WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 735

By Senators Rucker, Azinger, Chapman, Deeds,

Hunt, Karnes, Martin, Maynard, Roberts, Stuart, and

Taylor

[Introduced February 9, 2024; referred

to the Committee on the Judiciary]

A BILL to amend and reenact §16-2R-2 of the Code of West Virginia, 1931, as amended; and to
 amend said code by adding thereto a new section, designated §16-2R-10, all relating to
 prohibiting the use or sale of abortifacients, and enacting criminal penalties and private
 causes of action for supplying abortifacients and creating severability.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2R. UNBORN CHILD PROTECTION ACT. §16-2R-2. Definitions. 1 The definitions set forth in this section are controlling for purposes of this article and of this 2 code, irrespective of terms used in medical coding, notations, or billing documents. For purposes 3 of this article: 4 "Abortifacient" means any drug, medicine, substance, chemical, or means used to cause 5 an abortion which either requires a prescription based on FDA guidelines or is not approved by the 6 FDA and is primarily used to cause an abortion. 7 "Abortion" means the use of any instrument, medicine, drug, or any other substance or device with intent to terminate the pregnancy of a patient known to be pregnant and with intent to 8 9 cause the death and expulsion or removal of an embryo or a fetus. This term does not include the 10 terms "intrauterine fetal demise" or "stillbirth" or "miscarriage" as defined in this section. 11 "Attempt to perform or induce an abortion" means an act or the omission of an act that, 12 under the circumstances as the person so acting or omitting to act believes them to be, constitutes 13 a substantial step in a course of conduct intended to culminate in an abortion. 14 "Born alive" means the complete expulsion or extraction of the fetus, at any stage of 15 development, who after such expulsion or extraction breathes or has a beating heart, pulsation of 16 the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical 17 cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of 18 natural or induced labor, cesarean section, or induced abortion.

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"Commissioner" means the Commissioner of the Bureau for Public Health of the West

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20	Virginia Department of Health and Human Resources
21	"Cabinet Secretary" means the Secretary of the West Virginia Department of Health.
22	"Contraception" or "contraceptive" means the prevention of pregnancy by interfering with
23	the process of ovulation, fertilization, or implantation.
24	"Ectopic" means a fertilized egg which is developing outside the uterus, or a fertilized egg
25	is developing within parts of the uterus where it cannot be viable, including a cervical, cornual, or
26	cesarean section scar implantations.
27	"Embryo" means the developing human from the time of fertilization until the end of the
28	eighth week of gestation.
29	"Fertilization" means the fusion of a human spermatozoon with a human ovum.
30	"Fetal tissue research" means tissue or cells obtained from a dead embryo or fetus after a
31	miscarriage, abortion, or intrauterine fetal demise.
32	"Fetus" means the developing human in the postembryonic period from nine weeks after
33	fertilization until birth.
33 34	fertilization until birth. <u>"Foreign sender" means a person or an entity that:</u>
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34 35	<u>"Foreign sender" means a person or an entity that:</u> Mails or sends by common carrier an abortifacient to an address in this state or to a person
34 35 36	"Foreign sender" means a person or an entity that: Mails or sends by common carrier an abortifacient to an address in this state or to a person in this state; or
34 35 36 37	<u>"Foreign sender" means a person or an entity that:</u> Mails or sends by common carrier an abortifacient to an address in this state or to a person in this state; or Intentionally places an abortifacient into the stream of commerce when the person or entity
34 35 36 37 38	"Foreign sender" means a person or an entity that: Mails or sends by common carrier an abortifacient to an address in this state or to a person in this state; or Intentionally places an abortifacient into the stream of commerce when the person or entity knows that the abortifacient is substantially likely to be used in this state or mailed or sent by
34 35 36 37 38 39	"Foreign sender" means a person or an entity that: Mails or sends by common carrier an abortifacient to an address in this state or to a person in this state; or Intentionally places an abortifacient into the stream of commerce when the person or entity knows that the abortifacient is substantially likely to be used in this state or mailed or sent by common carrier to an address in this state or to a person in this state; or
34 35 36 37 38 39 40	"Foreign sender" means a person or an entity that: Mails or sends by common carrier an abortifacient to an address in this state or to a person in this state; or Intentionally places an abortifacient into the stream of commerce when the person or entity knows that the abortifacient is substantially likely to be used in this state or mailed or sent by common carrier to an address in this state or to a person in this state; or Knowingly prescribes an abortifacient to a person in this state, regardless of whether the
34 35 36 37 38 39 40 41	"Foreign sender" means a person or an entity that: Mails or sends by common carrier an abortifacient to an address in this state or to a person in this state; or Intentionally places an abortifacient into the stream of commerce when the person or entity knows that the abortifacient is substantially likely to be used in this state or mailed or sent by common carrier to an address in this state or to a person in this state; or Knowingly prescribes an abortifacient to a person in this state, regardless of whether the prescriber was in this state or knew the recipient was in this state.
 34 35 36 37 38 39 40 41 42 	"Foreign sender" means a person or an entity that: Mails or sends by common carrier an abortifacient to an address in this state or to a person in this state; or Intentionally places an abortifacient into the stream of commerce when the person or entity knows that the abortifacient is substantially likely to be used in this state or mailed or sent by common carrier to an address in this state or to a person in this state; or Knowingly prescribes an abortifacient to a person in this state, regardless of whether the prescriber was in this state or knew the recipient was in this state. "Gestation" means the development of a human embryo or fetus as calculated from the

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46 "Implantation" means when a fertilized egg has attached to the lining of the wall of the47 uterus.

