

Introduced Version

Key: **Green** = existing Code. **Red** = new code to be enacted

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.

The definitions set forth in this section are controlling for purposes of this article and of this code, irrespective of terms used in medical coding, notations, or billing documents. For purposes of this article:

"Abortifacient" means any drug, medicine, substance, chemical, or means used to cause an abortion which either requires a prescription based on FDA guidelines or is not approved by the FDA and is primarily used to cause an abortion.

"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 cause the death and expulsion or removal of an embryo or a fetus. This term does not include the terms "intrauterine fetal demise" or "stillbirth" or "miscarriage" as defined in this section.

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

"Born alive" means the complete expulsion or extraction of the fetus, at any stage of development, who after such expulsion or extraction breathes or has a beating heart, pulsation of 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.

"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 first day of the pregnant woman's last menstrual period.

"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.

"Standard medical measure" means the medical care that a physician would provide based on the particular facts of the pregnancy, the information available to the physician, and the technology reasonably available in a hospital, with an obstetrical department, to preserve the life and health of the fetus, with or without temporary artificial life-sustaining support, if the fetus were born at the same stage of fetal development.

"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) Notwithstanding any other provision to the contrary, in an instance when an abortion is performed subject to provisions of [§16-2R-3](#) of this code, the following conditions apply:

(1) A foreign sender knowingly mailing or sending by common carrier an abortifacient to an address in this state or to a person in this state.

(A) A person or an entity knowingly disseminating an abortifacient in this state without a valid prescription.

(B) A person or an entity intentionally placing 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.

(2) It is not a defense that a foreign sender did not know or intend that an abortion would be performed.

(b)(1) Performing or attempting to perform an abortion with an abortifacient is a felony, punishable by a mandatory term of imprisonment not to exceed 10 years or with a fine not to exceed \$100,000, or both.

(2) 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.

(3) The following are affirmative defenses to any criminal or other liabilities under this section:

(A) A physician licensed in this state provides 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.

(B) A pharmacy fills a valid prescription issued by a physician licensed in this state.

(C) A pregnant woman who receives an abortifacient may bring a civil action against another person or entity, including a foreign sender, that knowingly or intentionally performs or attempts to perform an abortion in violation of this section.

(1) If a claimant prevails in an action brought under this section, the court shall award:

(A) Injunctive relief that requires the defendant to comply with this section.

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

(c) A person may bring an action under this section up to three years after the date the cause of action accrues or up to one year after the lifting or expiration of any stay, injunction, or temporary restraining order which was put in place less than three years after the date the cause of action accrued, whichever is later.

(1) Notwithstanding any other law to the contrary, a court may not award attorney fees or costs to a defendant in a civil action brought under this section.

(2) A civil action brought under this section is in addition to and does not impair the rights or remedies of the plaintiff in other causes of action in law or equity.

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