WEST VIRGINIA CODE CHAPTER 16 ARTICLE 2O

WV Legislature

§16-2O-1. Unborn Child Protection from Dismemberment Abortion Act.

(a) *Definitions*. — For purposes of this section:

(1) "Abortion" means the same as that term is defined in section two, article two-f, chapter sixteen of this code.

(2) "Attempt to perform an abortion" means the same as that term is defined in §16-2M-2 of this code.

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

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

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

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

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

(b) *Prohibition*. —

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

(c) *Enforcement*. —

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

(2) Any person, not subject to subdivision (1) of this subsection, who intentionally or recklessly performs or induces an abortion in violation of this article is considered to have engaged in the unauthorized practice of medicine in violation of section thirteen, article three, chapter thirty of this code, and, upon conviction, subject to the penalties contained in that section.

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

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

(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.

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