

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**ENGROSSED**

**Committee Substitute**

**for**

**Committee Substitute**

**for**

**Senate Bill 468**

BY SENATORS RUCKER, BOLEY, GRADY, KARNES,  
MAYNARD, PHILLIPS, ROBERTS, SMITH, STOVER, SYPOLT,  
TARR, WOODRUM, CLEMENTS, MARTIN, AZINGER AND  
MARONEY

[Originating in the Committee on Finance; reported on  
February 25, 2022]



1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §16-2Q-1, §16-2Q-2, §16-2Q-3, §16-2Q-4, §16-2Q-5, §16-2Q-6, §16-2Q-7,  
3 §16-2Q-8, §16-2Q-9, §16-2Q-10, and §16-2Q-11, all relating to creating the Unborn Child  
4 with Down Syndrome Protection and Education Act; providing a short title; defining terms;  
5 requiring health care practitioner to provide certain information to expectant or new  
6 parents; requiring Department of Health and Human Resources to make certain  
7 information available to health care practitioners on website; prohibiting abortion before  
8 confirming and documenting that abortion is not sought because of a disability except in  
9 medical emergency or severe fetal condition; prohibiting abortion because of disability  
10 except in medical emergency or severe fetal condition; requiring physician who performs  
11 or induces abortion to report certain anonymous information to commissioner; requiring  
12 commissioner to create forms and providing for applicability of reporting requirements;  
13 providing for professional sanctions and civil penalties or fines; authorizing Attorney  
14 General, West Virginia Board of Medicine, and West Virginia Board of Osteopathic  
15 Medicine to bring action; clarifying effect of article with respect to right to abortion,  
16 generally accepted medical standards, and currently unlawful abortions; providing for  
17 severability; and providing effective date.

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

**ARTICLE 2Q. UNBORN CHILD WITH DOWN SYNDROME PROTECTION AND  
EDUCATION ACT.**

**§16-2Q-1. Short title.**

1 This article shall be known and cited as the Unborn Child with Down Syndrome Protection  
2 and Education Act.

**§16-2Q-2. Definitions.**

1 As used in this article only:

2 “Abortion” means the same as that term is defined in §16-2F-2 of this code.

3 “Attempt to perform or induce an abortion” means the same as that term is defined in §16-  
4 2M-2 of this code.

5 “Because of a disability” means on account of the presence or presumed presence of a  
6 genetic, physical, emotional, or intellectual disability or diagnosis in the unborn human being  
7 including, but not limited to, chromosomal disorders or morphological malformations occurring as  
8 the result of atypical gene expressions.

9 “Conception” means the fusion of human spermatozoon with a human ovum.

10 “Commissioner” means the commissioner of the Bureau for Public Health.

11 “Health care practitioner” means a person who is licensed, certified, or otherwise  
12 authorized by law or regulation to provide or render health care services or genetic counseling to  
13 expectant or new parents.

14 “Human being” means an individual member of the species Homo sapiens, from and after  
15 the point of conception.

16 “Medical emergency” means the same as that term is defined in §16-2I-1 of this code.

17 “Physician” or “referring physician” means the same as that term is defined in §16-2M-2  
18 of this code.

19 “Reasonable medical judgment” means the same as that term is defined in §16-2M-2(10)  
20 of this code.

21 “Severe fetal condition” means a life-threatening physical condition that, in reasonable  
22 medical judgment, regardless of the provision of life-saving medical treatment, is incompatible  
23 with life outside the womb.

**§16-2Q-3. Dissemination of information on fetal disabilities.**

1 (a) Requirement. — A health care practitioner that administers, or causes to be  
2 administered, a test for any physical, emotional, or intellectual disability or diagnosis to an  
3 expectant or new parent shall, upon receiving a test result that confirms the presence of any

4 disability, provide the expectant or new parent with educational information made available by the  
5 department under §16-2Q-4 of this code.

6 (b) Delivery of information prepared by the department in accordance with §16-2Q-4 of  
7 this code at the time genetic results or diagnostic conclusions are provided shall constitute  
8 compliance with this section.

**§16-2Q-4. Informational publications by department.**

1 General rule. —The Department of Health and Human Resources shall make the following  
2 available to health care practitioners on the department’s publicly accessible internet website:

3 (a) Up-to-date, evidence-based information about any in-utero physical, emotional, or  
4 intellectual disability or diagnosis that has been reviewed by medical experts and any national  
5 disability rights organizations. The information provided shall include the following:

6 (1) Physical, developmental, educational, and psychosocial outcomes;

7 (2) Life expectancy;

8 (3) Clinical course;

9 (4) Intellectual and functional development;

10 (5) Treatment options; and

11 (6) Any other information the department deems necessary;

12 (b) Contact information regarding first call programs and support services, including the  
13 following:

14 (1) Information hotlines specific to any in-utero fetal disabilities or conditions;

15 (2) Relevant resource centers or clearinghouses;

16 (3) National and local disability rights organizations; and

17 (4) Education and support programs.

