

H. B. 4593

(By Delegates Andes, McCuskey, Householder,
Frich, Sumner, Rowan, Arvon, Border-Sheppard,
Sobonya, Miller and Storch)

[Introduced February 17, 2014; referred to the
Committee on Health and Human Resources then the
Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §16-2M-1, §16-2M-2,
§16-2M-3, §16-2M-4, §16-2M-5, §16-2M-6, §16-2M-6, §16-2M-7,
§16-2M-8, §16-2M-9 and §16-2M-10, all relating to creating the
"Women's Health Protection Act"; legislative findings;
definitions; admitting privileges requirement; civil penalties
and fines; injunctive remedies; construction; right of
intervention; severability; and effective date.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding thereto a new article, designated §16-2M-1, §16-2M-2,
§16-2M-3, §16-2M-4, §16-2M-5, §16-2M-6, §16-2M-6, §16-2M-7,
§16-2M-8, §16-2M-9 and §16-2M-10, all to read as follows:

ARTICLE 2M. WOMEN'S HEALTH PROTECTION ACT.

§16-2M-1. Title.

This Act may be known and cited as the "Women's Health

1 Protection Act.”

2 **§16-2M-2. Legislative Findings and Purposes.**

3 (a) The Legislature of the State of West Virginia finds that:

4 (1) The vast majority of all abortions in this state are
5 performed in clinics devoted primarily to providing abortions and
6 family planning services. Most women who seek abortions at these
7 clinics do not have any relationship with the physician who
8 performs the abortion either before or after the procedure. They do
9 not return to the facility for post-surgical care. In most
10 instances, the woman’s only actual contact with the abortion
11 provider occurs simultaneously with the abortion procedure, with
12 little opportunity to ask questions about the procedure, potential
13 complications, and proper follow-up care.

14 (2) In some cases, abortion providers travel into West
15 Virginia from other states to perform abortions at abortion clinics
16 in this state. These physicians typically do not live in or remain
17 in this state when not providing abortions or abortion-related
18 care.

19 (3) “The medical, emotional, and psychological consequences of
20 an abortion are serious and can be lasting” H.L. v. Matheson,
21 450 U.S. 398, 411 (1981).

22 (4) Abortion is an invasive, surgical procedure that can lead
23 to numerous and serious, both short and long term, medical

1 complications. Potential complications for abortion include, among
2 others, bleeding, hemorrhage, infection, uterine perforation,
3 uterine scarring, blood clots, cervical tears, incomplete abortion
4 (retained tissue), failure to actually terminate the pregnancy,
5 free fluid in the abdomen, acute abdomen, organ damage, missed
6 ectopic pregnancies, cardiac arrest, sepsis, respiratory arrest,
7 reactions to anesthesia, and even death.

8 (5) The risks for second trimester abortions are greater than
9 for first trimester abortions. The risk of hemorrhage, in
10 particular, is greater, and the resultant complications may require
11 a hysterectomy, other reparative surgery, or a blood transfusion.

12 (6) The State of West Virginia has a legitimate concern for
13 the public's health and safety. Williamson v. Lee Optical, 348 U.S.
14 483, 486 (1985).

15 (7) The State of West Virginia "has legitimate interests from
16 the outset of pregnancy in protecting the health of women." Planned
17 Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 847
18 (1992).

19 (8) More specifically, the State of West Virginia "has a
20 legitimate concern with the health of women who undergo abortions."
21 Akron v. Akron Ctr. for Reproductive Health, Inc., 462 U.S. 416,
22 428-29 (1983).

23 (9) The State of West Virginia has "a legitimate interest in

1 seeing to it that abortion, like any other medical procedure, is
 2 performed under circumstances that ensure maximum safety for the
 3 patient." *Roe v Wade, 410 U.S. 113, 150 (1973).*

4 (b) Based on the findings in subsection (a), it is the purpose
 5 of this article to provide for the protection of public health
 6 generally and of women's health and safety specifically through the
 7 establishment and enforcement of an admitting privileges
 8 requirement for physicians providing abortions in freestanding
 9 abortion clinics in this state.

