

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 74

FISCAL
NOTE

BY SENATORS RUCKER, WOODRUM, KARNES, SWOPE,
AND AZINGER

[Introduced February 10, 2021; 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 §16-2Q-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, §16-2Q-11, and §16-2Q-12, all relating to the Human
 4 Life Non-Discrimination Act; providing for a short title; providing for legislative findings and
 5 purpose; providing for definitions; providing for criteria under which an abortion may not
 6 be performed; providing for certain exceptions under which an abortion may be performed
 7 with the prohibited circumstances; providing for forms the Commissioner of the Bureau for
 8 Public Health must create; providing for 15 days for a physician to file a report with the
 9 Commissioner of the Bureau for Public Health; providing the required content of the forms
 10 the physician must file; providing for 30 days from the effective date for the Commissioner
 11 of the Bureau for Public Health to create the forms necessary for physicians to file reports;
 12 providing for privacy of the maternal patient by redacting name or other identifying
 13 information on the required reporting forms to the commissioner; providing for criminal
 14 penalties against physicians; providing for a ban on criminal penalties extending to the
 15 maternal patient; providing for professional sanctions against physicians; providing for civil
 16 penalties against physicians; providing for the Attorney General to file legal action to
 17 enforce this article; providing for the West Virginia Board of Medicine to file legal action on
 18 own enforcement of provisions of this article; providing for construction; providing for
 19 severability; providing for a right of intervention by action of the Legislature for a member
 20 to intervene in any legal action where the constitutionality of this article is challenged; and
 21 providing for an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2Q. HUMAN LIFE NON-DISCRIMINATION ACT.

§16-2Q-1. Short Title.

1 This Act shall be known and cited the Human Life Non-Discrimination Act of 2021.

§16-2Q-2. Legislative finding and purpose.

1 (a) The Legislature finds:

2 (1) The science of embryology has advanced considerably in recent decades. It is well-
3 established that human life begins at conception and continues in an unbroken progression
4 through birth until death. Every individual on this continuum is a “human being,” meaning a
5 member of the species Homo sapiens.

6 (2) All human beings, from conception through death, have intrinsic dignity and worth.
7 Human dignity includes the inherent right not to suffer discrimination on the basis of innate
8 characteristics, such as a human being’s race, sex, or genetic characteristics, including any
9 genetic abnormalities.

10 (3) The U.S. Supreme Court has been “zealous in vindicating the rights of people even
11 potentially subjected to race, sex, and disability discrimination.” *Box v. Planned Parenthood of*
12 *Indiana and Kentucky*, 139 S.Ct. 1780, 1792 (2019) (Thomas J., concurring) (citing *Pena-*
13 *Rodriguez v. Colorado*, 580 U. S. _____, _____ (2017) (slip op., at 15) (condemning “discrimination
14 on the basis of race” as “odious in all aspects”); *United States v. Virginia*, 518 U. S. 515, 532
15 (1996) (denouncing any “law or official policy [that] denies to women, simply because they are
16 women, . . . equal opportunity to aspire, achieve, participate in and contribute to society based on
17 their individual talents and capacities”); *Tennessee v. Lane*, 541 U. S. 509, 522 (2004)
18 (condemning “irrational disability discrimination”)).

19 (4) The inherent right against discrimination on the basis of race, sex, or genetic
20 abnormality is protected in federal and state laws. For example, the 1964 Civil Rights Act (42
21 U.S.C. § 2000e *et seq.*) and the laws of every state protect against discrimination on the basis of
22 race or sex. The Rehabilitation Act of 1973 (29 U.S.C. § 701), the Americans With Disabilities
23 Amendments Act of 2010 (42 U.S.C. § 12101 *et seq.*), and many state laws prohibit discrimination
24 against individuals on the basis of a real or perceived physical or mental impairment that
25 substantially limits one or more major life activities.

26 (5) Notwithstanding these protections, unborn human beings are often discriminated

27 against and deprived of life.

