

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2954

FISCAL
NOTE

BY DELEGATES BURKHAMMER, MANDT, PAYNTER,
MARTIN, HANNA, WORRELL, GRAVES, PINSON, AND
WAMSLEY

[Introduced March 05, 2021; Referred to the
Committee on Health and Human Resources then the
Judiciary]

1 A BILL to amend and reenact §16-2M-2, §16-2M-4, and §16-2M-6 of the Code of West Virginia,
2 1931, as amended; and to amend said code by adding a new section thereto, designated
3 §16-2M-4a, all relating to restricting the circumstances in which an abortion may be
4 performed or attempted; modifying the definition of ‘pain capable gestational age’;
5 establishing absolute limit on gestational age for abortion; limiting abortion to
6 circumstances of rape, incest, or threat to life or safety of the mother; requiring abortions
7 to be performed in hospitals by licensed physician; referencing requirements for
8 notification and consent by parent or guardian; and providing for manslaughter charges if
9 the woman is convicted, after the abortion, of making false statements regarding the
10 sexual assault.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2M. THE PAIN-CAPABLE UNBORN CHILD PROTECTION ACT.

§16-2M-2. Definitions.

1 For purposes of this article:

2 (1) “Abortion” means abortion as that term is defined in §16-2F-2 of this code.

3 (2) “Attempt to perform or induce an abortion” means an act or an omission of a statutorily
4 required act that, under the circumstances as the person believes them to be, constitutes a
5 substantial step in a course of conduct planned to culminate in the performance or induction of
6 an abortion in this state in violation of the applicable provisions of this code.

7 (3) “Fertilization” means the fusion of a human spermatozoon with a human ovum.

8 (4) “Fetus” means the developing young in the uterus, specifically the unborn offspring in
9 the postembryonic period from nine weeks after fertilization until birth.

10 (5) “Medical emergency” means a condition that, on the basis of a reasonably prudent
11 physician’s reasonable medical judgment, so complicates the medical condition of a pregnant
12 female that it necessitates the immediate abortion of her pregnancy without first determining
13 gestational age to avert her death or for which the delay necessary to determine gestational age

14 will create serious risk of substantial and irreversible physical impairment of a major bodily
15 function, not including psychological or emotional conditions. No condition may be deemed a
16 medical emergency if based on a claim or diagnosis that the woman will engage in conduct which
17 she intends to result in her death or in substantial and irreversible physical impairment of a major
18 bodily function.

19 (6) "Nonmedically viable fetus" means a fetus that contains sufficient lethal fetal anomalies
20 so as to render the fetus medically futile or incompatible with life outside the womb in the
21 reasonable medical judgment of a reasonably prudent physician.

22 (7) "Pain capable gestational age" means ~~twenty-two~~ 22 weeks since the first day of the
23 woman's last menstrual period. The pain capable gestational age defined herein is generally
24 consistent with the time that is 20 weeks after fertilization.

25 (8) "Physician" means a person with an unrestricted license to practice allopathic medicine
26 pursuant to §30-3-1 *et seq.* of this code or osteopathic medicine pursuant to §30-14-1 *et seq.* of
27 this code.

28 (9) "Probable gestational age of the fetus" means, in reasonable medical judgment and
29 with reasonable probability, the gestational age of the fetus at the time an abortion is planned to
30 be performed.

31 (10) "Reasonable medical judgment" means a medical judgment that would be made by
32 a reasonably prudent physician, knowledgeable about the case and the treatment possibilities
33 with respect to the medical conditions involved.

