

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4282

BY DELEGATES MARCUM, HICKS, ISNER, RODIGHIERO,

ELDRIDGE, R. MILLER AND CAMPBELL

[Introduced January 24, 2018; Referred
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §61-2-30 of the Code of West Virginia, 1931, as amended, relating
 2 to changing the Unborn Victims of Violence Act to the Unborn Victims of Abuse Act; adding
 3 that a “person” is also exempt from a certain provision of the act; and defining the term
 4 “person.”

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-30. Recognizing an embryo or fetus as a distinct unborn victim of certain crimes of violence against the person.

1 (a) This section may be known and cited as the Unborn Victims of ~~Violence~~ Domestic
 2 Abuse Act.

3 (b) For the purposes of this article, the following definitions shall apply: *Provided, That*
 4 these definitions only apply for purposes of prosecution of unlawful acts under this section and
 5 may not otherwise be used: (i) To create or to imply that a civil cause of action exists; or (ii) for
 6 purposes of argument in a civil cause of action, unless there has been a criminal conviction under
 7 this section.

8 (1) “Embryo” means the developing human in its early stages. The embryonic period
 9 commences at fertilization and continues to the end of the embryonic period and the beginning of
 10 the fetal period, which occurs eight weeks after fertilization or ten weeks after the onset of the last
 11 menstrual period.

12 (2) “Fetus” means a developing human that has ended the embryonic period and
 13 thereafter continues to develop and mature until termination of the pregnancy or birth.

14 (3) “Person” has the same meaning as it has elsewhere in this code.

15 (c) For purposes of enforcing the provisions of sections §61-20-4, §61-20-7, §61-20-9(a),
 16 §61-20-9(c), §61-20-10, §61-20-10(b), and §61-20-28(a), a pregnant woman and the embryo or
 17 fetus she is carrying in the womb constitute separate and distinct victims.

18 (d) *Exceptions.* -- The provisions of this section do not apply to:

19 (1) Acts committed during a legal abortion to which the pregnant woman, or a person
20 authorized by law to act on her behalf, consented or for which the consent is implied by law;

21 (2) Acts or omissions by medical or health care personnel during or as a result of medical
22 or health-related treatment or services, including, but not limited to, medical care, abortion,
23 diagnostic testing or fertility treatment;

24 (3) Acts or omissions by medical or health care personnel or scientific research personnel
25 in performing lawful procedures involving embryos that are not in a stage of gestation in utero;

26 (4) Acts involving the use of force in lawful defense of self or another, but not an embryo
27 or fetus and

28 (5) Acts or omissions of a pregnant woman with respect to the embryo, ~~or fetus~~ or person
29 she is carrying.

30 (e) For purposes of the enforcement of the provisions of this section, a violation of the
31 provisions of §16-2j-1 of this code shall not serve as a waiver of the protection afforded by the
32 provisions of subdivision (1), subsection (d) of this section.

33 (f) *Other convictions not barred.* -- A prosecution for or conviction under this section is not
34 a bar to conviction of or punishment for any other crime committed by the defendant arising from
35 the same incident.

NOTE: The purpose of this bill is to change the name of the Unborn Victims of Violence Act to the Unborn Victims of Abuse Act. The bill permits a "person" to be exempt from a certain provision of the act. The bill defines the term "person."

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