides or where the abortion was performed shall, upon  
9 petition or motion and after an appropriate hearing, authorize the  
10 waiving of the required notice of the performed abortion if the  
11 judge determines, by clear and convincing evidence, that the  
12 unemancipated minor is mature and capable of determining whether  
13 notification should be given or that the waiver would be in the  
14 unemancipated minor's best interest.

15 (i) The Department of Health and Human Resources may propose  
16 rules for legislative approval in accordance with the provisions of  
17 article three, chapter twenty-nine-a of this code to propose all  
18 forms, affidavits and certifications required by this section.

19 (j) The Supreme Court of Appeals shall promulgate a form  
20 petition for the use of unemancipated minors seeking relief  
21 pursuant to the provisions of section five of this article.

22 **§16-2F-5. Petition to circuit or family court; review by circuit**  
23 **court.**

24 ~~The notification requirements of section three of this article~~

~~1 do not apply where there is an emergency need for an abortion to be  
2 performed if the continuation of the pregnancy constitutes an  
3 immediate threat and grave risk to the life or health of the  
4 pregnant minor and the attending physician so certifies in writing  
5 setting forth the nature of such threat or risk and the  
6 consequences which may be attendant to the continuation of the  
7 pregnancy. Such writing shall be maintained with the other medical  
8 records relating to such minor which are maintained by the  
9 physician and the facility at which such abortion is performed.~~

10       (a) If a circuit or family court judge of the county in which  
11 the minor resides or in which the abortion is to be performed hears  
12 a petition or motion filed by an unemancipated minor who elects not  
13 to allow notification of her parent, then the judge shall authorize  
14 a physician to perform the abortion without notice to the parent if  
15 the judge determines, by clear and convincing evidence, that the  
16 pregnant minor is mature and capable of giving informed consent to  
17 the abortion. If the judge determines that the pregnant minor is  
18 not mature, or if the pregnant minor does not claim to be mature,  
19 the judge shall determine, by clear and convincing evidence,  
20 whether the performance of an abortion upon her without  
21 notification of her parent would be in her best interest. The  
22 judge shall enter an order authorizing the physician to perform the  
23 abortion without notification if the judge concludes that the  
24 pregnant minor's best interests would be served. This

1 authorization is not subject to appeal. If a family court judge  
2 denies the authorization, that decision is subject to review by the  
3 circuit court in an in-camera hearing. All hearings are subject to  
4 the procedural requirements of section five of this article.

5 (b) A minor may file the petition or motion on her own behalf  
6 and the court may appoint a guardian ad litem for her. The court  
7 shall advise her that she has a right to court-appointed counsel  
8 and shall, upon her request, provide her with such counsel. The  
9 attorney shall be paid for his or her services in accordance with  
10 the provisions of article twenty-one, chapter twenty-nine of this  
11 code.

12 (c) Proceedings under this section are confidential and shall  
13 be given precedence over other pending matters so that the judge  
14 may reach a decision promptly and without delay so as to serve the  
15 best interests of the pregnant minor. In no event may the  
16 proceeding be later than the third judicial day after the day that  
17 the complaint is filed. A judge who conducts proceedings under  
18 this section shall make written factual findings and legal  
19 conclusions supporting the decision and shall order a record of the  
20 evidence to be maintained including the judge's own findings and  
21 conclusions. All records of proceedings in these proceedings shall  
22 be kept in the office of the clerk of the circuit court in a sealed  
23 file and shall be kept in a locked or sealed cabinet, vault or  
24 other container and may not be opened to inspection or copy by



1 anyone unless upon court order for good cause shown.

2 (d) If the action is filed in family court and the proceeding  
3 is not held before a family court judge by the third judicial day  
4 after the complaint is filed, jurisdiction is transferred to the  
5 circuit court and the minor has the right to an immediate expedited  
6 confidential hearing to the circuit court.

