

# WEST VIRGINIA LEGISLATURE

## 2017 REGULAR SESSION

**Introduced**

### **House Bill 2002**

BY DELEGATES KESSINGER, FAST, EVANS, A., ROMINE,  
R., FRICH, ARVON, BUTLER, ROWAN, WILSON, PAYNTER  
AND LANE, E.

[Introduced February 20, 2017; Referred  
to the Committee on Health and Human Resources then  
the Judiciary.]

1 A BILL to amend and reenact §16-2F-1, §16-2F-2, §16-2F-3, §16-2F-4, §16-2F-5, §16-2F-6, §16-  
 2 2F-7, §16-2F-8 and §16-2F-9 of the Code of West Virginia, 1931, as amended; and to  
 3 amend said code by adding thereto a new section, designated §16-2F-10, all relating to  
 4 parental notification of abortions performed on unemancipated minors; setting out  
 5 legislative findings; defining terms; clarifying parental notification requirements prior to  
 6 performing an abortion on an unemancipated minor; modifying waiver language; providing  
 7 an exception; requiring reporting forms to be developed by the Secretary of the  
 8 Department of Health and Human Resources; setting out data elements to be included on  
 9 the reporting form; requiring distribution of the forms; setting forth reporting requirements;  
 10 providing a penalty for failure to report; requiring a statistical report to be prepared by the  
 11 Secretary of the Department of Health and Human Resources; and allowing for  
 12 rulemaking.

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

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

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

**§16-2F-1. Legislative findings and intent.**

1 The Legislature finds that immature minors often lack the ability to make fully informed  
 2 choices that take into account both immediate and long-range consequences of their actions; that  
 3 the medical, emotional and psychological consequences of abortion are serious and of  
 4 indeterminate duration, particularly when the patient is immature; that in its current abortion policy  
 5 as expressed in *Bellotti v. Baird*, 443 U. S. 622 (1979), and *H. L. v. Matheson*, 450 U. S. 398

6 (1981), and Hodgson v. Minnesota, 497 U.S. 417, (1990), the United States Supreme Court  
7 ~~clearly relies on physician's commitment to consider all factors, physical and otherwise, before~~  
8 ~~performing abortions on minors~~ held that notification of a parent with a judicial waiver procedure  
9 is Constitutional; that parents ordinarily possess information essential to a physician's exercise of  
10 his or her best medical judgment concerning their child; and that parents who are aware that their  
11 minor daughter has had an abortion may better ensure that the minor receives adequate medical  
12 attention after her abortion. The Legislature further finds that parental consultation regarding  
13 abortion is usually desirable and in the best interests of the minor.

14 The Legislature further finds in accordance with the U. S. Supreme Court's decision in  
15 Bellotti v. Baird, 443 U. S. 622 (1979), and H. L. v. Matheson, 450 U. S. 398 (1981), and Hodgson  
16 v. Minnesota, 497 U.S. 417, 1990, that there exists important and compelling state interests (i) in  
17 protecting minors against their own immaturity, (ii) in fostering the family structure and preserving  
18 it as a viable social unit, and (iii) in protecting the rights of parents to rear their own children in  
19 their own household.

20 It is, therefore, the intent of the Legislature to further these important and compelling state  
21 interests by enacting this parental notice provision.

#### **§16-2F-2. Definitions.**

1 For purposes of this article, unless the context in which used clearly requires otherwise:

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

4 ~~(2) "Unemancipated minor" means any minor who is neither married nor who has been~~  
5 ~~emancipated as pursuant to applicable federal law or as provided by section twenty-seven, article~~  
6 ~~seven, chapter forty-nine of this code.~~

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

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

10 ~~(5) "Abortion" means the use of any instrument, medicine, drug or any other substance or~~  
11 ~~device with intent to terminate the pregnancy of a female known to be pregnant and with intent to~~  
12 ~~cause the expulsion of a fetus other than by live birth: *Provided*, That nothing in this article shall~~  
13 ~~be construed so as to prevent the prescription, sale or transfer of intrauterine contraceptive~~  
14 ~~devices or other contraceptive devices or other generally medically accepted contraceptive~~  
15 ~~devices, instruments, medicines or drugs for a female who is not known to be pregnant and for~~  
16 ~~whom such contraceptive devices, instruments, medicines or drugs were prescribed by a~~  
17 ~~physician solely for contraceptive purposes and not for the purpose of inducing or causing the~~  
18 ~~termination of a known pregnancy.~~

19 As used in this article:

20 "Abortion" means the use of any instrument, medicine, drug or any other substance or  
21 device with intent to terminate the pregnancy of a female known to be pregnant and with intent to  
22 cause the expulsion of a fetus other than by live birth. This article does not prevent the  
23 prescription, sale or transfer of intrauterine contraceptive devices or other contraceptive devices  
24 or other generally medically accepted contraceptive devices, instruments, medicines or drugs for  
25 a female who is not known to be pregnant and for whom the contraceptive devices, instruments,  
26 medicines or drugs were prescribed by a physician solely for contraceptive purposes and not for  
27 the purpose of inducing or causing the termination of a known pregnancy.

