

1 **H. B. 2281**

2
3 (By Delegate Border)

4 [Introduced January 12, 2011; referred to the
5 Committee on Health and Human Resources then the
6 Judiciary.]

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10 A BILL to amend and reenact §33-42-8 of the Code of West Virginia,
11 1931, as amended, relating to establishing the felony crime of
12 partial birth infanticide; criminal penalty; definitions; and
13 providing exceptions.

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

15 That §33-42-8 of the Code of West Virginia, 1931, as amended,
16 be amended and reenacted to read as follows:

17 **ARTICLE 42. WOMEN'S ACCESS TO HEALTH CARE ACT.**

18 **§33-42-8. Partial-birth infanticide prohibited; criminal penalty;**
19 **definitions; exceptions.**

20 ~~(a) Any person who knowingly performs a partial-birth abortion~~
21 ~~and thereby kills a human fetus is guilty of a felony and, shall be~~
22 ~~fined not less than ten thousand dollars, nor more than fifty~~
23 ~~thousand dollars, or imprisoned not more than two years, or~~

1 ~~both fined and imprisoned. This section does not apply to a~~
2 ~~partial-birth abortion that is necessary to save the life of a~~
3 ~~mother when her life is endangered by a physical disorder, illness~~
4 ~~or injury.~~

5 ~~(b) A physician charged pursuant to this section may seek a~~
6 ~~hearing before the West Virginia Board of Medicine on the issue of~~
7 ~~whether the physician's act was necessary to save the life of a~~
8 ~~mother pursuant to the provisions of subsection (a) of this~~
9 ~~section. The findings of the board of Medicine are admissible on~~
10 ~~this issue at the trial of the physician. Upon a motion by the~~
11 ~~defendant, the court shall delay the beginning of trial for not~~
12 ~~more than thirty days to permit the board of Medicine hearing to~~
13 ~~take place.~~

14 ~~(c) No woman may be prosecuted under the provisions of this~~
15 ~~section for having a partial-birth abortion, nor may she be~~
16 ~~prosecuted for conspiring to violate the provisions of this~~
17 ~~section.~~

18 (a) Any person who knowingly performs partial birth
19 infanticide and thereby kills a human infant is guilty of a felony
20 and, upon conviction thereof, shall be fined not more than \$100,000
21 or imprisoned in a state correctional facility not less than two
22 years nor more than ten years, or both fined and imprisoned.

23 (b) For the purposes of this section, "partial birth
24 infanticide" means any deliberate act that: (i) Is intended to

1 kill a human infant who has been born alive, but who has not been
2 completely extracted or expelled from its mother; and (ii) does
3 kill such infant, regardless of whether death occurs before or
4 after extraction or expulsion from its mother has been completed.
5 The term "partial birth infanticide" may not under any
6 circumstances be construed to include any of the following
7 procedures: (i) The suction curettage abortion procedure; (ii) the
8 suction aspiration abortion procedure; (iii) the dilation and
9 evacuation abortion procedure involving dismemberment of the fetus
10 prior to removal from the body of the mother; or (iv) completing
11 delivery of a living human infant and severing the umbilical cord
12 of any infant who has been completely delivered.

13 (c) For the purposes of this section, "human infant who has
14 been born alive" means a product of human conception that has been
15 completely or substantially expelled or extracted from its mother,
16 regardless of the duration of pregnancy, which after such expulsion
17 or extraction breathes or shows any other evidence of life such as
18 beating of the heart, pulsation of the umbilical cord, or definite
19 movement of voluntary muscles, whether or not the umbilical cord
20 has been cut or the placenta is attached.

21 (d) For purposes of this section, "substantially expelled or
22 extracted from its mother" means, in the case of a headfirst
23 presentation, the infant's entire head is outside the body of the
24 mother, or, in the case of breech presentation, any part of the

1 infant's trunk past the navel is outside the body of the mother.

2 (e) This section does not prohibit the use by a physician of
3 any procedure that, in reasonable medical judgment, is necessary to
4 prevent the death of the mother, so long as the physician takes
5 every medically reasonable step, consistent with such procedure, to
6 preserve the life and health of the infant. A procedure may not be
7 deemed necessary to prevent the death of the mother if completing
8 the delivery of the living infant would prevent the death of the
9 mother.

10 (f) The mother may not be prosecuted for any criminal offense
11 based on the performance of any act or procedure by a physician in
12 violation of this section.

NOTE: The purpose of this bill is to establish the felony crime of partial birth infanticide.

This section has been completely rewritten; therefore, it has been completely underscored.