

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 87

BY SENATORS MAYNARD, 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 and §16-2Q-8, all relating to enacting the West Virginia Human Life Protection Act; making
4 abortion and attempted abortion felony offenses except in cases where abortion is
5 necessary in order to prevent a serious health risk to the unborn child's mother; providing
6 that a woman who receives an abortion will not be held criminally culpable or civilly liable
7 for receiving the abortion; making legislative findings; and defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2Q. THE WEST VIRGINIA HUMAN LIFE PROTECTION ACT.

§16-2Q-1. Short title.

1 This article shall be known as the West Virginia Human Life Protection Act.

§16-2Q-2. Legislative findings.

1 (a) This state's statute criminalizing abortion, §61-2-8 of this code, has never been
2 repealed. It has remained unenforceable as a result of the U.S. Supreme Court decision in *Roe*
3 *v. Wade*, 410 U.S. 113 (1973) and its progeny, which struck down as unconstitutional a Texas
4 statute criminalizing abortion and which effectively repealed by implication and made
5 unenforceable all other state statutes criminalizing abortion.

6 (b) In present state law, §61-2-30 of this code, recognizes an embryo or fetus as a distinct
7 unborn victim of certain crimes of violence against the person.

8 (c) In the United States Declaration of Independence, the principle of natural law that "all
9 men are created equal" was articulated. The self-evident truth found in natural law, that all human
10 beings are equal from creation, was at least one of the bases for the anti-slavery movement, the
11 women's suffrage movement, the Nuremberg war crimes trials, and the American civil rights
12 movement. If those movements had not been able to appeal to the truth of universal human
13 equality, they could not have been successful.

14 (d) Abortion advocates speak to women's rights, but they ignore the unborn child, while

15 medical science has increasingly recognized the humanity of the unborn child.

16 (e) Recent medical advances prove a baby’s heart starts to beat at around six weeks. At
17 about eight weeks, the heartbeat can be heard through an ultrasound examination. A fetal Doppler
18 can detect a fetal heartbeat as early as 10 weeks.

19 (f) Ultrasound imaging shows the developing child in utero.

20 (g) As early as six weeks after fertilization, fetal photography shows the clear development
21 of a human being.

22 (h) It is estimated that 6 million Jewish people were murdered in German concentration
23 camps during World War II; 3 million people were executed by Joseph Stalin’s regime in Soviet
24 gulags; 2.5 million people were murdered during the Chinese “Great Leap Forward” in 1958; 1.5
25 to 3 million people were murdered by the Khmer Rouge in Cambodia during the 1970s; and
26 approximately 1 million people were murdered during the Rwandan genocide in 1994. All of these
27 are widely acknowledged to have been crimes against humanity. By comparison, more than 50
28 million babies have been aborted in the United States since the *Roe* decision in 1973, more than
29 three times the number who were killed in German death camps, Chinese purges, Stalin’s gulags,
30 Cambodian killing fields, and the Rwandan genocide combined.

§16-2Q-3. Definitions.

1 As used in this article:

2 “Abortion” means the use or prescription of any instrument, medicine, drug, or any other
3 substance or device with the intent to terminate the pregnancy of a woman known to be pregnant
4 with knowledge that the termination by those means will, with reasonable likelihood, cause the
5 death of the unborn child. The term does not include these activities if done with the intent to save
6 the life or preserve the health of an unborn child, remove a dead unborn child, to deliver the
7 unborn child prematurely to avoid a serious health risk to the unborn child’s mother, or to preserve
8 the health of her unborn child. The term does not include a procedure or act to terminate the
9 pregnancy of a woman with an ectopic pregnancy, nor does it include the procedure or act to

10 terminate the pregnancy of a woman when the unborn child has a lethal anomaly.

11 “Ectopic pregnancy” means any pregnancy resulting from either a fertilized egg that has
12 implanted or attached outside the uterus or a fertilized egg implanted inside the cornu of the
13 uterus.