28 "Medical emergency" means the same as that term is defined in section two, article two-  
29 m of this chapter.

30 "Secretary" means the Secretary of the West Virginia Department of Health and Human  
31 Resources.

32 "Unemancipated minor" means any person less than eighteen years of age who is not, or  
33 has not been, married or who is under the care custody and control of the person's parent or  
34 parents, guardian or court of competent jurisdiction pursuant to applicable federal law or as  
35 provided in section twenty-seven, article seven, chapter forty-nine of this code.

**§16-2F-3. Parental notification required for abortions performed on unemancipated minors; waiver; notice to minor of right of petition to circuit court; minor to be referred for counseling.**

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

10       ~~(b) Upon notification being given to any parent or to the legal guardian of such pregnant~~  
11 ~~minor, the physician shall refer such pregnant minor to a counselor or caseworker of any church~~  
12 ~~or school or of the department of human services or of any other comparable agency for the~~  
13 ~~purpose of arranging or accompanying such pregnant minor in consultation with her parents. Such~~  
14 ~~counselor shall thereafter be authorized to monitor the circumstances and the continued~~  
15 ~~relationship of and between such minor and her parents.~~

16       ~~(c) Parental notification required by subsection (a) of this section may be waived by a~~  
17 ~~physician, other than the physician who is to perform the abortion, if such other physician finds~~  
18 ~~that the minor is mature enough to make the abortion decision independently or that notification~~  
19 ~~would not be in the minor's best interest: *Provided*, That such other physician shall not be~~  
20 ~~associated professionally or financially with the physician proposing to perform the abortion.~~

21       (a) No physician may perform an abortion upon an unemancipated minor or upon a female  
22 who has been appointed a guardian or conservator pursuant to the provisions of chapter forty-  
23 four-a of this code due to the female's incompetency until such time as forty-eight hours has

24 passed following the delivery of written notice of the pending abortion as required by this section  
 25 and section five of this article.

26 (b) *Personal Service.* – The notice shall be addressed and delivered to the parent of the  
 27 unemancipated minor or the guardian or conservator at their usual place of residence and shall  
 28 be delivered personally by the physician or his or her agent.

29 (c) *Mail Service.* – Notice may be made by certified mail addressed to the parent of the  
 30 unemancipated minor or the guardian or conservator at their usual place of residence, return  
 31 receipt requested. The delivery shall be sent restricted delivery assuring that the letter is delivered  
 32 only to the addressee. Time of delivery shall be deemed to occur at twelve o'clock noon on the  
 33 next day on which regular mail delivery takes place unless.

34 (d) Notice may be waived if the person entitled to notice certifies in writing that he or she  
 35 has been notified.

**§16-2F-4. Waiver of notification; petition to circuit court; contents of petition; duties of Attorney General and circuit clerk; confidentiality of proceedings; appointment of counsel and limitation of compensation; findings required to be made by court; petition to supreme court; waiver of certain fees.**

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

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

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

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

9 (iii) A brief statement of petitioner's reason or reasons for the desired waiver of notification  
 10 of the parent or guardian of such minor petitioner.

11 No such petition shall be dismissed nor shall any hearing thereon be refused because of  
12 any defect in the form of the petition.

13 (c) Upon the effective date of this article or as soon thereafter as may be, the Attorney  
14 General shall prepare suggested form petitions and accompanying instructions and shall make  
15 the same available to the several clerks of the circuit courts. Such clerks shall see that a sufficient  
16 number of such suggested form petitions and instructions are available in the clerk's office for the  
17 use of any person desiring to use the same for the purposes of this section.

