

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 278

By Senator Rucker

[Introduced January 11, 2024; referred
to the Committee on Health and Human Resources;
and then to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §16-2S-1, §16-2S-2, §16-2S-3, §16-2S-4, §16-2S-5, and §16-2S-6, all relating
 3 to the creation of the West Virginia Chemical Abortion Prohibition Act; creating the offense;
 4 providing no liability to the patient; providing a rule of construction regarding ectopic
 5 pregnancy; providing for definitions; creating severability; and providing for disposal of
 6 discarded abortion drugs.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2S. WEST VIRGINIA CHEMICAL ABORTION PROHIBITION ACT.

§16-2S-1. Offense.

1 Any healthcare provider who, in or affecting interstate or foreign commerce, who knowingly
 2 provides or attempts to provide a chemical abortion:

- 3 (1) Without physically examining the patient;
- 4 (2) Without being physically present at the location of the chemical abortion;
- 5 (3) Without scheduling a follow-up visit for the patient to occur not more than seven days
 6 after the administration or use of the drug to assess the patient's physical condition; and
- 7 (4) Without providing a catch kit and medical waste bag, including instructions for the
 8 patient to bring the catch kit and medical waste bag to the healthcare provider for proper disposal;

9 Shall be fined not more than \$1,000 or imprisoned not more than three (3) years, or both.

10 This subsection does not apply to a chemical abortion that is necessary to save the life of a mother
 11 whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-
 12 endangering physical condition.

§16-2S-2. No liability to the patient.

1 A patient upon whom an abortion is performed may not be prosecuted under this section or
 2 for a conspiracy to violate this section.

§16-2S-3. Rule of construction regarding ectopic pregnancy.

1 Nothing in this section shall be construed to have any impact on the treatment of a verified

2 ectopic pregnancy.

§16-2S-4. Definitions.

1 (a) "Abortion drug" means any medicine, drug or any other substance, or any combination
2 of drugs, medicines, or substances, when it is used:

3 (1) To intentionally kill the unborn child of a woman known to be pregnant; or

4 (2) To intentionally terminate the pregnancy of a woman known to be pregnant, with an
5 intention other than:

6 (A) To produce a live birth; or

7 (B) To remove a dead unborn child.

8 (b) "Attempts to provide" means conduct that, under the circumstances as the actor
9 believes them to be, constitutes a substantial step in a course of conduct planned to culminate in a
10 chemical abortion.

11 (c) "Catch kit" – The term "catch kit" means a collection container designed to catch and
12 hold medical waste or infectious waste, often used for collecting samples for testing.

13 (d) "Chemical abortion" refers to the use of an abortion drug to:

14 (1) Intentionally kill the unborn child of a woman known to be pregnant; or

15 (2) Intentionally terminate the pregnancy of a woman known to be pregnant, with an
16 intention other than:

17 (A) To produce a live birth; or

18 (B) To remove a dead unborn child.

19 (e) "Healthcare provider" means any person licensed to prescribe prescription drugs under
20 applicable Federal and State Laws.

21 (f) "Provide" means to dispense or prescribe an abortion drug, or to otherwise make an
22 abortion drug available to a patient.

23 (g) "Medical Waste Bag" – the Term "medical waste bag" means a red biohazardous waste
24 container made to contain medical or biohazardous waste. Warning labels shall be affixed to the

25 container stating "BIOHAZARD." The container must either:

26 (1) Be fluorescent orange or orange-red, with lettering and symbols in a contrasting color;

27 or

28 (2) Include such required warning labels in fluorescent orange or orange-red, with lettering

29 and symbols in a contrasting color. Such medical waste bag may also be referred to as "infectious

30 waste bag," "healthcare waste bag," or "biohazard waste bag."

31 (h) "Unborn child" means an individual organism of the species homosapiens, beginning at

32 fertilization, until the point of being born alive.

§16-2S-5. **Severability.**

1 If any provision of this section or the application of such provision to any person or

2 circumstance is held to be invalid, the remainder of this section and the application of the

3 provisions of the remainder to any person or circumstance shall not be affected thereby.

§16-2S-6. **Disposal.**

1 The manufacturer of any abortion drug is responsible for proper disposal of discarded

2 abortion drugs. If abortion drugs are found in wastewater, the pill manufacturer company shall be

3 responsible for cleanup, remediation, and further preventative measures. A violation of this

4 provision is punishable by a fine of \$20,000 per violation.

NOTE: The purpose of this bill is to create the West Virginia Chemical Abortion Prohibition Act. The bill creates the offense. The bill provides no liability to the patient. The bill provides a rule of construction regarding ectopic pregnancy. The bill provides for definitions. The bill provides for severability. Finally, the bill provides for disposal of discarded abortion drugs.

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