WEST virginia legislature

2024 regular session

eNGROSSED

Committee Substitute

for

House Bill 5243

By Delegates Crouse, W. Clark, C. Pritt, Willis, Linville, Cannon, Moore, Foster, Kimble, Mazzocchi and Warner

[Originating in the Committee on the Judiciary; Reported on February 5, 2024]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-67-1, §16-67-2, §16-67-3, §16-67-4, and §16-67-5, all relating to the Women's Bill of Rights; providing short title; setting forth purpose; establishing application of act; defining terms; establishing the state interest in certain single sex environments; creating parameters for certain data collection; and allowing severability.

Be it enacted by the Legislature of West Virginia:

chapter 16. publc health.

Article 67. West Virginia Women's Bill of Rights Act.

§16-67-1. Short title; purposes; general application.

(a) This act shall be known and may be cited as the "West Virginia Women’s Bill of Rights."

(b) The purpose of the West Virginia Women’s Bill of Rights is to bring clarity, certainty, and uniformity to the laws of the state regarding sex discrimination, equality of the sexes, and benefits or services specifically provided to males and to females.

(c) The West Virginia Women’s Bill of Rights applies wherever West Virginia, or an instrumentality of the state, classifies people on the basis of sex or otherwise defines people as being female or male, women or men, girls or boys; the definitions contained in §16-67-2 of this code apply.

§16-67-2. Definitions of terms used in statutory construction.

(a) Notwithstanding any provision of law to the contrary, with respect to the application of an individual’s biological sex pursuant to any state laws, rules, regulations, or official public policies, the following shall apply:

(1) An individual’s “sex” means such individual’s biological sex, either male or female, at birth;

(2) A "female", when used in reference to a natural person, is an individual who has, had, will have, or would have (but for a developmental anomaly, genetic anomaly, or accident) the reproductive system that at some point produces ova;

(3) A “male” when used in reference to a natural person, means an individual who has, had, will have, or would have (but for a developmental anomaly, genetic anomaly, or accident) the reproductive system that at some point produces sperm;

(4) A “woman" is an adult human of the female sex, and a "man" is an adult human of the male sex;

(5) A "girl" is a human female who has not yet reached adulthood, and a "boy" is a human male who has not yet reached adulthood;

(6) A "mother" is a female parent of a child or children as those terms are defined in this code; a "father" is a male parent of a child or children as those terms are defined in this code;

(7) "Equal" does not mean "same" or "identical" with respect to equality of the sexes;

(8) A person's "sex" is his or her biological sex (either male or female) at birth.

(A) There are only two sexes, and every individual is either male or female;

(B) "Sex" is objective and fixed; and

(C) "Sex" does not include "gender identity" or any other terms intended to convey a person’s subjective sense of self; "gender identity" and other subjective terms may not be used as synonyms or substitutes for "sex".

(b) Individuals with "differences in sex development" (also known as "DSD" or "intersex conditions") are not a third sex. Individuals with a congenital and medically verifiable DSD diagnosis must be accommodated consistent with state and federal law.

§16-67-3. Sex discrimination; single-sex environments.

(a) Any state policy, program, or statute that prohibits sex discrimination shall be construed to pertain to females or males.

(b) Because the state has an important interest in preventing unjust discrimination and in maintaining safety, privacy, and fairness, West Virginia and its political subdivisions and instrumentalities may provide separate single-sex environments.

(c) Wherever West Virginia or its political subdivisions or instrumentalities, in fact, provide separate single-sex environments for males and females, the definitions established in §16-67-2 of this code must apply.

§16-67-4. Data collection.

(a) Any public school, public school district, agency, department, or instrumentality of the state that collects vital statistics related to sex for the purpose of complying with state or federal anti-discrimination laws or for the purpose of gathering accurate public health, crime, economic, or other data shall identify each natural person who is part of the collected data set as either male or female as defined in this article.

(b) Compliance with this section shall not require the collection of data regarding sex unless otherwise required by law, and it shall not prevent the collection of additional data points other than biological sex.

**§16-67-5. Severability.**

If any provision of this article, an amendment made by this article, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this article, the amendments made by this article, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

CHApTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8B. sexual offenses.

§61-8B-1. Definition of terms.

In this article, unless a different meaning plainly is required:

(1) "Forcible compulsion" means:

(a) Physical force that overcomes such earnest resistance as might reasonably be expected under the circumstances; or

(b) Threat or intimidation, expressed or implied, placing a person in fear of immediate death or bodily injury to himself or herself or another person, or in fear that he or she or another person will be kidnapped; or

(c) Fear by a person under 16 years of age caused by intimidation, expressed or implied, by another person who is at least four years older than the victim.

For the purposes of this definition, "resistance" includes physical resistance or any clear communication of the victim's lack of consent.

(2) "Married", for the purposes of this article in addition to its legal meaning, includes persons living together as husband and wife regardless of the legal status of their relationship.

(3) "Mentally defective" means that a person suffers from a mental disease or defect which renders that person incapable of appraising the nature of his or her conduct.

(4) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct as a result of the influence of a controlled or intoxicating substance administered to that person without his or her consent or as a result of any other act committed upon that person without his or her consent.

(5) "Physically helpless" means that a person is unconscious or for any reason is physically unable to communicate unwillingness to an act.

(6) "Sexual contact" means any intentional touching, either directly or through clothing, of the breasts, buttocks, anus, or any part of the sex organs of another person, or intentional touching of any part of another person’s body by the actor's sex organs ~~where the victim is not married to the actor~~ and the touching is done for the purpose of gratifying the sexual desire of either party.

(7) "Sexual intercourse" means any act between persons involving penetration, however slight, of the female sex organ by the male sex organ or involving contact between the sex organs of one person and the mouth or anus of another person.

(8) "Sexual intrusion" means any act between persons involving penetration, however slight, of the female sex organ or of the anus of any person by an object for the purpose of degrading or humiliating the person so penetrated or for gratifying the sexual desire of either party.

(9) "Bodily injury" means substantial physical pain, illness, or any impairment of physical condition.

(10) "Serious bodily injury" means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

(11) "Deadly weapon" means any instrument, device, or thing capable of inflicting death or serious bodily injury and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon.

(12) "Forensic medical examination" means an examination provided to a possible victim of a violation of the provisions of this article by medical personnel qualified to gather evidence of the violation in a manner suitable for use in a court of law, to include: An examination for physical trauma; a determination of penetration or force; a patient interview; and the collection and evaluation of other evidence that is potentially relevant to the determination that a violation of the provisions of this article occurred and to the determination of the identity of the assailant.