

1 **ENROLLED**

2 **H. B. 4588**

3  
4 (By Delegates Perry, Reynolds, Skaff, P. Smith,  
5 Pino, Moye, Eldridge, Campbell, Stephens, Marcum  
6 and Barker)

**FISCAL  
NOTE**

7  
8 [Passed March 8, 2014; in effect ninety days from passage.]  
9

10 AN ACT to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new article, designated §16-2M-1, §16-2M-2,  
12 §16-2M-3, §16-2M-4, §16-2M-5 and §16-2M-6, all relating to  
13 prohibiting certain abortions; stating legislative findings;  
14 defining terms; requiring a calculation of post-fertilization  
15 age before an abortion is performed or attempted, except in  
16 certain cases; prohibiting abortions when the post-  
17 fertilization age of the fetus is twenty weeks or more  
18 regardless of whether the fetus has reached the point of  
19 viability; creating certain exceptions to that prohibition;  
20 requiring a physician performing an abortion of a fetus that  
21 has a post-fertilization age of twenty weeks or more to use  
22 the process most likely to allow the fetus to survive, with  
23 certain exceptions; requiring reporting of all completed  
24 abortions and that the reports contain certain information  
25 regarding the abortion; requiring an annual public report that

1 provides statistics of the abortions while keeping the  
2 identities of the persons involved confidential; creating a  
3 misdemeanor offense for a physician who intentionally and  
4 recklessly performs or induces an abortion in violation of  
5 this article; providing up to \$4,000 fine upon conviction; and  
6 clarifying that no penalty may be assessed against a patient.

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

8 That the Code of West Virginia, 1931, as amended, be amended  
9 by adding thereto a new article, designated §16-2M-1, §16-2M-2,  
10 §16-2M-3, §16-2M-4, §16-2M-5 and §16-2M-6, all to read as follows:

11 **ARTICLE 2M. THE PAIN-CAPABLE FETUS PROTECTION ACT.**

12 **§16-2M-1. Findings.**

13 The Legislature finds that there is substantial medical  
14 evidence that a fetus is capable of experiencing pain by twenty  
15 weeks after fertilization.

16 **§16-2M-2. Definitions.**

17 For purposes of this article, the following words and phrases  
18 have the following meanings:

19 (1) "Attempt to perform or induce an abortion" means an act or  
20 an omission of a statutorily required act that, under the  
21 circumstances as the person believes them to be, constitutes a  
22 substantial step in a course of conduct planned to culminate in the  
23 performance or induction of an abortion in this state in violation

1 of the applicable provisions of this code.

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

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

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

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

19       (6) "Physician" means a person with an unlimited license to  
20 practice allopathic medicine pursuant to article three of chapter  
21 thirty of this code or osteopathic medicine pursuant fourteen of  
22 chapter thirty of this code.

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

1           (8) "Probable post-fertilization age of the fetus" means, in  
2 reasonable medical judgment and with reasonable probability, the  
3 post-fertilization age of the fetus at the time an abortion is  
4 planned to be performed.

5           (9) "Reasonable medical judgment" means a medical judgment  
6 that would be made by a reasonably prudent physician, knowledgeable  
7 about the case and the treatment possibilities with respect to the  
8 medical conditions involved.

9 **§16-2M-3. Determination of post-fertilization age.**

10           Except in the case of a medical emergency or a non-medically  
11 viable fetus, no abortion may be performed or induced or be  
12 attempted to be performed or induced unless the physician  
13 performing or inducing it has first made a determination of the  
14 probable post-fertilization age of the fetus or relied upon such a  
15 determination made by another physician. In making this  
16 determination, the physician shall make such inquiries of the  
17 patient and perform or cause to be performed medical examinations  
18 and tests as a reasonably prudent physician, knowledgeable about  
19 the case and the medical conditions involved, would consider  
20 necessary to perform in making an accurate diagnosis with respect  
21 to post-fertilization age.

22 **§16-2M-4. Abortion of fetus of twenty or more weeks post-**  
23 **fertilization age prohibited.**

24           (a) No person may perform or induce, or attempt to perform or

1 induce, an abortion upon a female when it has been determined, by  
2 the physician performing or inducing or attempting to perform or  
3 induce the abortion or by another physician upon whose  
4 determination that physician relies, that the probable post-  
5 fertilization age of the fetus is twenty or more weeks, unless in  
6 the reasonable medical judgment of a reasonably prudent physician  
7 there exists a non-medically viable fetus or the patient has a  
8 condition that, on the basis of a reasonably prudent physician's  
9 reasonable medical judgment, so complicates her medical condition  
10 as to necessitate the abortion of her pregnancy to avert her death  
11 or to avert serious risk of substantial and irreversible physical  
12 impairment of a major bodily function.

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

23 **§16-2M-5. Reporting.**

24 (a) Any physician who performs or induces an abortion shall

1 report to the Bureau for Public Health. The reporting shall be on  
2 a schedule and on forms set forth by the Secretary of the  
3 Department of Health and Human Resources no later than December 31,  
4 2014. The reports shall include the following information:

5 (1) Post-fertilization age:

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

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

12 (2) Method of abortion;

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

20 (4) If the probable post-fertilization age was determined to  
21 be twenty or more weeks, whether the method of abortion used was  
22 one that, in reasonable medical judgment, provided the best  
23 opportunity for the fetus to survive and, if such a method was not  
24 used, the basis of the determination that termination of the

1 pregnancy in that manner would pose a greater risk either of the  
2 death of the patient or of the substantial and irreversible  
3 physical impairment of a major bodily function of the patient than  
4 would other available methods.

5 (b) Reports required by subsection (a) of this section may not  
6 contain the name or the address of the patient whose pregnancy was  
7 terminated nor may the report contain any information identifying  
8 the patient. These reports shall be maintained in strict  
9 confidence by the department, may not be available for public  
10 inspection, and may not be made available except pursuant to court  
11 order.

12 (c) Beginning June 30, 2016, and annually thereafter, the  
13 Department of Health and Human Resources shall issue a public  
14 report providing statistics for the previous calendar year compiled  
15 from all of the reports covering that year submitted in accordance  
16 with this section for each of the items listed in subsection (a) of  
17 this section. Each report shall provide the statistics for all  
18 previous calendar years from the effective date of this section,  
19 adjusted to reflect any additional information from late or  
20 corrected reports. The Department of Health and Human Resources  
21 shall take care to ensure that none of the information included in  
22 the public reports could reasonably lead to the identification of  
23 any patient upon whom an abortion was performed or induced.

24 **§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 whom  
6 an abortion is performed or induced or attempted to be performed or  
7 induced.