10 **§16-2M-3. Definitions.**

11 As used in this article:

12 (1) "Abortion" means the act of using or prescribing any
 13 instrument, medicine, drug, or any other substance, device, or
 14 means with the intent to terminate the clinically diagnosable
 15 pregnancy of a woman with knowledge that the termination by those
 16 means will with reasonable likelihood cause the death of the unborn
 17 child. Such use, prescription, or means is not an abortion if done
 18 with the intent to:

19 (A) Save the life or preserve the health of the unborn child;

20 (B) Remove a dead unborn child caused by spontaneous abortion;

21 or

22 (C) Remove an ectopic pregnancy.

23 (2) "Abortion clinic" means a facility, other than an

1 accredited hospital, in which five or more first trimester
2 abortions in any month or any second or third trimester abortions
3 are performed.

4 (3) "Admitting privileges" means the right of a physician, by
5 virtue of membership with a hospital's medical staff, to admit
6 patients from an abortion clinic to a particular hospital for the
7 purposes of providing specific diagnostic or therapeutic services
8 to such patient in that hospital.

9 (d) "Physician" means a person licensed to practice medicine
10 in the State of West Virginia. This term includes medical doctors
11 and doctors of osteopathy.

12 **§16-2M-4. Admitting Privileges Requirement.**

13 On any day when any abortion is performed in an abortion
14 clinic, a physician with admitting privileges at an accredited
15 hospital in this state and within thirty miles of the abortion
16 clinic must remain on the premises of the abortion clinic to
17 facilitate the transfer of emergency cases if hospitalization of an
18 abortion patient or a child born alive is necessary and until all
19 abortion patients are stable and ready to leave the recovery room.

20 **§16-2M-5. Civil Penalties and Fines.**

21 (a) Any violation of this article may be subject to a civil
22 penalty or fine up to \$10,000 imposed by the Bureau for Public
23 Health.

1 (b) Each day of violation constitutes a separate violation for
2 purposes of assessing civil penalties or fines.

3 (c) In deciding whether and to what extent to impose fines,
4 the Bureau for Public Health shall consider the following factors:

5 (1) Whether physical harm to a patient or a child born alive
6 has occurred;

7 (2) Severity and scope of the actual or potential harm;

8 (3) Any indications of good faith exercised by the abortion
9 clinic involved in the violation to comply with the requirements of
10 this article;

11 (4) The duration, frequency, and relevance of any previous
12 violations of this article by the abortion clinic; and

13 (5) Financial benefit to the abortion clinic of committing or
14 continuing the violation.

15 (d) Both the Office of the Attorney General and the
16 Prosecuting Attorney for the county in which the violation occurred
17 may institute a legal action to enforce collection of civil
18 penalties or fines.

19 **§16-2M-6. Injunctive Remedies.**

20 In addition to any other penalty provided by law, whenever in
21 the judgment of the Commissioner of the Bureau for Public Health,
22 any person has engaged, or is about to engage, in any acts or
23 practices which constitute, or will constitute, a violation of this

1 article, the commissioner shall make application to any court of
2 competent jurisdiction for an order enjoining such acts and
3 practices, and upon a showing by the commissioner that such person
4 has engaged, or is about to engage, in any such acts or practices,
5 an injunction, restraining order, or such other order as may be
6 appropriate shall be granted by such court without bond.

7 **§16-2M-7. Construction.**

8 (a) Nothing in this article shall be construed as creating or
9 recognizing a right to abortion.

10 (b) It is not the intention of this article to make lawful an
11 abortion that is currently unlawful.

12 **§16-2M-8. Right of Intervention.**

13 The Legislature, by Joint Resolution, may appoint one or more
14 of its members, who sponsored or cosponsored the legislation
15 creating this article in his or her official capacity, to intervene
16 as a matter of right in any case in which the constitutionality of
17 this article or any portion thereof is challenged.

18 **§16-2M-9. Severability.**

19 Any provision of this article held to be invalid or
20 unenforceable by its terms, or as applied to any person or
21 circumstance, shall be construed so as to give it the maximum
22 effect permitted by law, unless such holding shall be one of utter
23 invalidity or unenforceability, in which event such provision shall

1 be deemed severable herefrom and shall not affect the remainder
2 hereof or the application of such provision to other persons not
3 similarly situated or to other, dissimilar circumstances.

4 **§16-2M-10. Effective Date.**

5 This article takes effect on July 1, 2014.

NOTE: The purpose of this bill is to create the "Women's Health Protection Act."

This article is new; therefore, it has been completely underscored.