7 **§16-2F-6. Reporting requirements for physicians.**

8 (a) Any physician performing an abortion upon an unemancipated  
9 minor shall provide the Department of Health and Human Resources a  
10 written report of the procedure within thirty days after having  
11 performed the abortion. Nothing in the report may personally  
12 identify any individual female. The Department of Health and Human  
13 Resources shall provide reporting forms for this purpose to all  
14 physicians and public health facilities required to be licensed  
15 pursuant to article five-b of this chapter. The following  
16 information, in addition to any other information which may be  
17 required by the Department of Health and Human Resources, regarding  
18 the minor receiving the abortion shall be included in ~~such~~ the  
19 reporting form:

- 20 (1) Age;
- 21 (2) Educational level;
- 22 (3) Previous pregnancies;
- 23 (4) Previous live births;
- 24 (5) Previous abortions;

(6) Complications, if any, of the abortion being reported;

~~(7) Reason for waiver of notification of the minor's parent or guardian, if such notice was waived; and~~

~~(8)~~ (7) The city and county in which the abortion was performed.

~~Any such report shall not contain the name, address or other information by which the minor receiving the abortion may be identified.~~

(b) Any physician performing abortions upon unemancipated minors shall provide the Department of Health and Human Resources a written report containing the information listed below. Nothing in the report may personally identify any individual female. The following information, in addition to any other information which may be required by the Department of Health and Human Resources, regarding the minor receiving the abortion shall be included in the reporting form:

(1) The number of females whose parent was notified pursuant to section four of this article and the manner in which they were notified;

(2) The number of females who, to the best of the reporting physician's information and belief, went on to obtain the abortion;

(3) The number of females upon whom the physician performed an abortion without providing the notice described in section four of this article, including the number who were emancipated minors;

1       (4) The number of abortions performed upon a female by the  
2 physician after receiving judicial authorization to do so without  
3 parental notification; and

4       (5) The number of abortions performed for medical emergency  
5 reasons.

6       (c) The Department of Health and Human Resources may propose  
7 legislative rules in accordance with the provisions of article  
8 three, chapter twenty-nine-a of this code to develop reporting  
9 forms as described in this section. The rules shall ensure that  
10 copies of the reporting forms, described in this section, together  
11 with a reprint of this article, are provided:

12       (1) By December 1 of every year, other than the calendar year  
13 in which forms are distributed in accordance with this section, to  
14 all physicians licensed to practice in this state; and

15       (2) To each physician who subsequently becomes newly licensed  
16 to practice in this state at the same time as official notification  
17 to that physician that the physician is so licensed.

18       (d) By February 28 of each year following a calendar year in  
19 any part of which this article was in effect, each physician or his  
20 or her designee who provided the notice described in section four  
21 of this article and any physician who knowingly performed an  
22 abortion upon a pregnant minor or upon a female for whom a guardian  
23 or curator had been appointed pursuant to applicable federal law or  
24 as provided by sections three and four, article ten, chapter forty-

1 four of this code because of a finding of incompetency of the  
2 pregnant minor during the previous calendar year shall submit to  
3 the Department of Health and Human Resources a copy of the forms  
4 described in this section with the requested data entered  
5 accurately and completely. The information included in the reports  
6 may not personally identify any individual female.

7       (e) Reports that are not submitted within thirty days  
8 following the due date are subject to a late fee of \$500 for the  
9 first month and \$1,000 for each additional thirty-day period or  
10 portion of a thirty-day period they are overdue. Any physician  
11 required to report in accordance with this section who has not  
12 submitted a report, or has submitted only an incomplete report,  
13 more than one year following the due date, may, in an action  
14 brought by the Department of Health and Human Resources, be  
15 directed by a circuit court of the county in which the physician  
16 resides or practices to submit a complete report within a period  
17 stated by court order or be subject to sanctions for civil  
18 contempt.

19       (f) By June 30 of each year, the Department of Health and  
20 Human Resources shall issue a public report providing statistics  
21 for the previous calendar year compiled from all of the reports  
22 covering that year submitted in accordance with this article. The  
23 report shall also include statistics which shall be obtained from  
24 the Supreme Court of Appeals giving the total number of petitions

1 or motions filed under subsection (a), section five of this  
2 article, including the number in which the court appointed a  
3 guardian ad litem, the number in which the court appointed counsel,  
4 the number in which the family court judge issued an order  
5 authorizing an abortion without notification, the number in which  
6 the family court judge denied such an order, the number of denials  
7 from which an appeal was filed, the number of appeals that resulted  
8 in the denials being affirmed and the number of appeals that  
9 resulted in reversals of denials. Each report shall provide the  
10 statistics from late or corrected reports for all previous calendar  
11 years. The information included in the public reports may not  
12 personally identify any individual female.

