

**ENROLLED**

**H. B. 4588**

(By Delegates Perry, Reynolds, Skaff, P. Smith,  
Pino, Moye, Eldridge, Campbell, Stephens, Marcum  
and Barker)



[Passed March 8, 2014; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-2M-1, §16-2M-2, §16-2M-3, §16-2M-4, §16-2M-5 and §16-2M-6, all relating to prohibiting certain abortions; stating legislative findings; defining terms; requiring a calculation of post-fertilization age before an abortion is performed or attempted, except in certain cases; prohibiting abortions when the post-fertilization age of the fetus is twenty weeks or more regardless of whether the fetus has reached the point of viability; creating certain exceptions to that prohibition; requiring a physician performing an abortion of a fetus that has a post-fertilization age of twenty weeks or more to use the process most likely to allow the fetus to survive, with certain exceptions; requiring reporting of all completed abortions and that the reports contain certain information regarding the abortion; requiring an annual public report that provides statistics of the abortions while keeping the identities of the persons involved confidential; creating a misdemeanor offense for a physician who intentionally and recklessly performs or induces an abortion in violation of this article; providing up to \$4,000 fine upon conviction; and clarifying that no penalty may be assessed against a patient.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-2M-1, §16-2M-2, §16-2M-3, §16-2M-4, §16-2M-5 and §16-2M-6, all to read as follows:

**ARTICLE 2M. THE PAIN-CAPABLE FETUS PROTECTION ACT.**

**§16-2M-1. Findings.**

The Legislature finds that there is substantial medical evidence that a fetus is capable of experiencing pain by twenty weeks after fertilization.

**§16-2M-2. Definitions.**

For purposes of this article, the following words and phrases have the following meanings:

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

(2) "Fertilization" means the fusion of a human spermatozoon with a human ovum.

(3) "Fetus" means the developing young in the uterus, specifically the unborn offspring in the postembryonic period from nine weeks after fertilization until birth.

(4) "Medical emergency" means a condition that, on the basis of a reasonably prudent physician's reasonable medical judgment, so complicates the medical condition of a pregnant female that it necessitates the immediate abortion of her pregnancy without first determining post-fertilization age to avert her death or for which the delay necessary to determine post-fertilization age will create serious risk of substantial and irreversible physical impairment of a major bodily function.

(5) "Non-medically viable fetus" means a fetus that contains sufficient fetal anomalies so as to render the fetus medically futile or incompatible with life outside the womb in the reasonable medical judgment of a reasonably prudent physician.

(6) "Physician" means a person with an unlimited license to practice allopathic medicine pursuant to article three of chapter thirty of this code or osteopathic medicine pursuant fourteen of chapter thirty of this code.

(7) "Post-fertilization age" means the age of the fetus as calculated from the fertilization of the human ovum.

(8) "Probable post-fertilization age of the fetus" means, in reasonable medical judgment and with reasonable probability, the post-fertilization age of the fetus at the time an abortion is planned to be performed.

(9) "Reasonable medical judgment" means a medical judgment that

would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

**§16-2M-3. Determination of post-fertilization age.**

Except in the case of a medical emergency or a non-medically viable fetus, no abortion may be performed or induced or be attempted to be performed or induced unless the physician performing or inducing it has first made a determination of the probable post-fertilization age of the fetus or relied upon such a determination made by another physician. In making this determination, the physician shall make such inquiries of the patient and perform or cause to be performed medical examinations and tests as a reasonably prudent physician, knowledgeable about the case and the medical conditions involved, would consider necessary to perform in making an accurate diagnosis with respect to post-fertilization age.

**§16-2M-4. Abortion of fetus of twenty or more weeks post-fertilization age prohibited.**

(a) No person may perform or induce, or attempt to perform or induce, an abortion upon a female when it has been determined, by the physician performing or inducing or attempting to perform or induce the abortion or by another physician upon whose determination that physician relies, that the probable post-fertilization age of the fetus is twenty or more weeks, unless in the reasonable medical

judgment of a reasonably prudent physician there exists a non-medically viable fetus or the patient has a condition that, on the basis of a reasonably prudent physician's reasonable medical judgment, so complicates her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function.

(b) When an abortion upon a patient whose fetus has been determined to have a probable post-fertilization age of twenty or more weeks is not prohibited by subsection (a) of this section, the physician shall terminate the pregnancy in the manner which, in reasonable medical judgment, provides the best opportunity for the fetus to survive, unless, in reasonable medical judgment, termination of the pregnancy in that manner would pose a greater risk either of the death of the patient or of the substantial and irreversible physical impairment of a major bodily function of the patient than would other available methods.

**§16-2M-5. Reporting.**

(a) Any physician who performs or induces an abortion shall report to the Bureau for Public Health. The reporting shall be on a schedule and on forms set forth by the Secretary of the Department of Health and Human Resources no later than December 31, 2014. The reports shall include the following information:

(1) Post-fertilization age:

(A) If a determination of probable post-fertilization age was made, whether ultrasound was employed in making the determination, and the week of probable post-fertilization age determined.

(B) If a determination of probable post-fertilization age was not made, the basis of the determination that a medical emergency existed or that there existed a non-medically viable fetus.

(2) Method of abortion;

(3) If the probable post-fertilization age was determined to be twenty or more weeks, the basis of the determination that there existed a non-medically viable fetus or that the patient had a condition which so complicated the medical condition of the patient that it necessitated the abortion of her pregnancy in order to avert her death or avert a serious risk of substantial and irreversible physical impairment of a major bodily function; and

(4) If the probable post-fertilization age was determined to be twenty or more weeks, whether the method of abortion used was one that, in reasonable medical judgment, provided the best opportunity for the fetus to survive and, if such a method was not used, the basis of the determination that termination of the pregnancy in that manner would pose a greater risk either of the death of the patient or of the substantial and irreversible physical impairment of a major bodily function of the patient than would other available

methods.

(b) Reports required by subsection (a) of this section may not contain the name or the address of the patient whose pregnancy was terminated nor may the report contain any information identifying the patient. These reports shall be maintained in strict confidence by the department, may not be available for public inspection, and may not be made available except pursuant to court order.

(c) Beginning June 30, 2016, and annually thereafter, the Department of Health and Human Resources shall issue a public report providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with this section for each of the items listed in subsection (a) of this section. Each report shall provide the statistics for all previous calendar years from the effective date of this section, adjusted to reflect any additional information from late or corrected reports. The Department of Health and Human Resources shall take care to ensure that none of the information included in the public reports could reasonably lead to the identification of any patient upon whom an abortion was performed or induced.

**§16-2M-6. Penalties.**

(a) Any person who intentionally or recklessly performs or induces an abortion in violation of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined up to \$4,000.

(b) No penalty may be assessed against any patient upon whom an abortion is performed or induced or attempted to be performed or induced.