

HB 4588 (veto)

FILED

2014 MAR 28 P 6:37

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2014



ENROLLED

House Bill No. 4588

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



Passed March 8, 2014

In effect ninety days from passage.

FILED

2014 MAR 28 P 6:37

OFFICE WEST VIRGINIA
SECRETARY OF STATE

E N R O L L E D

H. B. 4588

(BY DELEGATES PERRY, REYNOLDS, SKAFF,
SMITH, P., 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

FILED
FEB 9 1981
MAYOR'S OFFICE
3042-20

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.

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

§16-2M-2. Definitions.

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

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

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

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

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

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

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

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

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

36 (9) "Reasonable medical judgment" means a medical
37 judgment that would be made by a reasonably prudent physician,
38 knowledgeable about the case and the treatment possibilities
39 with respect to the medical conditions involved.

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

1 Except in the case of a medical emergency or a non-
2 medically viable fetus, no abortion may be performed or induced
3 or be attempted to be performed or induced unless the physician
4 performing or inducing it has first made a determination of the

5 probable post-fertilization age of the fetus or relied upon such a
6 determination made by another physician. In making this
7 determination, the physician shall make such inquiries of the
8 patient and perform or cause to be performed medical
9 examinations and tests as a reasonably prudent physician,
10 knowledgeable about the case and the medical conditions
11 involved, would consider necessary to perform in making an
12 accurate diagnosis with respect to post-fertilization age.

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

1 (a) No person may perform or induce, or attempt to perform
2 or induce, an abortion upon a female when it has been
3 determined, by the physician performing or inducing or
4 attempting to perform or induce the abortion or by another
5 physician upon whose determination that physician relies, that
6 the probable post-fertilization age of the fetus is twenty or more
7 weeks, unless in the reasonable medical judgment of a
8 reasonably prudent physician there exists a non-medically viable
9 fetus or the patient has a condition that, on the basis of a
10 reasonably prudent physician's reasonable medical judgment, so
11 complicates her medical condition as to necessitate the abortion
12 of her pregnancy to avert her death or to avert serious risk of
13 substantial and irreversible physical impairment of a major
14 bodily function.

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

§16-2M-5. Reporting.

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

7 (1) Post-fertilization age:

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

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

16 (2) Method of abortion;

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

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

31 impairment of a major bodily function of the patient than would
32 other available methods.

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

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

§16-2M-6. Penalties.

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

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

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Benny Well
Chairman, House Committee

[Signature]
Member ~~Chairman~~, Senate Committee

Originating in the House.

In effect ninety days from passage.

Gregg A. Day
Clerk of the House of Delegates

Joseph M. Minard
Clerk of the Senate

[Signature]
Speaker of the House of Delegates

[Signature]
President of the Senate

The within *is disapproved* this the *28th*
day of *March*, 2014.

Carl Ray Tomblin
Governor

PRESENTED TO THE GOVERNOR

MAY 28 2011

Time 10:45 AM