13 (g) If the Department of Health and Human Resources fails to  
14 issue the public report required by subsection (f) of this section,  
15 any group of ten or more citizens of this state may seek an  
16 injunction in the circuit court of Kanawha County against the  
17 Secretary of the Department of Health and Human Resources requiring  
18 that a complete report be issued within a period stated by court  
19 order.

20 (h) The Department of Health and Human Resources may propose  
21 rules for legislative approval pursuant to section five, article  
22 three, chapter twenty-nine-a of this code to alter the dates  
23 established by subdivision (1), subsection (b) of this section or  
24 subsection (c) or (f) of this section or consolidate the forms or

1 reports to achieve administrative convenience or fiscal savings or  
2 to reduce the burden of reporting requirements, so long as  
3 reporting forms are sent to all licensed physicians in the state at  
4 least once every year and the report described in subsection (f) of  
5 this section is issued at least once every year.

6 **§16-2F-8. Penalties.**

7 ~~Any person who knowingly performs an abortion upon an~~  
8 ~~unemancipated minor in violation of this article or who knowingly~~  
9 ~~fails to conform to any requirement of this article shall be guilty~~  
10 ~~of a misdemeanor, and, upon conviction thereof, shall be fined not~~  
11 ~~less than five hundred dollars nor more than one thousand dollars~~  
12 ~~or imprisoned in the county jail not more than thirty days, or both~~  
13 ~~fined and imprisoned.~~

14 (a) A person who uses a false governmental record or makes a  
15 false representation or statement in order to obtain an abortion  
16 for a minor or who signs an affidavit or certification required by  
17 section three or four of this article that is false is guilty of  
18 false swearing as defined in section two, article five, chapter  
19 sixty-one of this code.

20 (b) Any person who uses a false governmental record or makes  
21 a false representation or statement in order to obtain an abortion  
22 for a minor or who signs an affidavit or certification required by  
23 section three or four of this article that is false is civilly  
24 liable to the person or persons entitled to receive parental notice

1 for pain and suffering and any subsequent costs of medical or  
2 psychiatric treatment a minor might require because of  
3 complications resulting from the abortion.

4 (c) Any person who knowingly or recklessly performs an  
5 abortion on a pregnant unemancipated minor in violation of this  
6 article is guilty of a felony and, upon conviction, shall be  
7 imprisoned in a state correctional facility not less than three nor  
8 more than ten years.

9 (d) Any person who knowingly, recklessly or negligently  
10 performs an abortion on an unemancipated minor in violation of this  
11 article is civilly liable to the person or persons entitled to  
12 receive parental notice for pain and suffering and any subsequent  
13 costs of medical or psychiatric treatment a minor might require  
14 because of complications resulting from the abortion.

15 (e) It is not a defense to a claim brought pursuant to this  
16 section that the minor gave informed and voluntary consent.

17 (f) An unemancipated minor does not have capacity to consent  
18 to any action that violates this article.

19 **§16-2F-9. Severability.**

20 ~~The provisions of subsection (cc), section ten, article two,~~  
21 ~~chapter two of this code shall apply to the provisions of this~~  
22 ~~article to the same extent as if said subsection were set forth in~~  
23 ~~extenso herein.~~

24 If any one or more provision, section, subsection, sentence,

1 clause, phrase or word of this article or its application to any  
2 person or circumstance is found to be unconstitutional, it is  
3 severable and the balance of this article remains effective  
4 notwithstanding the unconstitutionality. The Legislature declares  
5 that it would have passed this article, and each provision,  
6 section, subsection, sentence, clause, phrase or word of this  
7 article, irrespective of the fact any one or more provision,  
8 section, subsection, sentence, clause, phrase or word is determined  
9 to be unconstitutional.

NOTE: The purpose of this bill relates to parental involvement in the minor's decision to obtain an abortion. The bill requires abortion providers to obtain proof of age prior to the performance of an abortion on a pregnant woman. The bill provides a judicial bypass. Abortion providers must provide actual or constructive notice to parents of minors, and maintain certifications of such notice as well as parent's proof of identification for a minimum time period in the medical file of the minor. The bill creates civil liability, criminal penalties, and mandates certain reporting requirements.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.