

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4337

FISCAL
NOTE

BY DELEGATES KESSINGER, PINSON, MAZZOCCHI,
BURKHAMMER, PACK, MAYNARD, D. JEFFRIES, KIMBLE,
TULLY, BRIDGES, AND KEATON

[Introduced January 21, 2022; Referred to the
Committee on Health and Human Resources then 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, §16-2Q-12, §16-2Q-13, and §16-2Q-14, all
 4 relating to creating the Unborn Child with Down Syndrome Protection and Education Act;
 5 providing for a short title, legislative finding, and purpose; providing for definitions; creating
 6 dissemination of information on fetal disabilities; providing for informational publications
 7 by department; providing that abortion may not be performed for down syndrome and
 8 other disabilities except in the case of a medical emergency; providing reporting forms
 9 and establishing criminal penalties; providing professional sanctions and civil penalties;
 10 providing for additional enforcement; providing for construction of the act; creating
 11 severability; providing for the right of intervention; and providing for an effective date.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 2Q. UNBORN CHILD WITH DOWN SYNDROME PROTECTION AND
 EDUCATION ACT.**

§16-2Q-1. Short Title.

1 This article shall be known and cited as The Unborn Child with Down Syndrome Protection
 2 and Education Act.

§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 genetic

8 characteristics, including Down syndrome or any other disabilities.

9 (3) The inherent right against discrimination on the basis of Down syndrome or other
10 disability is protected in federal and state laws. The Rehabilitation Act of 1973 (29 U.S.C. §701),
11 the Americans with Disabilities Amendments Act of 2010 (42 U.S.C. §12101 et seq.), and many
12 state laws prohibit discrimination against individuals on the basis of a real or perceived physical
13 or mental impairment that substantially limits one or more major life activities.

14 (4) Notwithstanding these protections, unborn human beings are often discriminated
15 against and deprived of life.

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

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

22 (7) The State of West Virginia maintains a “compelling interest in preventing abortion from
23 becoming a tool of modern-day eugenics.” *Id.*

24 (8) Unborn human beings perceived as “handicapped” or “disabled,” such as those with
25 Down syndrome or other chromosomal or genetic disabilities or those with operable conditions
26 such as spina bifida and cleft palate, are routinely aborted in the United States and in other
27 countries around the world.

28 (9) Abortions predicated on the presence or presumed presence of genetic disabilities
29 continue to occur despite the increasingly favorable post-natal outcomes for human beings
30 perceived as “handicapped” or “disabled.” Pharmaceutical treatments, gene therapies, and
31 prosthetic advances have given formerly “handicapped” and “disabled” human beings much
32 greater opportunities for survival and success than ever before. Importantly, surgical intervention
33 now includes the availability of intrauterine surgery.

34 (b) Based on the findings in subsection (a), it is the intent of the Legislature, through this
35 article and any regulations and policies promulgated hereunder, to provide educational resources
36 for families who are given a fetal diagnosis of any physical, mental, or intellectual disability, to
37 protect unborn children by prohibiting the practice of nontherapeutic or elective abortion for the
38 purpose of terminating the life of an unborn human being because of the presence or presumed
39 presence of Down syndrome or a disability.

§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 a disability” means on account of the presence or presumed presence of a
11 genetic, physical, emotional, or intellectual disability or diagnosis in the unborn human being
12 including, but not limited to, chromosomal disorders or morphological malformations occurring as
13 the result of atypical gene expressions.

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

15 “Commissioner” means the commissioner of the Bureau for Public Health.

16 “Health care practitioner.” A person who is licensed, certified, or otherwise authorized by
17 law or regulation to provide or render health care services or genetic counseling to expectant or
18 new parents.

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 which, in reasonable medical judgment, so
27 complicates the medical condition of the pregnant woman as to necessitate the immediate
28 abortion of her pregnancy to avert her death or for which a delay will create serious risk of
29 substantial and irreversible physical impairment of a major bodily function, not including
30 psychological or emotional conditions. No condition shall be deemed a medical emergency if
31 based on a claim or diagnosis that the woman will engage in conduct which she intends to result
32 in her death or in substantial and irreversible physical impairment of a major bodily function.

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

35 “Reasonable medical judgment” means the same as that term is defined in §16-2M-2(10)
36 of this code.

§16-2Q-4. Dissemination of information on fetal disabilities.

1 (a) Requirement.-- A health care practitioner that administers, or causes to be
2 administered, a test for any physical, emotional, or intellectual disability or diagnosis to an
3 expectant or new parent shall, upon receiving a test result that confirms the presence of any
4 disability, provide the expectant or new parent with educational information made available by the
5 department under §16-2Q-5 of this code.

6 (b) Delivery of information prepared by the department in accordance with §16-2Q-5 of
7 this code at the time genetic results or diagnostic conclusions are provided shall constitute
8 compliance with this section.

§16-2Q-5. Informational publications by department.

1 General rule.--The department shall make the following available to health care
2 practitioners on the department's publicly accessible internet website:

3 (a) Up-to-date, evidence-based information about any in-utero physical, emotional, or
4 intellectual disability or diagnosis that has been reviewed by medical experts and any national
5 disability rights organizations. The information provided shall include the following:

6 (1) Physical, developmental, educational and psychosocial outcomes.

7 (2) Life expectancy.

8 (3) Clinical course.

9 (4) Intellectual and functional development.

10 (5) Treatment options.

11 (6) Any other information the department deems necessary.

12 (b) Contact information regarding First Call programs and support services, including the
13 following:

14 (1) Information hotlines specific to any in-utero fetal disabilities or conditions.

15 (2) Relevant resource centers or clearinghouses.

16 (3) National and local disability rights organizations.

17 (4) Education and support programs.

18 The information provided in accordance with this article shall conform to the applicable
19 standard or standards provided in the Enhanced National Standards for Culturally and
20 Linguistically Appropriate Services in Health and Health Care as adopted by the United States
21 Department of Health and Human Services and published in the Federal Register on September
22 24, 2013.

§16-2Q-6. Abortion may not be performed because of Down syndrome or other disability,
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 presence or presumed presence of Down syndrome or other disability and documented
5 these facts in the maternal patient's chart, as well as in the report to be filed with the commissioner
6 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 presence or presumed
10 presence of Down syndrome or other disability.

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

21 (4) A statement confirming that the reason for the abortion, as stated by the maternal
22 patient, was not because of the presence or presumed presence of Down syndrome or any
23 disability; and;

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-7. 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-8. Criminal Penalties.

1 (a) Any person who intentionally or knowingly violates the prohibition in §16-2Q-6(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-9. Professional sanctions and civil penalties.

1 (a) A physician who intentionally or knowingly violates the prohibition in §16-2Q-6(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-6(c) 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-10. 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 For Public Health or the West Virginia Board
3 of Medicine. The West Virginia Board of Medicine may bring such action on its own behalf.

§16-2Q-11. 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-12. 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-13. 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-14. Effective Date.

1 This article shall take effect on July 1, 2022.

NOTE: The purpose of this bill is to establish the Unborn Child with Down Syndrome Protection and Education Act. The bill provides for a short title, legislative findings, and a purpose. The bill provides for definitions, and creates a dissemination of information on fetal disabilities. The bill provides for informational publications by department. The bill provides that abortion may not be performed for Down syndrome and other disabilities except in the case of a medical emergency. The bill provides for reporting forms and establishes criminal penalties for violation of the act. The bill provides for professional sanctions and civil penalties. The bill provides for additional enforcement. The bill provides for construction of the act. The bill creates severability. The bill provides for the right of intervention. Finally, the bill provides for an effective date.

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