

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2239

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LONGANACRE AND MALLOW

[Introduced February 10, 2021; Referred to the Committee
on Health and Human Resources then the Judiciary]

1 A BILL to amend and reenact §16-2I-1 of the Code of West Virginia, 1931, as amended; to amend
 2 said code by adding thereto a new section, designated §16-2I-2a; to amend said code by
 3 adding thereto a new article, designated §16-2Q-1; and to amend said code by adding
 4 thereto a new article, designated §16-2R-1 and §16-2R-2, all relating to restricting the
 5 performance of abortions and acquiring, providing, receiving, otherwise transferring, or
 6 using fetal body parts; providing exceptions and criminal penalties; placing requirements
 7 on physicians; and requiring rulemaking by the Board of Medicine.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2I. WOMEN'S RIGHT TO KNOW ACT.

§16-2I-1. Definitions.

1 For the purposes of this article, the words or phrases defined in this section have these
 2 meanings ascribed to them.

3 (a) "Abortion" means the use or prescription of any instrument, medicine, drug or any other
 4 substance or device intentionally to terminate the pregnancy of a female known to be pregnant
 5 with an intention other than to increase the probability of a live birth, to preserve the life or health
 6 of the child after live birth or to remove a dead embryo or fetus.

7 (b) "Attempt to perform an abortion" means an act, or an omission of a statutorily required
 8 act, that, under the circumstances as the actor believes them to be, constitutes a substantial step
 9 in a course of conduct planned to culminate in the performance of an abortion in West Virginia in
 10 violation of this article.

11 (c) "Medical emergency" means ~~any condition which, on the basis of a physician's good-~~
 12 ~~faith clinical judgment, so complicates the medical condition of a pregnant female as to~~
 13 ~~necessitate the immediate termination of her pregnancy to avert her death or for which a delay~~
 14 ~~will create serious risk of substantial and irreversible impairment of a major bodily function a~~
 15 situation in which an abortion is performed to preserve the life of the pregnant woman whose life

16 is endangered by a physical disorder, physical illness, or physical injury, including a life-
 17 endangering physical condition caused by or arising from the pregnancy, but not including
 18 psychological conditions, emotional conditions, familial conditions, or the woman’s age; or when
 19 continuation of the pregnancy will create a serious risk of substantial and irreversible impairment
 20 of a major bodily function of the pregnant woman.

21 (d) “Physician” means any medical or osteopathic doctor licensed to practice medicine in
 22 this state.

23 (e) “Probable gestational age of the embryo or fetus” means what, in the judgment of the
 24 physician, will with reasonable probability be the gestational age of the embryo or fetus at the
 25 time the abortion is planned to be performed.

26 (f) “Stable Internet website” means a website that, to the extent reasonably practicable, is
 27 safeguarded from having its content altered other than by the Department of Health and Human
 28 Resources.

§16-2I-2a. Compliance not required.

1 Compliance with the prerequisites of §16-2I-2 of this code is not required when:

2 (1) An abortion is performed to save the life of a pregnant woman;

3 (2) An abortion is performed in a medical emergency; or

4 (3) A medical procedure is performed by a physician that in the physician’s reasonable
 5 medical judgment is designed to or intended to prevent the death or to preserve the life of the
 6 pregnant woman.

ARTICLE 2Q. FETAL BODY PARTS.

§16-2Q-1. Fetal body parts; actions prohibited; criminal penalties.

1 (a) A person may not knowingly acquire, provide, receive, otherwise transfer, or use a fetal
 2 body part in this state, regardless of whether the acquisition, provision, receipt, transfer, or use is
 3 for valuable consideration.

4 (b) Subsection (a) of this section does not apply to any of the following:

5 (1) Diagnostic or remedial tests, procedures, or observations which have the sole purpose
6 of determining the life or health of the fetus in order to provide that information to the pregnant
7 woman or to preserve the life or health of the fetus or pregnant woman.

8 (2) The actions of a person taken in furtherance of the final disposition of a fetal body part.

9 (3) The pathological study of body tissue, including genetic testing, for diagnostic or
10 forensic purposes.

11 (4) A fetal body part, if the fetal body part results from a spontaneous termination of
12 pregnancy or stillbirth, and is willingly donated for the purpose of medical research.

13 (c) A person who violates this section is guilty of a felony and, upon conviction, shall be
14 imprisoned for no more than 10 years, and in addition shall be fined at least \$1,000 but not more
15 than \$10,000.

16 (d) For the purposes of this section:

17 “Abortion” means the termination of a human pregnancy with the intent other than to
18 produce a live birth or to remove a dead fetus.

19 “Fetal body part” means a cell, tissue, organ, or other part of a fetus that is terminated by
20 an abortion. “Fetal body part” does not include any of the following:

21 (A) Cultured cells or cell lines derived from a spontaneous termination of pregnancy or
22 stillbirth and willingly donated for the purposes of medical research;

23 (B) A cell, tissue, organ, or other part of a fetus that is terminated by an abortion that
24 occurred prior to July 1, 2021; or

25 (C) All cells and tissues external to the fetal body proper.