14 “Lethal anomaly” means a condition from which an unborn child would die after birth or
15 shortly thereafter or be stillborn.

16 “Medical emergency” means a condition which, in reasonable medical judgment, so
17 complicates the medical condition of the pregnant woman that her pregnancy must be terminated
18 to avoid a serious health risk.

19 “Physician” means a person licensed to practice medicine and surgery or osteopathic
20 medicine and surgery in West Virginia.

21 “Serious health risk to the unborn child’s mother” means in reasonable medical judgment,
22 the child’s mother has a condition that so complicates her medical condition that it necessitates
23 the termination of her pregnancy to avert her death or to avert serious risk of substantial physical
24 impairment of a major bodily function. This term does not include a condition based on a claim
25 that the woman is suffering from an emotional condition or a mental illness which will cause her
26 to engage in conduct that intends to result in her death or the death of her unborn child. However,
27 the condition may exist if a second physician who is licensed in West Virginia as a psychiatrist,
28 with a minimum of three years of clinical experience, examines the woman and documents that
29 the woman has a diagnosed serious mental illness and because of it, there is reasonable medical
30 judgment that she will engage in conduct that could result in her death or the death of her unborn
31 child. If the mental health diagnosis and the likelihood of conduct is confirmed as provided in this
32 article, and it is determined that a termination of her pregnancy is medically necessary to avoid
33 the conduct, the termination may be performed and shall be only performed by a physician
34 licensed in West Virginia in a hospital.

35 “Unborn child, child or person” means a human being, specifically including an unborn

36 child in utero at any stage of development, regardless of viability.

37 “Woman” means a female human being, whether or not she has reached the age of
38 majority.

§16-2Q-4. Abortion prohibited; exception.

1 (a) It is unlawful for any person to intentionally perform or attempt to perform an abortion
2 except as provided for by subsection (b) of this section.

3 (b) An abortion is permitted if an attending physician licensed in West Virginia determines
4 that an abortion is necessary in order to prevent a serious health risk to the unborn child’s mother.
5 Except in the case of a medical emergency, the physician’s determination shall be confirmed in
6 writing by a second physician licensed in West Virginia. The confirmation shall occur within 180
7 days after the abortion is completed and shall be prima facie evidence for a permitted abortion.

§16-2Q-5. Pregnant women exempt from penalties.

1 No woman upon whom an abortion is performed or attempted to be performed may be
2 criminally or civilly liable. Furthermore, no physician confirming the serious health risk to the child’s
3 mother may be criminally or civilly liable for those actions.

§16-2Q-6. Penalties.

1 (a) A person performing an abortion in violation of this article is guilty of a felony and, upon
2 conviction thereof, shall be fined not more than \$25,000 or confined in a state correctional facility
3 for not less than two years nor more than five years, or both fined and confined.

4 (b) A person attempting to perform an abortion violation of this article is guilty of a felony
5 and, upon conviction thereof, shall be fined not more than \$10,000 or confined in a state
6 correctional facility for not less than one year nor more than two years, or both fined and confined.

§16-2Q-7. Exemption.

1 This article does not apply to a physician licensed in West Virginia performing a
2 termination of a pregnancy or assisting in performing a termination of a pregnancy due to a
3 medical emergency.

§16-2Q-8. Construction.

1 The construction of existing statutes and regulations that regulate or recognize abortion in
2 West Virginia that conflict with or are antagonistic to this article shall be repealed as null and void
3 and shall recognize the prohibition of abortion as provided in this article. If this article is challenged
4 and enjoined pending a final judicial decision, the existing statutes and regulations that regulate
5 or recognize abortion shall remain in effect during that time.

NOTE: The purpose of this bill is to enact the West Virginia Human Life Protection Act. The bill makes abortion and attempted abortion felony offenses except in cases where abortion is necessary in order to prevent a serious health risk to the unborn child's mother. The bill provides that a woman who receives an abortion will not be held criminally culpable or civilly liable for receiving the abortion. The bill makes legislative findings. The bill defines terms.

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