28 (6) As Supreme Court Justice Clarence Thomas has noted, “Each of the immutable
29 characteristics protected by this [Act] can be known relatively early in a pregnancy, and [this Act]
30 prevents them from becoming the sole criterion for deciding whether the child will live or die.” *Box*
31 *v. Planned Parenthood of Indiana and Kentucky*, 139 S.Ct. 1780, 1783 (2019) (Thomas, J.,
32 concurring).

33 (7) “Abortion is an act rife with the potential for eugenic manipulation.” *Id.* at 1787.

34 (8) The state of West Virginia maintains a “compelling interest in preventing abortion from
35 becoming a tool of modern-day eugenics.” *Id.*

36 (9) Sex-selection abortions are used to prevent the birth of a child of the undesired sex.
37 Its victims are female.

38 (10) Researchers at Harvard University, Columbia University, the University of California
39 at Berkeley, and the University of Texas have determined that a substantial disparity exists in
40 births between male and female infants among certain populations.

41 (11) Despite equality under the law being guaranteed to all women in the United States
42 and most of the developed world, sex-selection abortions continue to occur in the United States
43 and other countries around the world.

44 (12) Americans overwhelmingly oppose abortions performed for reasons of sex selection.
45 A 2012 poll conducted by the Charlotte Lozier Institute found that 77 percent of respondents
46 opposed abortion in instances of sex selection (specifically, abortion of girls). These results reflect
47 the long-held legal traditions and mores of Americans in support of individual equality without
48 respect to race, ethnicity, or sex. Charlotte Lozier Institute, Sex-selection Abortion: Worldwide
49 Son-bias Fueled by Population Policy Abuse, May 30, 2012.

50 (13) Unborn human beings perceived as “handicapped” or “disabled,” such as those with
51 Down syndrome or other chromosomal or genetic abnormalities or those with operable conditions
52 such as spina bifida and cleft palate, are routinely aborted in the United States and in other

53 countries around the world.

54 (14) Abortions predicated on the presence or presumed presence of genetic abnormalities
55 continue to occur despite the increasingly favorable post-natal outcomes for human beings
56 perceived as “handicapped” or “disabled.” Pharmaceutical treatments, gene therapies, and
57 prosthetic advances have given formerly “handicapped” and “disabled” human beings much
58 greater opportunities for survival and success than ever before. Importantly, surgical intervention
59 now includes the availability of intrauterine surgery.

60 (b) Based on the findings in subsection (a), it is the intent of the Legislature, through this
61 Act and any regulations and policies promulgated hereunder, to prohibit the practice of non-
62 therapeutic or elective abortion for the purpose of terminating the life of an unborn human being
63 because of that human being’s race, sex, or the presence or presumed presence of a genetic
64 abnormality.

§16-2Q-3. Definitions.

1 As used in this article only:

2 “Abortion” means the use or prescription of an instrument, medicine, drug, or other
3 substance or device with the intent to terminate a clinically diagnosable pregnancy for reasons
4 other than to increase the probability of a live birth, to preserve the life or health of the unborn
5 human being, to terminate an ectopic pregnancy, or to remove a dead unborn human being.

6 “Attempt to perform or induce an abortion” means to do or omit anything that, under the
7 circumstances as the person believes them to be, is an act or omission that constitutes a
8 substantial step in a course of conduct planned to culminate in the performance or induction of
9 an abortion in violation of this article.

10 “Because of race” means on account of the race or racial makeup of the unborn human
11 being.

12 “Because of the presence of a genetic abnormality” means on account of the presence or
13 presumed presence of a genetic abnormality in the unborn human being including, but not limited

14 to, chromosomal disorders or morphological malformations occurring as the result of abnormal
15 gene expression.

16 “Because of sex” means on account of the biological sex of the unborn human being.

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

18 “Commissioner” means the commissioner of the Bureau of Public Health.

