

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

House Bill 4004

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AND HORST

[Originating in the Committee on the Judiciary;

reported on February 8, 2022]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §16-2Q-1, relating to prohibiting an abortion after 15 weeks' gestation; defining
3 terms; providing exceptions; requiring the determination of probable gestational; requiring
4 reports; providing professional discipline; providing criminal penalties; clarifying this law
5 does not prohibit other causes of actions; and prohibiting penalizing a patient.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2Q. LIMITATION ON ABORTION.

§16-2Q-1. Abortion limited to fifteen weeks' gestation except in medical emergency and in cases of severe fetal abnormality.

1 (a) As used in this section:

2 "Abortion" has the same meaning as that set forth in §16-2M-2 of this code, but does not
3 include the removal a fetus which died of natural causes.

4 "Attempt to perform an abortion" has the same meaning as that set forth in §16-2M-2 of
5 this code.

6 "Gestational age" means the age of the fetus as calculated from the first day of the last
7 menstrual period of a patient.

8 "Licensed medical professional" means a person licensed under Chapter 30 of this code
9 practicing within his or her scope of practice.

10 "Medical emergency" has the same meaning as that set forth in §16-2I-1 of this code.

11 "Physician" has the same meaning as set forth in §16-2M-2 of this code.

12 "Pregnancy" means the human female reproductive condition that begins with fertilization,
13 when the woman is carrying the developing human offspring, and that is calculated from the first
14 day of the last menstrual period of the woman.

15 "Reasonable medical judgment" has the same meaning as set forth in §16-2M-2 of this
16 code.

17 "Severe fetal abnormality" means a life-threatening physical condition that, in reasonable
18 medical judgment, regardless of the provision of life-saving medical treatment, is incompatible
19 with life outside the womb.

20 (b) Except in a medical emergency or in the case of a severe fetal abnormality, a licensed
21 medical professional may not perform, induce, or attempt to perform or induce an abortion unless
22 the licensed medical professional has first made a determination of the probable gestational age
23 of the fetus and documented that gestational age in the patient's chart and, if required, in a report
24 to be filed with the Bureau for Public Health. The determination of probable gestational age shall
25 be made according to the standard of care.

26 (c) Except in a medical emergency or in the case of a severe fetal abnormality, a licensed
27 medical professional may not intentionally or knowingly perform, induce, or attempt to perform or
28 induce an abortion of a fetus if the probable gestational age of the fetus being has been
29 determined to be greater than 15 weeks.

30 (d) If a licensed medical professional performs or induces an abortion on a fetus whose
31 gestational age is greater than 15 weeks, the licensed medical professional shall within 15 days
32 of the abortion file with the bureau, on a form supplied by the bureau, a report containing the
33 following information:

- 34 (1) Date the abortion was performed;
- 35 (2) Specific method of abortion used;
- 36 (3) The probable gestational age of the fetus and the method used to calculate gestational
37 age;
- 38 (4) A statement declaring that the abortion was necessary to preserve the life or physical
39 health of the maternal patient;
- 40 (5) Specific medical indications supporting the abortion; and
- 41 (6) Probable health consequences of the abortion and specific abortion method used.

42 The licensed medical professional shall sign the form as his or her attestation that the
43 information provided is true and correct to the best of his or her knowledge.

44 (e) Reports required and submitted may not contain the name of the patient upon whom
45 the abortion was performed or any other information or identifiers that would make it possible to
46 identify the patient.

47 (f) A licensed medical professional who intentionally or recklessly performs or induces an
48 abortion in violation of this section is considered to have acted outside the scope of practice
49 permitted by law or otherwise in breach of the standard of care owed to a patient, and is subject
50 to discipline from the applicable licensure board for that conduct, including, but not limited to, loss
51 of professional license to practice.

52 (g) A person, not subject to subsection (f) of this section, who intentionally or recklessly
53 performs or induces an abortion in violation of this article is considered to have engaged in the
54 unauthorized practice of medicine in violation of §30-3-13 of this code, and upon conviction,
55 subject to the penalties contained in that section.

56 (h) In addition to the penalties set forth in this section, a patient may seek any remedy
57 otherwise available to such patient by applicable law.

58 (i) A penalty may not be assessed against any patient upon whom an abortion is performed
59 or induced or attempted to be performed or induced.

NOTE: The purpose of this bill is to prohibit an abortion after 15 weeks' gestation.

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