

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 231

FISCAL
NOTE

BY SENATORS RUCKER, CARMICHAEL (MR. PRESIDENT),

MAYNARD, SYPOLT, TARR, CLINE, HAMILTON, AND

ROBERTS

[Introduced January 9, 2020; referred
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 §16-20-1, §16-20-2, §16-20-3, §16-20-4, §16-20-5, §16-20-6, §16-20-7, §16-
 3 20-8, and §16-20-9, all relating to creating the Born Alive Abortion Survivors Protection
 4 Act; and establishing penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 20. BORN ALIVE ABORTION SURVIVORS PROTECTION ACT.

§16-20-1. Short title.

1 This article shall be known and may be cited as the “Born-Alive Abortion Survivors
 2 Protection Act”.

§16-20-2. Definitions. As used in this section.

1 (a) “Abortion” means the use or prescription of any instrument, medicine, drug, or any
 2 other substance or device;

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 to:

6 (A) After viability to produce a live birth and preserve the life and health of the child born
 7 alive; or

8 (B) To remove a dead unborn child.

9 (b) “Born alive,” with respect to a member of the species homo sapiens, means the
 10 complete expulsion or extraction from its mother of that member, at any stage of development,
 11 who after such expulsion or extraction breathes or has a beating heart, pulsation of the umbilical
 12 cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has
 13 been cut, and regardless of whether the expulsion or extraction occurs as a result of natural or
 14 induced labor, cesarean section, or induced abortion.

§16-20-3. Application.

1 In determining the meaning of any statute, ruling, regulation, or interpretation of the
 2 various administrative bureaus and agencies of this state, the words “person,” “human being,”
 3 “child,” and “individual,” shall include every infant member of the species homo sapiens who is
 4 born alive at any stage of development.

§16-20-4. Requirements pertaining to born-alive abortion survivors.

1 Requirements for Health Care Practitioners. — In the case of an abortion or attempted
 2 abortion that results in a child born alive:

3 (a) Degree of care required; immediate admission to a hospital. — Any health care
 4 practitioner present at the time the child is born alive shall;

5 (1) Exercise the same degree of professional skill, care, and diligence to preserve the life
 6 and health of the child as a reasonably diligent and conscientious health care practitioner would
 7 render to any other child born alive at the same gestational age; and

8 (2) Following the exercise of skill, care, and diligence required under subparagraph (A),
 9 ensure that the child born alive is immediately transported and admitted to a hospital.

10 (b) Mandatory reporting of violations.—A health care practitioner or any employee of a
 11 hospital, a physician’s office, or an abortion clinic who has knowledge of a failure to comply with
 12 the requirements of paragraph (1) shall immediately report the failure to an appropriate state law
 13 enforcement agency.

§16-20-5. Exceptions.

1 Nothing in this section shall be construed to affirm, deny, expand, or contract any legal
 2 status or legal right applicable to any member of the species homo sapiens at any point prior to
 3 being "born alive" as defined in this section.

§16-20-6. Criminal penalties.

1 (a) Any person who knowingly or recklessly violates section four of this article shall be
 2 guilty of a felony and upon conviction thereof, shall be imprisoned in a state correctional facility
 3 not less than 1 nor more than 10 years. No penalty or civil liability may be assessed against the

4 female upon whom the abortion is performed or attempted.

5 (b) Whoever intentionally performs or attempts to perform an overt act that kills a child
6 born alive described under section four of this article, shall be guilty of a felony for intentionally
7 killing or attempting to kill a human and, upon conviction thereof, shall be imprisoned not less than
8 10 nor more than 20 years.

§16-20 7. Civil remedies.

1 (a) If a child is born alive and there is a violation of section four of this article, the woman
2 upon whom the abortion was performed or attempted may, in a civil action against any person
3 who, in knowing and reckless violation of this Act, committed the violation, obtain appropriate
4 relief.

5 (b) If judgment is rendered in favor of the plaintiff, the court shall also render judgment for
6 a reasonable attorney's fee in favor of the plaintiff against the defendant. If judgment is rendered
7 in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in
8 bad faith, the court shall also render judgment for reasonable attorney's fee in favor of the
9 defendant against the plaintiff.

§16-20-8. Protection of privacy in court proceedings.

1 In every civil or criminal proceeding or action brought under this Act, the court shall rule
2 whether the anonymity of any female upon whom an abortion has been performed shall be
3 preserved from public disclosure if she does not give her consent to such disclosure. The court,
4 upon motion or *sua sponte*, shall make such a ruling and, upon determining that her anonymity
5 should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the
6 sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent
7 necessary to safeguard her identity from public disclosure. Each such order shall be accompanied
8 by specific written findings explaining why the anonymity of the female should be preserved from
9 public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve

10 that interest, and why no reasonable less restrictive alternative exists. This section may not be
11 construed to conceal the identity of the plaintiff or of witnesses from the defendant.

§16-20-9. Severability.

1 If any provision, word, phrase, or clause of this Act or the application thereof to any person
2 or circumstance is held invalid, such invalidity shall not affect the provisions, words, phrases,
3 clauses, or applications of this Act which can be given effect without the invalid provision, word,
4 phrase, clause, or application and to this end, the provisions, words, phrases, and clauses of this
5 Act are declared severable.

NOTE: The purpose of this bill is to create the Born-Alive Abortion Survivors Protection Act.

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