18 (d) All proceedings held pursuant to this article shall be confidential and the court shall  
19 conduct all such proceedings in camera. The court shall inform the minor petitioner of her right to  
20 be represented by counsel and that if she is without the requisite funds to retain the services of  
21 an attorney, that the court will appoint an attorney to represent her interest in the matter. If the  
22 minor petitioner desires the services of an attorney, an attorney shall be appointed to represent  
23 such minor petitioner, if she advises the court under oath or affidavit that she is financially unable  
24 to retain counsel. Any attorney appointed to represent such minor petitioner shall be appointed  
25 and paid for her services pursuant to the provisions of article twenty-one, chapter twenty-nine of  
26 this code: *Provided*, That the pay to any such attorney pursuant to such appointment shall not  
27 exceed the sum of \$100.

28 (e) The court shall conduct a hearing upon the petition without delay, but in no event shall  
29 the delay exceed the next succeeding judicial day, and the court shall render its decision  
30 immediately upon its submission and, in any event, an order reflecting the findings of fact and  
31 conclusions of law reached by the court and its judgement shall be endorsed by the judge thereof  
32 not later than twenty-four hours following such submission and shall be forthwith entered of record  
33 by the clerk of the court. All testimony, documents and other evidence presented to the court, as  
34 well as the petition and any orders entered thereon and all records of whatsoever nature and kind  
35 relating to the matter shall be sealed by the clerk and shall not be opened to any person except  
36 upon order of the court and, then, only upon good cause being shown therefor. A separate order

37 book for the purposes of this article shall be maintained by such clerk and shall likewise be sealed  
38 and not open to inspection by any person save upon order of the court for good cause shown.

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

41 (1) That the minor petitioner is mature and well informed sufficiently to make the decision  
42 to proceed with the abortion independently and without the notification or involvement of her  
43 parent or legal guardian; or

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

46 ~~(g) If or when the circuit court, or the judge thereof, shall refuse to order the waiver of the~~  
47 ~~notification required by section three of this article, a copy of the petition and all orders entered in~~  
48 ~~the matter and all other documents and papers submitted to the circuit court, may be presented~~  
49 ~~to the Supreme Court of Appeals, or to any justice thereof if such court then be in vacation, and~~  
50 ~~such court or justice if deemed proper, may thereupon order the waiver of notification otherwise~~  
51 ~~required by section three of this article. The Supreme Court of Appeals or justice thereof shall~~  
52 ~~hear and decide the matter without delay and shall enter such orders as such court or justice may~~  
53 ~~deem appropriate.~~

54 ~~(h) If either the circuit court or the Supreme Court of Appeals, or any judge or justice~~  
55 ~~thereof if either of such courts be then in vacation, shall order a waiver of the notification required~~  
56 ~~by section three of this article, any physician to whom a certified copy of said order shall be~~  
57 ~~presented may proceed to perform the abortion to the same extent as if such physician were in~~  
58 ~~compliance with the provisions of said section three and, notwithstanding the fact that no~~  
59 ~~notification is given to either the parent or legal guardian of any such unemancipated minor, any~~  
60 ~~such physician shall not be subject to the penalty provisions which may be prescribed by this~~  
61 ~~article for such failure of notification.~~

62 (g) A confidential appeal shall be available to any unemancipated minor to whom a court

63 denies an order authorizing an abortion without notification. An order authorizing an abortion  
64 without notification may not be appealed. Access to the trial court and the Supreme Court of  
65 Appeals shall be given to an unmacerated minor without delay.

66 (f) (h) No filing fees may be required of any minor who avails herself of any of the  
67 procedures provided by this section.

#### **§16-2F-5. Emergency exception from notification requirements.**

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

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

1 (a) Any physician performing an abortion upon an unemancipated minor shall provide the  
2 ~~department of health~~ secretary a written report of the procedure within thirty days after having  
3 performed the abortion. ~~The department of health shall provide reporting forms for this purpose~~  
4 ~~to all physicians and public health facilities required to be licensed pursuant to article five-b of this~~  
5 ~~chapter.~~ The following information, in addition to any other information which may be required by  
6 the ~~department of health~~ secretary, regarding the minor receiving the abortion shall be included  
7 in such reporting form:

- 8 (1) Age;
- 9 (2) Educational level;
- 10 (3) Previous pregnancies;
- 11 (4) Previous live births;

12 (5) Previous abortions;

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

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

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

17 (b) Any such report shall not contain the name, address or other information by which the  
18 minor receiving the abortion may be identified.

19 (c) (1) The secretary shall promulgate emergency rules pursuant to the provisions of  
20 section fifteen, article three, chapter twenty-nine-a of this code to provide a reporting form for  
21 physicians. In addition to the form required by this section, these rules may also provide for  
22 modification of the dates set forth in this section or for consolidation of any necessary forms for  
23 administrative convenience, fiscal savings or to reduce reporting requirements.

