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Veto

FILED

2004 MAR 24 P 6:45

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2004



ENROLLED

Committee Substitute for

SENATE BILL NO. 566

(By Senator Kessler, et al)



PASSED March 13, 2004

In Effect ninety days from Passage

FILED

2004 MAR 24 P 6:45

OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 566

(SENATORS KESSLER, GUILLS, MINARD, BOWMAN, HARRISON,
DEEM, SNYDER, SMITH, MINEAR, PREZIOSO, OLIVERIO, WEEKS,
FACEMYER, BOLEY, SHARPE, BAILEY, HUNTER, ROSS, FANNING,
LOVE, MCKENZIE, DEMPSEY, JENKINS, SPROUSE, EDGELL,
PLYMALE AND UNGER, *original sponsors*)

[Passed March 13, 2004; in effect ninety days from passage.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-2-30, relating to creating the "Unborn Victims of Violence Act"; defining certain terms; identifying offenses of violence against a person that are committed against a pregnant woman or her embryo or fetus in the womb; establishing that an embryo or fetus in the womb may be a separate and distinct unborn victim in the case of certain violent crimes against a pregnant woman or her embryo or fetus in the womb; providing exceptions against the application of this section to certain persons or entities; specifying penalties; and providing that a conviction under this section, or of this article, is not a bar to prosecution of, or punishment for, any

other crime allegedly committed by the defendant arising from the same incident.

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 section, designated §61-2-30, to read as follows:

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
2 Victims of Violence Act”.

3 (b) For the purposes of this article, the following defini-
4 tions shall apply: *Provided*, That these definitions only
5 apply for purposes of prosecution of unlawful acts under
6 this section and may not otherwise be used: (1) To create
7 or to imply that a civil cause of action exists; or (2) for
8 purposes of argument in a civil cause of action, unless
9 there has been a criminal conviction under this section.

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

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

19 (c) For purposes of enforcing the provisions of sections
20 one, four and seven of this article, subsections (a) and (c),
21 section nine of said article, sections ten and ten-b of said
22 article and subsection (a), section twenty-eight of said
23 article, a pregnant woman and the embryo or fetus she is

24 carrying in the womb constitute separate and distinct
25 victims.

26 (d) *Exceptions.* – The provisions of this section do not
27 apply to:

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

32 (2) Acts or omissions by medical or health care personnel
33 during or as a result of medical or health-related treat-
34 ment or services, including, but not limited to, medical
35 care, abortion, diagnostic testing, or fertility treatment;

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

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

42 (5) Acts or omissions of a pregnant woman with respect
43 to the embryo or fetus she is carrying.

44 (e) For purposes of the enforcement of the provisions of
45 this section, a violation of the provisions of article two-i,
46 chapter sixteen of this code shall not serve as a waiver of
47 the protection afforded by the provisions of subdivision
48 (1), subsection (d) of this section.

49 (f) *Other convictions not barred.* – A prosecution for or
50 conviction under this section is not a bar to conviction of
51 or punishment for any other crime committed by the
52 defendant arising from the same incident.

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

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is disapproved* this the *24th*
Day of *March*, 2004.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

DATE

3/22/04

TIME

9:45 am