**§16-2M-4. Abortion of fetus of pain capable gestational age prohibited; abortion in special
circumstances.**

1 (a) No person may perform or induce, or attempt to perform or induce, an abortion when
2 it has been determined, by the physician performing or inducing or attempting to perform or induce
3 the abortion or by another physician upon whose determination that physician relies, that the
4 probable gestational age of the fetus has reached the pain capable gestational age. ~~unless in~~

5 (b) No person may perform or induce, or attempt to perform or induce, an abortion upon
6 a fetus that has not reached the pain capable gestational age unless:

7 (1) In the reasonable medical judgment of a reasonably prudent physician there exists a
8 nonmedically viable fetus or the patient has a condition that, on the basis of a reasonably prudent
9 physician’s reasonable medical judgment, so complicates her medical condition as to necessitate
10 the abortion of her pregnancy to avert her death or to avert serious risk of substantial and
11 irreversible physical impairment of a major bodily function, not including psychological or
12 emotional conditions; or

13 (2) The fetus was conceived through the rape of the woman carrying the fetus, the woman
14 has reported the rape to an appropriate police agency having jurisdiction over the incident, and a
15 defendant has been charged or sought for arrest as a result of the report; or

16 (3) The fetus was conceived as a result of incest, as defined and prohibited by §61-8-12
17 of this code, regardless of whether either parent has been charged or convicted of the criminal
18 offense.

19 (c) No condition may be deemed a medical emergency if based on a claim or diagnosis
20 that the woman will engage in conduct which she intends to result in her death or in substantial
21 and irreversible physical impairment of a major bodily function.

22 ~~(b) When an abortion upon a patient whose fetus has been determined to have a probable~~
23 ~~gestational age that has reached the pain capable gestational age is not prohibited by subsection~~
24 ~~(a) of this section, the physician shall terminate the pregnancy in the manner which, in reasonable~~
25 ~~medical judgment, provides the best opportunity for the fetus to survive, unless, in reasonable~~
26 ~~medical judgment, termination of the pregnancy in that manner would pose a greater risk either~~
27 ~~of the death of the patient or of the substantial and irreversible physical impairment of a major~~
28 ~~bodily function of the patient than would other available methods~~

**§16-2M-4a. Medical requirements to perform abortion; consent of parent or guardian
required when patient is a minor.**

1 (a) No abortion may be performed or induced, and no person may attempt to perform or
2 induce, an abortion except at a facility licensed as a hospital under the laws of this state or a
3 facility operated as a hospital by the United States, by a licensed physician as defined by §16-
4 2M-2 of this code.

5 (b) A physician shall not perform an abortion upon an unemancipated minor until the
6 procedures under §16-2F-1 et seq. of this code have been completed regarding notification of
7 and consent by a parent or guardian.

§16-2M-6. Penalties.

1 (a) Any physician or other licensed medical practitioner who intentionally or recklessly
2 performs or induces an abortion in violation of this article is considered to have acted outside the
3 scope of practice permitted by law or otherwise in breach of the standard of care owed to patients,
4 and is subject to discipline from the applicable licensure board for that conduct, including, but not
5 limited to, loss of professional license to practice.

6 (b) Any person, not subject to subsection (a) of this section, who intentionally or recklessly
7 performs or induces an abortion in violation of this article is considered to have engaged in the
8 unauthorized practice of medicine in violation of §30-3-13 of this code, and upon conviction,
9 subject to the penalties contained in that section.

10 (c) In addition to the penalties set forth in subsections (a) and (b) of this section, a patient
11 may seek any remedy otherwise available to such patient by applicable law.

12 (d) If a woman obtains an abortion under the provisions of §16-2M-4(b)(2) of this code and
13 subsequently is found guilty of making a false statement to a law-enforcement officer, as
14 prohibited by §61-5-17 of this code, or false swearing, as defined by §61-5-2 of this code,
15 regarding the sexual assault, the woman shall be charged with manslaughter and may, upon
16 conviction, be punished pursuant to §61-2-4 of this code. No penalty may be assessed against
17 any patient upon whom an abortion is performed or induced or attempted to be performed or
18 induced pursuant to the provisions of §16-2M-4(b)(1) of this code.

NOTE: The purpose of this bill is to establish an absolute limit on when abortions may be performed based upon the gestational age of the fetus and to carefully define those situations and circumstances in which abortions may be lawfully performed.

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