

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 2712

By Delegates White, Anders, Coop-Gonzalez,
McGeehan, Ridenour, Ward, Dillon, And Burkhammer

[Introduced February 20, 2025; referred to the
Committee on Health and Human Resources then the
Judiciary]

1 A BILL to amend and reenact §16-2O-1 and §16-2R-3 of the Code of West Virginia, 1931, as
2 amended; relating to removing abortion exceptions for rape and incest.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 20. UNBORN CHILD PROTECTION FROM DISMEMBERMENT ABORTION
ACT.**

§16-2O-1. Unborn Child Protection from Dismemberment Abortion 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 of
4 this code.

5 (3) "Dismemberment abortion" means, with the purpose of causing the death of an unborn
6 child, purposely to dismember a living unborn child and extract him or her one piece at a time from
7 the uterus through use of clamps, grasping forceps, tongs, scissors or similar instruments that,
8 through the convergence of two rigid levers, slice, crush or grasp a portion of the unborn child's
9 body to cut or rip it off. The term "dismemberment abortion" includes an abortion in which a
10 dismemberment abortion is performed to cause the death of an unborn child but suction is
11 subsequently used to extract fetal parts after the death of the unborn child. The term
12 "dismemberment abortion" does not include an abortion which uses suction to dismember the
13 body of the unborn child by sucking fetal parts into a collection container, an abortion following
14 fetal demise which uses a suction curette, suction curettage or forceps to dismember the body of a
15 dead unborn child, or when forceps are used following an induced fetal demise by other means.

16 (4) "Medical emergency" means the same as that term is defined in §16-2M-2 of this code.

17 (5) "Physician" means the same as that term is defined in §16-2M-2 of this code.

18 (6) "Reasonable medical judgement" means the same as that term is defined in §16-2M-2
19 of this code.

20 ~~(7)~~ "Woman" means a female human being whether or not she has reached the age of
21 majority.

22 (b) *Prohibition.* —

23 No person may perform, or attempt to perform, a dismemberment abortion as defined in
24 this section, unless in reasonable medical judgment the woman has a condition that, on the basis
25 of reasonable medical judgment, so complicates her medical condition as to necessitate the
26 abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible
27 physical impairment of a major bodily function, not including psychological or emotional
28 conditions. No condition may be deemed a medical emergency if based on a claim or diagnosis
29 that the woman will engage in conduct which she intends to result in her death or in substantial and
30 irreversible physical impairment of a major bodily function.

31 (c) *Enforcement.* —

32 (1) Any physician or other licensed medical practitioner who intentionally or recklessly
33 performs or induces an abortion in violation of this article is considered to have acted outside the
34 scope of practice permitted by law or otherwise in breach of the standard of care owed to patients,
35 and is subject to discipline from the applicable licensure board for that conduct, including, but not
36 limited to, loss of professional license to practice.

37 (2) Any person, not subject to subdivision (1) of this subsection, who intentionally or
38 recklessly performs or induces an abortion in violation of this article is considered to have engaged
39 in the unauthorized practice of medicine in violation of §30-3-13 of this code, and, upon conviction,
40 subject to the penalties contained in that section.

41 (3) In addition to the penalties set forth in subdivisions (1) and (2) of this section, a patient
42 may seek any remedy otherwise available to such patient by applicable law.

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

45 (d) *Miscellaneous Provisions.* —

(1) This section does not prevent an abortion by any other method for any reason.
~~including rape and incest~~

(2) Nothing in this section may be construed as creating or recognizing a right to abortion, nor a right to a particular method of abortion.

(e) Effective from the reenactment of this section during the third extraordinary session of the Legislature, 2022, this article is of no force or effect unless any provision of §16-2R-1 *et seq.* of this code is judicially determined to be unconstitutional.

§16-2R-3. Prohibition to perform an abortion.

(a) An abortion may not be performed or induced or be attempted to be performed or induced unless in the reasonable medical judgment of a licensed medical professional:

(1) The embryo or fetus is nonviable;

(2) The pregnancy is ectopic; or

(3) A medical emergency exists.

~~(b) The prohibition set forth in subsection (a) of this section shall not apply to an adult within the first 8 weeks of pregnancy if the pregnancy is the result of sexual assault, as defined in §61-8B-1 *et seq.* of this code, or incest, as defined in §61-8-12 of this code, and at least 48 hours prior to the abortion the patient has reported the sexual assault or incest to a law enforcement agency having jurisdiction to investigate the complaint and provided the report to the licensed medical professional performing the abortion.~~

~~(c) The prohibition set forth in subsection (a) of this section shall not apply to a minor or an incompetent or incapacitated adult within the first 14 weeks of pregnancy if the pregnancy is the result of sexual assault, as defined in §61-8B-1 *et seq.* of this code, or incest, as defined in §61-8-12 of this code, and at least 48 hours prior to the abortion the patient has:~~

~~(1) A report of the sexual assault or incest has been made to law enforcement having jurisdiction to investigate the complaint; or~~

~~(2) The patient has obtained medical treatment for the sexual assault or incest or any injury~~

19 ~~related to the sexual assault or incest from a licensed medical professional or in a hospital, as~~
20 ~~defined in §16-5B-1 of this code, which is licensed by the Office of Health Facility Licensure and~~
21 ~~Certification of the West Virginia Department of Health and Human Resources: *Provided*, That the~~
22 ~~licensed medical professional or hospital, as defined in §16-5B-1 of this code, which is licensed by~~
23 ~~the Office of Health Facility Licensure and Certification of the West Virginia Department of Health~~
24 ~~and Human Resources, and which performed or provided such medical treatment may not~~
25 ~~perform or provide the abortion arising from such sexual assault or incest.~~

26 ~~(d) In all cases where a report of sexual assault or incest against a minor is made pursuant~~
27 ~~this subsection (c), the agency or person to whom the report is made shall report the sexual~~
28 ~~assault or incest to the Child Abuse and Neglect Investigations Unit of the West Virginia State~~
29 ~~Police within 48 hours~~

30 ~~(e)~~ (b) An abortion performed pursuant to this section may not use the partial birth abortion
31 procedure.

32 ~~(f)~~ (c) A surgical abortion performed or induced or attempted to be performed or induced
33 pursuant to this section shall be in a hospital, as defined in §16-5B-1 of this code, which is licensed
34 by the Office of Health Facility Licensure and Certification of the West Virginia Department of
35 Health and Human Resources.

36 ~~(g)~~ (d) An abortion performed or induced or attempted to be performed or induced shall be
37 performed by a licensed medical professional who has West Virginia hospital privileges.

NOTE: The purpose of this bill is to remove abortion exceptions for rape and incest.

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