18 The information provided in accordance with this article shall conform to the applicable  
19 standard or standards provided in the Enhanced National Standards for Culturally and  
20 Linguistically Appropriate Services in Health and Health Care as adopted by the United States

21 Department of Health and Human Services and published in the Federal Register on September  
22 24, 2013.

**§16-2Q-5. Abortion may not be performed because of a disability, except in a medical emergency.**

1 (a) Except in a medical emergency, or if the unborn human being has a severe fetal  
2 condition, as defined in §16-2Q-2 of this code, a person may not perform, induce, or attempt to  
3 perform or induce an abortion unless the physician who is to perform or induce the abortion has  
4 first confirmed that the abortion is not being sought because of a disability, as defined in §16-2Q-  
5 2 of this code, including Down syndrome and documented these facts in the maternal patient's  
6 chart, as well as in the report to be filed with the commissioner as set forth in subsection (c) of  
7 this section.

8 (b) Except in a medical emergency, or if the unborn human being has a severe fetal  
9 condition, as defined in §16-2Q-2 of this code, a person may not intentionally or knowingly  
10 perform, induce, or attempt to perform or induce an abortion of an unborn human being if the  
11 abortion is being sought because of a disability, a defined in §16-2Q-2 of this code, including  
12 Down syndrome.

13 (c) In every case in which a physician performs or induces an abortion on an unborn  
14 human being, the physician shall, within 15 days of the procedure, cause to be filed with the  
15 commissioner, on a form supplied by the commissioner, a report containing the following  
16 information:

17 (1) Date the abortion was performed;

18 (2) Specific method of abortion used;

19 (3) Whether the presence or presumed presence of any disability in the unborn human  
20 being had been detected at the time of the abortion by genetic testing or any other fetal testing,  
21 such as maternal serum tests, or ultrasound, such as by nuchal translucency screening (NT), or  
22 by other forms of testing;

23 (4) A statement confirming that the reason for the abortion, as stated by the maternal  
24 patient, was not because of a disability, as defined in §16-2Q-2 of this code, including Down  
25 syndrome;

26 (5) Probable health consequences of the abortion to the maternal patient and specific  
27 abortion method used;

28 (6) Whether a medical emergency as defined in §16-2Q-3 existed; and

29 (7) Whether the unborn human being had a severe fetal condition as defined in §16-2Q-  
30 3.

31 The physician shall sign the form as his or her attestation under oath that the information  
32 stated is true and correct to the best of his or her knowledge.

33 (d) Reports required and submitted under subsection (c) of this section may not contain  
34 the name of the maternal patient upon whom the abortion was performed or any other information  
35 or identifiers that would make it possible to identify, in any manner or under any circumstances,  
36 a woman who obtained or sought to obtain an abortion.

**§16-2Q-6. Reporting forms.**

1 The commissioner shall create the forms required by this article within 30 days after the  
2 effective date of this article. No provision of this article requiring the reporting of information on  
3 forms published by the commissioner may be applicable until 10 days after the requisite forms  
4 have been made available or the effective date of this article, whichever is later.

**§16-2Q-7. Professional sanctions and civil penalties.**

1 (a) A physician who intentionally or knowingly violates the prohibition in §16-2Q-5(b) of  
2 this code commits an act of unprofessional conduct and his or her license to practice medicine in  
3 the State of West Virginia shall be suspended or revoked pursuant to the West Virginia Board of  
4 Medicine and pursuant to §30-3-1 *et seq.* of this code and the West Virginia Board of Osteopathic  
5 Medicine and pursuant to §30-14-1 *et seq.* of this code.

6 (b) A physician who knowingly or intentionally delivers to the commissioner any report  
7 required by §16-2Q-5(c) of this code, and known by him or her to be false, is subject to a civil  
8 penalty or fine as determined by the West Virginia Board of Medicine and the West Virginia Board  
9 of Osteopathic Medicine.

**§16-2Q-8. Additional enforcement.**

1 The Attorney General may bring an action in law or equity to enforce the provisions of this  
2 article on behalf of the Commissioner of the Bureau for Public Health, the West Virginia Board of  
3 Medicine, or the West Virginia Board of Osteopathic Medicine. The West Virginia Board of  
4 Medicine or the West Virginia Board of Osteopathic Medicine may bring such action on its own  
5 behalf.

**§16-2Q-9. Construction.**

1 Nothing in this article may be construed as creating or recognizing a right to abortion or  
2 as altering generally accepted medical standards. Further, it is not the intention of this article to  
3 make lawful an abortion that is currently unlawful.

**§16-2Q-10. Severability.**

1 It is the intent of the Legislature that every provision of this article shall operate with equal  
2 force and shall be severable one from the other. If any provision of this article is held invalid or  
3 unenforceable by a court of competent jurisdiction, that provision shall be deemed severable, and  
4 the remaining provisions of this article deemed fully enforceable.

**§16-2Q-11. Effective date.**

1 This article shall take effect on July 1, 2022.