WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4007

BY DELEGATES ROWAN, D. JEFFRIES, PACK, MAYNARD,

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BARNHART AND KUMP

[Introduced January 08, 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 <u>of this code.</u>
- 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 <u>2 of this code.</u>
- 15 <u>(b) Prohibition.</u>
- 16 (1) If a physician performs or attempts to perform an abortion that results in a child born
- 17 <u>alive the physician shall:</u>
- 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 <u>age; and</u>

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- 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 <u>subsection shall report the failure to the applicable licensing board.</u>
- 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 <u>unauthorized practice of medicine in violation of §30-3-13 of this code, and, upon conviction</u>
- 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 <u>a patient may seek any remedy otherwise available to the patient by applicable law.</u>
- 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.