

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

ENROLLED

House Bill 4007

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

PORTERFIELD, FOSTER, WAXMAN, BIBBY, HANNA,

BARNHART AND KUMP

[Passed February 19, 2020; in effect ninety days from passage.]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §16-2P-1, relating to creating the Born-Alive Abortion Survivors Protection Act
3 generally; defining terms requiring medical practitioners to use the same degree of
4 reasonable medical judgment to preserve the life of a fetus which is born alive as would
5 be used in a live non-abortion birth of the same gestational age; making the failure to
6 exercise such judgment a crime; establishing penalties; and making failure to exercise
7 such judgment a violation of medical licensure standards.

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” has the same meaning as that set forth in §16-2F-2 of this code.

3 (2) “Attempt to perform an abortion” has the same meaning as that set forth in §16-2M-2
4 of this code.

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

10 (4) “Fetus” has the same meaning as that set forth in §16-2M-2 of this code.

11 (5) “Licensed Medical Professional” means a person licensed under Chapter 30 of this
12 code practicing within his or her scope of practice.

13 (6) “Physician” has the same meaning as set forth in §16-2M-2 of this code.

14 (7) “Reasonable medical judgment” has the same meaning as set forth in §16-2M-2 of this
15 code.

16 (b) *Prohibition.* —

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

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

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

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

25 (c) *Enforcement.* —

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

30 (2) Any person, not subject to subdivision (1) of this subsection, who knowingly and willfully
31 violates subsection (b) of this section is guilty of the unauthorized practice of medicine in violation
32 of §30-3-13 of this code, and, upon conviction thereof, is subject to the penalties contained in that
33 section.

34 (3) In addition to the penalties set forth in this section, a patient may seek any remedy
35 otherwise available to the patient by applicable law.

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

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

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

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day of, 2020.

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Governor