

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

Senate Bill 10

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AND BLAIR

[Originating in the Committee on Health and Human
Resources; reported on February 9, 2016]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §16-2P-1, relating to the creation of the Unborn Child Protection from
3 Dismemberment Abortion Act; providing definitions; prohibiting dismemberment abortions;
4 deeming violations by physicians and other licensed medical practitioners to be a breach
5 of the standard of care and outside the scope of practice that is permitted by law; allowing
6 for discipline from the applicable licensure board for that conduct, including, but not limited
7 to, loss of professional license to practice for violation; constituting violations for
8 nonphysician and nonlicensed medical practitioners as unauthorized practice of medicine
9 and subject to criminal penalties; preserving existing legal remedies for violations; and
10 clarifying that no penalty may be assessed against a patient.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 article, designated §16-2P-1, to read as follows:

ARTICLE 2P. UNBORN CHILD PROTECTION FROM DISMEMBERMENT ABORTION

ACT.

§16-2P-1. Unborn Child Protection from Dismemberment Abortion Act.

1 (a) Definitions -- For purposes of this section:

2 (1) "Abortion" means the same as that term is defined in section two, article two-F, chapter
3 sixteen of this code.

4 (2) "Attempt to perform an abortion" means the same as that term is defined in section
5 two, article two-M, chapter sixteen of this code.

6 (3) "Dismemberment abortion" means, with the purpose of causing the death of an unborn
7 child, purposely to dismember a living unborn child and extract him or her one piece at a time
8 from the uterus through use of clamps, grasping forceps, tongs, scissors or similar instruments
9 that, through the convergence of two rigid levers, slice, crush, or grasp a portion of the unborn

10 child's body to cut or rip it off. The term "dismemberment abortion" includes an abortion in which
11 a dismemberment abortion is performed to cause the death of an unborn child but suction is
12 subsequently used to extract fetal parts after the death of the unborn child. The term
13 "dismemberment abortion" does not include an abortion which uses suction to dismember the
14 body of the unborn child by sucking fetal parts into a collection container, an abortion following
15 fetal demise which uses a suction curette, suction curettage or forceps to dismember the body of
16 a dead unborn child, or when forceps are used following an induced fetal demise by other
17 means.

18 (4) "Medical emergency" means the same as that term is defined in section two, article
19 two-M, chapter sixteen of this code.

20 (5) "Physician" means the same as that term is defined in section two, article two-M,
21 chapter sixteen of this code.

22 (6) "Reasonable Medical Judgement" means the same as that term is defined in section
23 two, article two-M, chapter sixteen of this code.

24 (7) "Woman" means a female human being whether or not she has reached the age of
25 majority.

26 (b) Prohibition –

27 No person may perform, or attempt to perform, a dismemberment abortion as defined in
28 this section, unless in reasonable medical judgment the woman has a condition that, on the basis
29 of reasonable medical judgment, so complicates her medical condition as to necessitate the
30 abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible
31 physical impairment of a major bodily function, not including psychological or emotional
32 conditions. No condition may be deemed a medical emergency if based on a claim or diagnosis
33 that the woman will engage in conduct which she intends to result in her death or in substantial
34 and irreversible physical impairment of a major bodily function.

35 (c) Enforcement --

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

41 (2) Any person, not subject to subdivision (1) of this subsection, who intentionally or
42 recklessly performs or induces an abortion in violation of this article is considered to have engaged
43 in the unauthorized practice of medicine in violation of section thirteen, article three, chapter thirty
44 of this code, and upon conviction, subject to the penalties contained in that section.

45 (3) In addition to the penalties set forth in subdivisions (1) and (2) of this section, a patient
46 may seek any remedy otherwise available to such patient by applicable law.

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

49 (d) *Miscellaneous Provisions* --

50 (1) This section does not prevent an abortion by any other method for any reason
51 including rape and incest.

52 (2) Nothing in this section may be construed as creating or recognizing a right to abortion,
53 nor a right to a particular method of abortion.

NOTE: The purpose of this bill is to create the “Unborn Child Protection from Dismemberment Abortion 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.