19 “Human being” means an individual member of the species Homo sapiens, from and after
20 the point of conception. *Planned Parenthood Minnesota, North Dakota, South Dakota v. Rounds,*
21 *530 F.3d 724, 735-36 (8th Cir. 2008); *Planned Parenthood of Indiana, Inc. v. Commissioner of**
22 *Indiana State Dept. of Health, 794 F.Supp.2d 892, 917-18 (S.Dist. Ind. 2011).*

23 “Major bodily function” includes, but is not limited to, functions of the immune system,
24 normal cell growth, and bladder, bowel, brain, circulatory, digestive, endocrine, neurological,
25 reproductive, and respiratory functions.

26 “Medical emergency” means a condition in which, on the basis of the physician’s good
27 faith clinical judgment, an abortion is necessary to preserve the life of a pregnant woman whose
28 life is endangered by a physical disorder, physical illness, or physical injury, including a life-
29 endangering physical condition arising from the pregnancy itself, or when the continuation of the
30 pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily
31 function.

32 “Physician” or “referring physician” means a person licensed to practice medicine in the
33 State of West Virginia.

§16-2Q-4. Abortion may not be performed because of race, sex, or genetic abnormality,
except in a medical emergency.

1 (a) Except in a medical emergency, as defined in §16-2Q-3 of this code, a person may not
2 perform, induce, or attempt to perform or induce an abortion unless the physician who is to
3 perform or induce the abortion has first confirmed that the abortion is not being sought because
4 of the race or sex of the unborn human being or because of the presence or presumed presence

5 of a genetic abnormality and documented these facts in the maternal patient's chart, as well as in
6 the report to be filed with the commissioner as set forth in subsection (c) of this section.

7 (b) Except in a medical emergency, as defined in §16-2Q-3 of this code, a person may not
8 intentionally or knowingly perform, induce, or attempt to perform or induce an abortion of an
9 unborn human being if the abortion is being sought because of the race or sex of the unborn
10 human being or because of the presence or presumed presence of a genetic abnormality.

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

15 (1) Date the abortion was performed;

16 (2) Specific method of abortion used;

17 (3) Whether the race of, sex of, or the presence or presumed presence of any genetic
18 abnormality in the unborn human being had been detected at the time of the abortion by genetic
19 testing, such as maternal serum tests, or ultrasound, such as by nuchal translucency screening
20 (NT), or by other forms of testing; and

21 (4) A statement confirming that the reason for the abortion, as stated by the maternal
22 patient, was not because of the unborn human being's race or sex or the presence or presumed
23 presence of any genetic abnormality.

24 (5) Probable health consequences of the abortion and specific abortion method used.

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

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

§16-2Q-5. 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-6. Criminal Penalties.

1 (a) Any person who intentionally or knowingly violates the prohibition in §16-2Q-4(b) of
2 this code commits a felony pursuant to §61-2-8 of this code.

3 (b) A woman upon whom an abortion is performed, induced, or attempted in violation of
4 this article may not be prosecuted for conspiracy to commit any violation of this article.

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

1 (a) A physician who intentionally or knowingly violates the prohibition in §16-2Q-4(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 pursuant to §30-3-1 et seq. of this code.

5 (b) A physician who knowingly or intentionally delivers to the commissioner any report
6 required by §16-2Q-4(b) of this code, and known by him or her to be false, is subject to a civil
7 penalty or fine as determined by the West Virginia Board of 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 of Public Health or the West Virginia Board of
3 Medicine. The West Virginia Board of Medicine may bring such action on its own 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 and that, if any provision of this article is held
3 invalid or unenforceable by a court of competent jurisdiction, that provision shall be deemed
4 severable and the remaining provisions of this article deemed fully enforceable.

§16-2Q-11. Right of Intervention.

1 The Legislature, through one or more sponsors of this article duly appointed by resolution
2 of their respective chamber, may intervene as a matter of right in any case in which the
3 constitutionality of this article is challenged.

§16-2Q-12. Effective Date.

1 This Act shall take effect on July 1, 2021.

NOTE: The purpose of this bill is to create the Human Life Non-Discrimination Act of 2020.

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