

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2594

BY DELEGATES KEATON, WAMSLEY AND HOLSTEIN

[Introduced February 18, 2021; 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 §55-19-1, §55-19-2, §55-19-3, §55-19-4, §55-19-5, §55-19-6, and §55-19-7,
 3 all relating to creating the “Unborn Infants Wrongful Death Act”, stating legislative findings
 4 and purposes; defining terms; creating a cause of action with exceptions; stating that
 5 article does not condone abortion, nor make abortion legal by this act; and right of
 6 intervention to defend constitutionality of this act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 19. UNBORN INFANTS WRONGFUL DEATH ACT

§55-19-1. Short title.

1 This article may be known and cited as the “Unborn Infants Wrongful Death Act.”

§55-19-2. Legislative findings and purposes.

1 (a) The Legislature finds that:

2 (1) This state has statutorily recognizes a wrongful death civil cause of action in §55-7-6
 3 of this code.

4 (2) A wrongful death cause of action is intended to correct a flaw in the common law where
 5 no cause of action survived a victim’s death. Thus, a wrongdoer could escape liability merely
 6 because he or she inflicted injuries so severe that they resulted in the death of the victim.

7 (3) The wrongful death cause of action provides for damages to be paid by a wrongdoer
 8 to his or her victim’s survivors, thus deterring tortious and harmful behavior and providing for
 9 restitution to a victim’s estate.

10 (4) This state has an interest in protecting every human being including unborn children
 11 from tortious and harmful acts.

12 (5) Parents of unborn children have protectable interests in the life, health, and well-being
 13 of their children.

14 (6) Tortious behavior which results in the death of an unborn child carries the same social
 15 and emotional cost as that which results in the death of a born and living human being including

16 bereavement, a loss to society, and the lawlessness and disregard for life which characterizes
17 negligent, harmful, and wrongful behavior.

18 (b) For these reasons, the Legislature finds that the exclusion of unborn children from
19 coverage under the state’s wrongful death cause of action is at cross purposes with the
20 justifications for the statute, and that a cause of action for the wrongful death of an unborn child
21 at any stage of gestation or development should be permitted under the laws of this State.

§55-19-3. Definitions.

1 As used in this article only:

2 “Abortion” means the act of using or prescribing any instrument, medicine, drug, or any
3 other substance, device, or means with the intent to terminate the clinically diagnosable
4 pregnancy of a woman with knowledge that the termination by those means will with reasonable
5 likelihood cause the death of the unborn child. Such use, prescription, or means is not an abortion
6 if done with the intent to:

7 (A) Save the life or preserve the health of the unborn child;

8 (B) Remove a dead unborn child caused by spontaneous abortion; or

9 (C) Remove an ectopic pregnancy.

10 “Born-alive” means the substantial expulsion or extraction of an infant from its mother,
11 regardless of the duration of the pregnancy, who, after expulsion or extraction, whether or not the
12 umbilical cord has been cut or the placenta is attached, and regardless of whether the expulsion
13 or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion,
14 shows any evidence of life including, but not limited to, one or more of the following:

15 (1) Breathing;

16 (2) A heartbeat;

17 (3) Umbilical cord pulsation; or

18 (4) Definite movement of voluntary muscles.

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

20 “Healthcare provider” means any individual who may be asked to participate in any way
21 in a healthcare service including, but not limited to, the following: a physician’s assistant; nurse;
22 nurses’ aide; medical assistant; hospital employee; clinic employee; nursing home employee;
23 pharmacist; pharmacy employee; researcher; medical or nursing school faculty, student, or
24 employee; counselor; social worker; or any professional, paraprofessional, or any other person
25 who furnishes or assists in the furnishing of healthcare services.

26 “Physician” means a doctor legally authorized to practice medicine or surgery in this State
27 or any other individual legally authorized by this state to perform abortions: *Provided*, That any
28 individual who is not a physician and not otherwise legally authorized by this state to perform
29 abortions, but who nevertheless performs an abortion is subject to the provisions of this article.

30 “Unborn child” means the offspring of human beings from conception until birth.

§55-19-4. Cause of Action.

1 The state or location of gestation or development of an unborn child when an injury is
2 caused, when an injury takes effect, or at death shall not foreclose maintenance of a cause of
3 action under the law of this state arising from the death of the unborn child caused by a wrongful
4 act, neglect, carelessness, lack of skill, or default.

§55-19-5. Exceptions.

1 (a) There may be no cause of action against a physician or a medical institution for the
2 wrongful death of an unborn child caused by an abortion where the abortion was permitted by law
3 and the requisite consent was lawfully given. However, a cause of action is not prohibited where
4 an abortion is performed in violation of state law or where the child is born alive and subsequently
5 dies.

6 (b) There may be no cause of action against a physician, another healthcare provider, or
7 a medical institution for the wrongful death of an unborn child *in utero* based on the alleged
8 misconduct of the physician or medical institution where the defendant did not know and, under
9 standard medical practice in the community, had no medical reason to know of the pregnancy of

10 the woman or the existence of the unborn child.

§55-19-6. Construction.

1 (a) This article does not create, recognize, endorse, or condone a right to an abortion.

2 (b) It is not the intention of this article to make lawful an abortion that is currently unlawful.

§55-19-7-8. Right of Intervention.

1 The Legislature may appoint one or more of its members who sponsored or cosponsored
2 this act in his or her official capacity, to intervene as a matter of right to defend this law in any
3 case in which its constitutionality is challenged.

NOTE: The purpose of this bill is to create the “Unborn Infants Wrongful Death 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.