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2005 MAR 28 P 3:09

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

*Regular Session, 2005*

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**ENROLLED**

SENATE BILL NO. 146

(By Senator Kessler, et al )

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PASSED March 16, 2005

In Effect July 1, 2005 Passage

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## **Senate Bill No. 146**

(BY SENATORS KESSLER, MCKENZIE, EDGELL, BAILEY, UNGER,  
LOVE, HUNTER, TOMBLIN, MR. PRESIDENT, CHAFIN, BARNES,  
BOLEY, JENKINS, MINARD, HELMICK, SPROUSE, DEMPSEY,  
OLIVERIO, HARRISON, PREZIOSO, WEEKS, SHARPE, MINEAR,  
GULLS, BOWMAN, CARUTH, PLYMALE AND FACEMYER)

[Passed March 16, 2005; to take effect July 1, 2005.]

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 said section to certain persons or entities; specifying penalties; and providing that a conviction under said section, or of said 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: (i) To create or  
7 to imply that a civil cause of action exists; or (ii) 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.

*Candy White*  
.....  
Chairman Senate Committee

*Robert Bury*  
.....  
Chairman House Committee

Originated in the Senate.

To take effect July 1, 2005.

*Darrell Holcomb*  
.....  
Clerk of the Senate

*Bryson W. Smith*  
.....  
Clerk of the House of Delegates

*Carl Roy Tomblin*  
.....  
President of the Senate

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

The within *is approved* ..... this the *28<sup>th</sup>*  
Day of *March* ..... 2005.

*[Signature]*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/22/05

Time 10:00 am