

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

### **Introduced**

## **House Bill 4175**

BY DELEGATES SYPOLT, TONEY, FAST, LITTLE, LINVILLE,  
BARTLETT, J. JEFFRIES, HOTT, P. MARTIN, WORRELL AND  
PHILLIPS

[Introduced January 14, 2020; Referred to the  
Committee on Health and Human Resources]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §16-2P-1, relating to providing reasonable medical care to a child born alive  
 3 during an abortion.

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

**ARTICLE 2P. BORN-ALIVE ABORTION SURVIVORS PROTECTION ACT.**

**§16-2P-1. Born-Alive Abortion Survivors Protection Act.**

1 (a) Definitions. — For purposes of this section:

2 (1) “Abortion” means the same as that term is defined in §16-2F-2 of this code.

3 (2) “Attempt to perform an abortion” means the same as that term is defined in §16-2M-2  
 4 of this code.

5 (3) “Born alive” means the complete expulsion or extraction from its mother of that  
 6 member, at any stage of development, who after such expulsion or extraction breathes or has a  
 7 beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles,  
 8 regardless of whether the umbilical cord has been cut, and regardless of whether the expulsion  
 9 or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion.

10 (4) “Licensed Medical Professional” means a person licensed under §30-1-1 et seq. of  
 11 this code practicing within his or her scope of practice.

12 (5) “Physician” means the same as that term is defined in §16-2M-2 of this code.

13 (6) “Reasonable medical judgement” means the same as that term is defined in §16-2M-  
 14 2 of this code.

15 (b) Prohibition. —

16 (1) If a physician performs or attempts to perform an abortion that results in a child born  
 17 alive the physician shall:

18 (A) Exercise the same degree of reasonable medical judgment to preserve the life and  
 19 health of the child as a physician would render to any other child born alive at the same gestational  
 20 age; and

21 (B) Ensure that the child born alive is immediately transported and admitted to a hospital.

22 (2) A person who has knowledge of a failure to comply with the requirements of this  
23 subsection shall report the failure to the applicable licensing board.

24 (c) Enforcement. —

25 (1) Any physician or other licensed medical professional who intentionally or recklessly  
26 violates subsection (b) of this section is considered to have breached the standard of care owed  
27 to patients, and is subject to discipline from the applicable licensure board for that conduct,  
28 including, but not limited to, loss of professional license to practice.

29 (2) Any person, not subject to subdivision (1) of this subsection, who intentionally or  
30 recklessly violates subsection (b) of this section is considered to have engaged in the  
31 unauthorized practice of medicine in violation of §30-3-13 of this code, and, upon conviction  
32 thereof, is subject to the penalties contained in that section.

33 (3) In addition to the penalties set forth in §16-2P-1(c)(1) and §16-2P-1(c)(2) of this code,  
34 a patient may seek any remedy otherwise available to the patient by applicable law.

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

NOTE: The purpose of this bill is to require a physician to use reasonable medical judgment if a child is born alive when an abortion is performed.

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