

COMMITTEE SUBSTITUTE

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Senate Bill No. 597

(By Senators Kessler, Prezioso, Boley and Green)

[Originating in the Committee on the Judiciary;
reported February 26, 2010.]

A BILL to amend and reenact §16-2I-2 of the Code of West Virginia, 1931, as amended, relating to requiring physicians or those assisting them in performing an elective abortion to provide to the patient the opportunity to view any ultrasound image utilized prior to and in conjunction with the abortion procedure of a live fetus without a fatal anomaly before performance of an elective abortion procedure.

Be it enacted by the Legislature of West Virginia:

That §16-2I-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2I. WOMEN'S RIGHT TO KNOW ACT.

§16-2I-2. Informed consent.

No abortion may be performed in this state except with the

voluntary and informed consent of the female upon whom the abortion is to be performed. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if, and only if:

(a) The female is told the following, by telephone or in person, by the physician or the licensed health care professional to whom the responsibility has been delegated by the physician who is to perform the abortion at least twenty-four hours before the abortion:

(1) The particular medical risks associated with the particular abortion procedure to be employed, including, when medically accurate, the risks of infection, hemorrhage, danger to subsequent pregnancies and infertility;

(2) The probable gestational age of the embryo or fetus at the time the abortion is to be performed; and

(3) The medical risks associated with carrying her child to term.

The information required by this subsection may be provided by telephone without conducting a physical examination or tests of the patient, in which case the information required to be provided may be based on facts supplied by the female to the physician or other licensed health care professional to whom the responsibility has been delegated by the physician and whatever other relevant information is reasonably available to the physician or other licensed health care professional to whom the

responsibility has been delegated by the physician. It may not be provided by a tape recording, but must be provided during a consultation in which the physician or licensed health care professional to whom the responsibility has been delegated by the physician is able to ask questions of the female and the female is able to ask questions of the physician or the licensed health care professional to whom the responsibility has been delegated by the physician.

If a physical examination, tests or the availability of other information to the physician or other licensed health care professional to whom the responsibility has been delegated by the physician subsequently indicate, in the medical judgment of the physician or the licensed health care professional to whom the responsibility has been delegated by the physician, a revision of the information previously supplied to the patient, that revised information may be communicated to the patient at any time ~~prior to~~ before the performance of the abortion procedure.

Nothing in this section may be construed to preclude provision of required information in a language understood by the patient through a translator.

(b) The female is informed, by telephone or in person, by the physician who is to perform the abortion, or by an agent of the physician, at least twenty-four hours before the abortion procedure:

(1) That medical assistance benefits may be available for prenatal care, childbirth and neonatal care through governmental or private entities;

(2) That the father, if his identity can be determined, is liable to assist in the support of her child based upon his ability to pay even in instances in which the father has offered to pay for the abortion; and

(3) That she has the right to review the printed materials described in section three of this article, that these materials are available on a state-sponsored website and the website address.

The physician or an agent of the physician shall orally inform the female that the materials have been provided by the State of West Virginia and that they describe the embryo or fetus and list agencies and entities which offer alternatives to abortion.

If the female chooses to view the materials other than on the website, then they shall either be provided to her at least twenty-four hours before the abortion or mailed to her at least seventy-two hours before the abortion by first class mail in an unmarked envelope.

The information required by this subsection may be provided by a tape recording if provision is made to record or otherwise register specifically whether the female does or does not choose to have the printed materials given or mailed to her.

(c) Whenever ultrasound imaging is utilized prior to and in conjunction with the performance of an elective abortion procedure on a live fetus without a fatal anomaly, the physician performing the abortion procedure or other licensed healthcare professional to whom responsibility is delegated shall, at least one hour before the abortion procedure, inform the female of the ultrasound imaging procedure and offer the female the opportunity to view or decline to view the ultrasound images obtained of the fetus before beginning the abortion procedure.

~~(e)~~ The female shall certify in writing, ~~prior to~~ before the abortion, that the information described in subsections (a) and (b) of this section has been provided to her and that she has been informed of her opportunity to review the information referred to in subdivision (3), subsection (b) of this section.

~~(d) Prior to~~ Before performing the abortion procedure, the physician who is to perform the abortion or the physician's agent shall obtain a copy of the executed certification required by the provisions of subsection (c) of this section.

(NOTE: The purpose of this bill is to require that a person who is undergoing an abortion be offered the opportunity to view available ultrasound images of the fetus before the performance of an abortion.

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

that would be added.)