26 “Final disposition” means the disposition of fetal body parts by burial, interment,
27 entombment, cremation, or incineration.

28 “Valuable consideration” means any payment including, but not limited to, payment
29 associated with the transportation, processing, preservation, quality control, or storage of fetal

30 body parts.

ARTICLE 2R. ABORTION RESTRICTION.

§16-2R-1. Definitions.

1 As used in this article:

2 “Abortion” means the termination of a human pregnancy with the intent other than to
3 produce a live birth or to remove a dead fetus.

4 “Fetal heartbeat” means cardiac activity, the steady and repetitive rhythmic contraction of
5 the fetal heart within the gestational sac.

6 “Medical emergency” means a situation in which an abortion is performed to preserve the
7 life of the pregnant woman whose life is endangered by a physical disorder, physical illness, or
8 physical injury, including a life-endangering physical condition caused by or arising from the
9 pregnancy, but not including psychological conditions, emotional conditions, familial conditions,
10 or the woman’s age; or when continuation of the pregnancy will create a serious risk of substantial
11 and irreversible impairment of a major bodily function of the pregnant woman.

12 “Medically necessary” means any of the following:

13 (A) The pregnancy is the result of a rape which is reported within 45 days of the incident
14 to a law-enforcement agency or to a public or private health agency which may include a family
15 physician.

16 (B) The pregnancy is the result of incest which is reported within 140 days of the incident
17 to a law-enforcement agency or to a public or private health agency which may include a family
18 physician.

19 (C) Any spontaneous abortion, commonly known as a miscarriage, if not all of the products
20 of conception are expelled.

21 (D) The attending physician certifies that the fetus has a fetal abnormality that in the
22 physician’s reasonable medical judgment is incompatible with life.

23 “Physician” means a person licensed under §30-3-1 et seq. or §30-14-1 et seq. of this
24 code.

25 “Reasonable medical judgment” means a medical judgment made by a reasonably
26 prudent physician who is knowledgeable about the case and the treatment possibilities with
27 respect to the medical conditions involved.

28 “Unborn child” means an individual organism of the species homo sapiens from fertilization
29 to live birth.

§16-2R-2. Abortion prohibited; detectable fetal heartbeat.

1 (a) Except in the case of a medical emergency or when the abortion is medically
2 necessary, a physician may not perform an abortion unless the physician has first complied with
3 the prerequisites of §16-2I-1 et seq. of this code and has tested the pregnant woman as specified
4 in this subsection, to determine if a fetal heartbeat is detectable.

5 (1) In testing for a detectable fetal heartbeat, the physician shall perform an abdominal
6 ultrasound, necessary to detect a fetal heartbeat according to standard medical practice and
7 including the use of medical devices, as determined by standard medical practice and specified
8 by rule of the Board of Medicine.

9 (2) Following the testing of the pregnant woman for a detectable fetal heartbeat, the
10 physician shall inform the pregnant woman, in writing:

11 (A) Whether a fetal heartbeat was detected; and

12 (B) That if a fetal heartbeat was detected, an abortion is prohibited.

13 (3) Upon receipt of the written information, the pregnant woman shall sign a form
14 acknowledging that the pregnant woman has received the information as required under this
15 subsection.

16 (b)(1) A physician may not perform an abortion upon a pregnant woman when it has been
17 determined that the unborn child has a detectable fetal heartbeat, unless, in the physician’s
18 reasonable medical judgment, a medical emergency exists, or when the abortion is medically

19 necessary.

20 (2) Notwithstanding subdivision (1) of this subsection, if a physician determines that the
21 probable postfertilization age of the unborn child is 20 or more weeks, the physician may not
22 perform an abortion upon a pregnant woman when it has been determined that the unborn child
23 has a detectable fetal heartbeat, unless in the physician's reasonable medical judgment the
24 pregnant woman has a condition which the physician considers a medical emergency or the
25 removal of the unborn child is necessary to preserve its life.

26 (c) A physician shall retain in the woman's medical record all of the following:

27 (1) Documentation of the testing for a fetal heartbeat and the results of the fetal heartbeat
28 test; and

29 (2) The pregnant woman's signed form acknowledging that the pregnant woman received
30 the information as required.

31 (d) This section does not impose civil or criminal liability on a woman upon whom an
32 abortion is performed in violation of this section.

33 (e) The Board of Medicine shall propose rules for legislative approval under the §29A-3-1
34 et seq. of this code to administer this section.

NOTE: The purpose of this bill is to restrict the performance of abortions when a fetal heartbeat is found and under other circumstances. It also prohibits persons from acquiring, providing, receiving, otherwise transferring, or using fetal body parts.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.