48 "Intrauterine fetal demise" or "stillbirth" means the unintended or spontaneous loss of a
49 fetus after the 19th week of pregnancy.

50 "In vitro fertilization" means a procedure or procedures intended to improve fertility or51 prevent genetic problems and assist with conception.

52 "Medical emergency" means a condition or circumstance that so complicates the medical 53 condition of a patient as to necessitate an abortion to avert serious risk of the patient's death or 54 serious risk of substantial life-threatening physical impairment of a major bodily function, not including psychological or emotional conditions. This term includes a circumstance in which it is 55 56 necessary to terminate a pregnancy of one or more fetuses to preserve the life of another fetus or 57 fetuses. A condition is not deemed a medical emergency if based on a claim or diagnosis that the 58 patient intends or may engage in conduct which results in the patient's death or in substantial and 59 irreversible physical impairment of a major bodily function.

60 "Miscarriage" means the unintended or spontaneous loss of an embryo or a fetus before
61 the 20th week of pregnancy. This term includes the medical terms "spontaneous abortion,"
62 "missed abortion," and "incomplete abortion".

63 "Nonviable" means an embryo or a fetus has a lethal anomaly which renders it64 incompatible with life outside of the uterus.

65 "Partial-birth abortion" means an abortion performed on a live fetus after partial vaginal66 delivery.

67 "Pregnancy" means the period of gestation after which a fertilized egg has implanted in the68 wall of a uterus.

69 "Reasonable medical judgment" means a medical judgment that would be made by a
70 licensed medical professional who is knowledgeable about the case and the treatment
71 possibilities with respect to the medical conditions involved.

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72	"Standard medical measure" means the medical care that a physician would provide
73	based on the particular facts of the pregnancy, the information available to the physician, and the
74	technology reasonably available in a hospital, with an obstetrical department, to preserve the life
75	and health of the fetus, with or without temporary artificial life-sustaining support, if the fetus were
76	born at the same stage of fetal development.
77	"Unemancipated minor" means a person younger than 18 years of age who is not, or has
78	not been, married or judicially emancipated.
	§16-2R-10. Abortifacients.
1	(a) Notwithstanding any other provision to the contrary, in an instance when an abortion is
2	performed subject to provisions of §16-2R-3 of this code, the following conditions apply:
3	(1) A foreign sender knowingly mailing or sending by common carrier an abortifacient to an
4	address in this state or to a person in this state.
5	(A) A person or an entity knowingly disseminating an abortifacient in this state without a
6	valid prescription.
7	(B) A person or an entity intentionally placing an abortifacient into the stream of commerce
8	when the person or entity knows that the abortifacient is substantially likely to be used in this state
9	or mailed or sent by common carrier to an address in this state.
10	(2) It is not a defense that a foreign sender did not know or intend that an abortion would be
11	performed.
12	(b)(1) Performing or attempting to perform an abortion with an abortifacient is a felony,
13	punishable by a mandatory term of imprisonment not to exceed 10 years or with a fine not to
14	exceed \$100,000, or both.
15	(2) This section does not authorize a woman to be charged with or convicted of a criminal
16	offense in the death of her own unborn child.
17	(3) The following are affirmative defenses to any criminal or other liabilities under this
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19	(A) A physician licensed in this state provides a medical procedure or service for a
20	legitimate medical reason to a pregnant woman that results in the accidental or unintentional
21	physical injury to or death of the unborn child.
22	(B) A pharmacy fills a valid prescription issued by a physician licensed in this state.
23	(C) A pregnant woman who receives an abortifacient may bring a civil action against
24	another person or entity, including a foreign sender, that knowingly or intentionally performs or
25	attempts to perform an abortion in violation of this section.
26	(1) If a claimant prevails in an action brought under this section, the court shall award:
27	(A) Injunctive relief that requires the defendant to comply with this section.
28	(B) Damages of \$10,000 for each abortion that the person, entity, or foreign sender
29	knowingly and intentionally performed or attempted to perform.
30	(c) A person may bring an action under this section up to three years after the date the
31	cause of action accrues or up to one year after the lifting or expiration of any stay, injunction, or
32	temporary restraining order which was put in place less than three years after the date the cause
33	of action accrued, whichever is later.
34	(1) Notwithstanding any other law to the contrary, a court may not award attorney fees or
35	costs to a defendant in a civil action brought under this section.
36	(2) A civil action brought under this section is in addition to and does not impair the rights or
37	remedies of the plaintiff in other causes of action in law or equity.
38	(3) If any provision of this section or its application to any particular person or circumstance
39	is held invalid, that provision or its application is severable and does not affect the validity of other
40	provisions or applications of this section.

NOTE: The purpose of this bill is to prohibit the use or sale of abortifacients and to enact criminal penalties and permit private causes of action for supplying abortifacients.

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