

# **WEST VIRGINIA LEGISLATURE**

## **2025 REGULAR SESSION**

**Engrossed**

**Committee Substitute**

**for**

**Senate Bill 85**

BY SENATORS RUCKER, ROBERTS, ROSE, WILLIS,

TAYLOR, HELTON, AND BARTLETT

[Reported March 28, 2025, from the Committee on  
the Judiciary]



1 A BILL to amend and reenact §16-2R-2 of the Code of West Virginia, 1931, as amended; and to  
2 amend the code by adding a new section, designated §16-2R-10, relating to prohibiting  
3 mailing of abortifacients; prohibiting placing abortifacients in the stream of commerce;  
4 prohibiting prescribing abortifacients; prohibiting dissemination of abortifacients without  
5 lawfully valid prescription; defining terms; creating criminal penalties; providing for  
6 revocation of medical license in certain circumstances; providing exceptions; and creating  
7 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 chemical or drug prescribed or dispensed with the intent of  
5 causing an abortion.

6 "Abortion" means the use of any instrument, medicine, drug, or any other substance or  
7 device with intent to terminate the pregnancy of a patient known to be pregnant and with intent to  
8 cause the death and expulsion or removal of an embryo or a fetus. This term does not include the  
9 terms "intrauterine fetal demise" or "stillbirth" or "miscarriage" as defined in this section.

10 "Attempt to perform or induce an abortion" means an act or the omission of an act that,  
11 under the circumstances as the person so acting or omitting to act believes them to be, constitutes  
12 a substantial step in a course of conduct intended to culminate in an abortion.

13 "Born alive" means the complete expulsion or extraction of the fetus, at any stage of  
14 development, who after such expulsion or extraction breathes or has a beating heart, pulsation of  
15 the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical

cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion.

~~"Commissioner" means the Commissioner of the Bureau for Public Health of the West Virginia Department of Health and Human Resources~~

"Cabinet Secretary" means the Secretary of the West Virginia Department of Health.

"Contraception" or "contraceptive" means the prevention of pregnancy by interfering with the process of ovulation, fertilization, or implantation.

"Ectopic" means a fertilized egg which is developing outside the uterus, or a fertilized egg is developing within parts of the uterus where it cannot be viable, including a cervical, cornual, or cesarean section scar implantations.

"Embryo" means the developing human from the time of fertilization until the end of the eighth week of gestation.

"Fertilization" means the fusion of a human spermatozoon with a human ovum.

"Fetal tissue research" means tissue or cells obtained from a dead embryo or fetus after a miscarriage, abortion, or intrauterine fetal demise.

"Fetus" means the developing human in the postembryonic period from nine weeks after fertilization until birth.

"Licensed medical professional" means a person licensed under §30-3-1 *et seq.*, or §30-14-1 *et seq.*, of this code.

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

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

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

"Medical emergency" means a condition or circumstance that so complicates the medical condition of a patient as to necessitate an abortion to avert serious risk of the patient's death or 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 necessary to terminate a pregnancy of one or more fetuses to preserve the life of another fetus or fetuses. A condition is not deemed a medical emergency if based on a claim or diagnosis that the patient intends or may engage in conduct which results in the patient's death or in substantial and irreversible physical impairment of a major bodily function.

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

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

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

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

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

"Unemancipated minor" means a person younger than 18 years of age who is not, or has not been, married or judicially emancipated.

**§16-2R-10. Abortifacients.**

(a) Unless otherwise permitted under §16-2R-3 of this code, a person or entity is guilty of performing or attempting to perform an abortion with an abortifacient if a person or entity knowingly and willfully:

4           (1) Sends by courier, delivery, or mail service an abortifacient to a person in the state of  
5 West Virginia;

6           (2) Places an abortifacient into the stream of commerce when the person or entity knows  
7 that the abortifacient is to be used in this state or mailed or sent by courier, delivery, or mail  
8 service to a person in the state of West Virginia;

9           (3) Prescribes an abortifacient to a person in the state of West Virginia, regardless of  
10 whether the prescriber was in the state of West Virginia; or

11           (4) Disseminates an abortifacient in the state of West Virginia without a lawfully valid  
12 prescription.

13           (b)(1) Any person other than a licensed medical professional, as defined in §16-2R-2 of  
14 this code, who knowingly and willfully violates subsection (a) of this section is guilty of a felony,  
15 and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate  
16 sentence of not less than three nor more than 10 years.

17           (2) The Attorney General of West Virginia may pursue a civil claim against a person or  
18 entity who has violated subsection (a) of this section in the circuit court where the abortion or the  
19 attempted abortion occurred. In addition to injunctive relief, the Attorney General may recover  
20 against the person or entity a sum not to exceed \$150,000 for each demonstrated violation of  
21 subsection (a) of this section: *Provided*, That neither an indictment nor a conviction is required for  
22 establishing liability against a person or entity in a civil action alleging a violation of subsection (a)  
23 of this section.

24           (3) Where a licensed medical professional, as defined in §16-2R-2 of this code, knowingly  
25 and willfully violates subsection (a) of this section, he or she is subject to disciplinary action by his  
26 or her applicable licensing board. If the licensing board finds that the licensed medical  
27 professional has knowingly and willfully violated subsection (a) of this section, the licensing board  
28 shall revoke the medical professional's license.

(4) This section does not authorize a woman to be charged with or convicted of a criminal offense in the death of her own unborn child.

(c) A pregnant woman who unlawfully receives an abortifacient may bring a civil action against a person or entity that knowingly and willfully violates subsection (a) of this section.

(1) If a claimant prevails in a civil action alleging a violation of subsection (a) of this section, and in addition to any permissive relief the circuit court may award in law or equity, the circuit court shall award:

(A) Injunctive relief directing the person or entity to refrain from engaging in the prohibited conduct set forth in subsection (a) of this section; and

(B) Damages of \$10,000 for each abortion that the person or entity knowingly and willfully performed or attempted to perform.

(2) Neither an indictment nor a conviction is required for establishing liability against a person or entity in a civil action alleging a violation of subsection (a) of this section.

(d) This section shall not apply to:

(1) A manufacturer, distributor, or courier, delivery, or mail service sending an abortifacient for use in connection with a lawfully valid prescription issued by a licensed medical professional in this state;

(2) A pharmacy fulfilling a lawfully valid prescription issued by a licensed medical professional in this state; or

(3) A physician providing a medical procedure or service for a legitimate medical reason to a pregnant woman that results in the accidental or unintentional physical injury to or death of the unborn child.

(e) If any provision of this section or its application to any particular person or circumstance is found to be invalid, that provision or its application is severable and does not affect the validity of other provisions or applications of this section.