24 (2) These forms shall contain the following:

25 (A) The number of unemancipated minors for whom notice was required pursuant to this  
26 article;

27 (B) The number of notices which were delivered personally and the number of notices  
28 which were delivered by mail;

29 (C) Following the notice, the number of unemancipated minors who, based upon the  
30 physician's information and belief, obtained an abortion;

31 (D) The number of abortions performed without providing notification as required by this  
32 article and, of these, the number of abortions performed on emancipated minors and the number  
33 of abortions performed due to a medical emergency;

34 (E) The number of abortions performed upon an unemancipated minor without parental  
35 notification following a wavier being granted pursuant to section four of this article; and

36 (F) The number of abortions performed upon a female who has had a guardian or  
37 conservator appointed for them pursuant to the provision of article forty-four-a of this code.

38 (d) The secretary shall distribute a copy of the provisions of this article and the forms  
39 provided in this section as follows:

40 (1) Within one hundred and twenty days of the effective date of this article to all physicians  
41 licensed to practice in this state;

42 (2) Upon licensure of any physicians newly licensed to practice in this state; and

43 (3) After the initial distribution as provided in subdivision (1) of this subsection, by  
44 December 1<sup>ST</sup> of every year to all physicians licensed to practice in this state.

45 (e) Commencing on February 28, 2018, and annually after that, each physician  
46 responsible for notice as required in section three of this article and any physician who knowingly  
47 performed an abortion upon an unemancipated minor or a female who has had a guardian or  
48 conservator appointed pursuant to chapter forty-four-a of this code shall submit to the secretary  
49 a completed copy of the form required by this section containing all of the reporting requirements  
50 as set forth in this section.

51 (f) Any physician who does not submit a report within thirty days following the due date  
52 set forth in subsection (e) of this section shall be fined \$500 payable to the secretary. An  
53 additional fine of \$500 shall be imposed for each additional thirty days, or portion thereof, in which  
54 the physician is not in compliance. The secretary may file an enforcement action in the circuit  
55 court in the court in which any physician resides who has not complied with the reporting  
56 requirement of this article or has filed an incomplete report for a period greater than one year  
57 following the due date set forth in this section.

**§16-2F-7. Statistical report.**

1 (a) The secretary shall prepare an annual report by the last of June of each year. This  
2 report shall be available to the public and shall be submitted to the Joint Committee on  
3 Government and Finance. The report is required to include:

4 (1) A statistical analysis of the information set forth in section six of this article; and

5 (2) Data on the number of petitions or motions filed with the court pursuant to the

6 provisions of section four of this article. This data is required to include;

7 (A) The number of actions which required the appointment of a guardian ad litem;

8 (B) The number of actions which required the appointment of counsel;

9 (C) The number of actions wherein the judge issued an order authorizing an abortion  
10 without parental notification;

11 (D) The number of actions wherein the judge denied a request to proceed with an abortion  
12 without parental notification;

13 (E) The number of appeals which were filed due to a denial;

14 (F) The number of appeals of a denial which resulted in an affirming of the judge's order  
15 to denial proceeding with an abortion without parental notification; and

16 (G) The number of appeals of a denial which were overturned.

17 (b) Each annual report shall contain statistical data for all previous years if it is necessary  
18 that previous data be adjusted to reflect additional information from late or corrected reports.

19 (c) Personal information shall be redacted in the report. The secretary shall ensure that  
20 none of the data or information in the report reasonably lead to the identification of any individual  
21 unemancipated minor or a female for whom a guardian or conservator has been appointed.

**§16-2F-7 §16-2F-8. Article not to be construed to require abortion.**

1 Nothing in this article, nor in any order issued pursuant thereto, shall require that a  
2 physician perform an abortion or that any person be required to assist in the performance of an  
3 abortion if ~~such~~ the physician or person, for any reason, medical or otherwise, does not wish to  
4 perform or assist in ~~such~~ the abortion.

**§16-2F-8 §16-2F-9. Penalties.**

1 (a) Any person who knowingly performs an abortion upon an unemancipated minor in  
2 violation of this article or who knowingly fails to conform to any requirement of this article shall be  
3 guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$500 nor more  
4 than \$1,000 or ~~imprisoned~~ confined in ~~the county~~ jail not more than thirty days, or both fined and

5 ~~imprisoned~~ confined.

~~§16-2F-9~~ §16-2F-10. **Severability.**

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

NOTE: The purpose of this bill is to modify the law requiring parental notification of abortions performed on unemancipated minors.

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