Veto

WEST VIRGINIA LEGISLATURE
Regular Session, 2004

ENROLLED
Committee Substitute for
SENATE BILL NO. 5660

(By Senator Kessler, et al.)

PASSED March 19, 2004

In Effect ninety days from Passage
AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-2-30, relating to creating the “Unborn Victims of Violence Act”; defining certain terms; identifying offenses of violence against a person that are committed against a pregnant woman or her embryo or fetus in the womb; establishing that an embryo or fetus in the womb may be a separate and distinct unborn victim in the case of certain violent crimes against a pregnant woman or her embryo or fetus in the womb; providing exceptions against the application of this section to certain persons or entities; specifying penalties; and providing that a conviction under this section, or of this article, is not a bar to prosecution of, or punishment for, any
other crime allegedly committed by the defendant arising from the same incident.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-2-30, to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-30. Recognizing an embryo or fetus as a distinct unborn victim of certain crimes of violence against the person.

(a) This section may be known and cited as the "Unborn Victims of Violence Act".

(b) For the purposes of this article, the following definitions shall apply: Provided, That these definitions only apply for purposes of prosecution of unlawful acts under this section and may not otherwise be used: (1) To create or to imply that a civil cause of action exists; or (2) for purposes of argument in a civil cause of action, unless there has been a criminal conviction under this section.

(1) "Embryo" means the developing human in its early stages. The embryonic period commences at fertilization and continues to the end of the embryonic period and the beginning of the fetal period, which occurs eight weeks after fertilization, or ten weeks after the onset of the last menstrual period.

(2) "Fetus" means a developing human that has ended the embryonic period and thereafter continues to develop and mature until termination of the pregnancy or birth.

(c) For purposes of enforcing the provisions of sections one, four and seven of this article, subsections (a) and (c), section nine of said article, sections ten and ten-b of said article and subsection (a), section twenty-eight of said article, a pregnant woman and the embryo or fetus she is
carrying in the womb constitute separate and distinct victims.

(d) Exceptions. – The provisions of this section do not apply to:

(1) Acts committed during a legal abortion to which the pregnant woman, or a person authorized by law to act on her behalf, consented or for which the consent is implied by law;

(2) Acts or omissions by medical or health care personnel during or as a result of medical or health-related treatment or services, including, but not limited to, medical care, abortion, diagnostic testing, or fertility treatment;

(3) Acts or omissions by medical or health care personnel or scientific research personnel in performing lawful procedures involving embryos that are not in a stage of gestation in utero;

(4) Acts involving the use of force in lawful defense of self or another, but not an embryo or fetus; and

(5) Acts or omissions of a pregnant woman with respect to the embryo or fetus she is carrying.

(e) For purposes of the enforcement of the provisions of this section, a violation of the provisions of article two-i, chapter sixteen of this code shall not serve as a waiver of the protection afforded by the provisions of subdivision (1), subsection (d) of this section.

(f) Other convictions not barred. – A prosecution for or conviction under this section is not a bar to conviction of or punishment for any other crime committed by the defendant arising from the same incident.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Greg Butler
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

Earl Ray Tomblin
President of the Senate

Robert C. Flaherty
Speaker House of Delegates

The within bill is approved this the ___ day of ___, 2004.

JIM WISE
Governor