WEST VIRGINIA CODE: §16-2P-1

§16-2P-1. Born-Alive Abortion Survivors Protection Act.

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

(1) “Abortion” has the same meaning as that set forth in §16-2F-2 of this code.

(2) “Attempt to perform an abortion” has the same meaning as that set forth in §16-2M-2 of this code.

(3) “Born alive” means the complete expulsion or extraction from its mother 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.

(4) “Fetus” has the same meaning as that set forth in §16-2M-2 of this code.

(5) “Licensed Medical Professional” means a person licensed under Chapter 30 of this code practicing within his or her scope of practice.

(6) “Physician” has the same meaning as set forth in §16-2M-2 of this code.

(7) “Reasonable medical judgment” has the same meaning as set forth in §16-2M-2 of this code.

(b) *Prohibition*. —

(1) If a physician performs or attempts to perform an abortion that results in a child being born alive the physician shall:

(A) Exercise the same degree of reasonable medical judgment to preserve the life and health of the child as a physician would render to any other child born alive at the same gestational age; and

(B) Ensure that the child born alive is immediately transported and admitted to a hospital.

(2) A person who has knowledge of a failure to comply with the requirements of this subsection shall report the failure to the applicable licensing board.

(c) *Enforcement*. —

(1) Any physician or other licensed medical professional who knowingly and willingly violates

WV Legislature

subsection (b) of this section is considered to have breached 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 knowingly and willfully violates subsection (b) of this section is guilty of the unauthorized practice of medicine in violation of §30-3-13 of this code, and, upon conviction thereof, is subject to the penalties contained in that section.

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

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

(d) 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.

WV Legislature