

West Virginia Legislature

JOURNAL
of the
HOUSE of DELEGATES

Eighty-Fifth Legislature
Third Extraordinary Session

Held at Charleston
Published by the Clerk of the House



July 27, 2022
THIRD DAY

Wednesday, July 27, 2022

THIRD DAY

[DELEGATE HANSHAW, MR. SPEAKER, IN THE CHAIR]

The House of Delegates was called to order by the Honorable Roger Hanshaw, Speaker.

Prayer was offered and the House was led in recitation of the Pledge of Allegiance.

The Clerk proceeded to read the Journal of Tuesday, July 26, 2022, being the first order of business, when the further reading thereof was dispensed with and the same approved.

Committee Reports

On motion for leave, a bill was introduced (Originating in the Committee on Health and Human Resources and reported with the recommendation that it do pass), which was read by its title, as follows:

By Delegates Rohrbach, Jeffries, Barnhart, Dean, Longanacre, Rowan, Tully, Honaker, Mallow, Forsht and Jennings:

H. B. 304 – “A Bill to amend the code of West Virginia, 1931, by adding thereto a new section, designated §5-16-7h; to amend and reenact §11-21-10a and §11-21-16 of said code; to amend said code by adding there a new section, designated §16-5K-7; to amend and reenact §16-58-3; §16-58-4, and §16-58-6 of said code; to amend said code by adding thereto a new section, designated §16-58-7; to amend said code by adding thereto a three new sections, designated §16-63-1, §16-63-2 and §16-63-3; to amend said code by adding thereto a new section, designated §33-15-4x; to amend said code by adding thereto a new section, designated §33-16-3ww; to amend said code by adding thereto a new section, designated §33-24-7x; to amend said code by adding thereto a new section, designated §33-24-8u; to amend said code by adding thereto a new section, designated §33-25A-8x; to amend and reenact §48-11-101 of said code; to amend and reenact §49-4-405, §49-4-406 and §49-4-601 of said code; and to amend and reenact §49-5-101 of said code; all relating to children.”

Pursuant to House Rule 80, the Speaker referred the bill (H. B. 304) to the Committee on Finance.

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, to take effect July 1, 2023, and requested the concurrence of the House of Delegates in the passage, of

S. B. 3001 - “A Bill to amend the code of West Virginia, 1931, by adding thereto a new section, designated §5-16-7h; to amend and reenact §11-21-10a of said code; to amend said code by adding there a new section, designated §16-5K-7; to amend and reenact §16-58-3; §16-58-4, and §16-58-6 of said code; to amend said code by adding thereto a new section, designated §16-58-7; to amend said code by adding thereto a new section, designated §33-15-4x; to amend said code by adding thereto a new section, designated §33-16-3ww; to amend said code by adding

thereto a new section, designated §33-24-7x; to amend said code by adding thereto a new section, designated §33-24-8u; and to amend said code by adding thereto a new section, designated §33-25A-8x, all relating to family planning services; requiring insurance coverage for specified sterilization procedures; providing a one-time tax credit for adoption expenses; providing for early intervention services for newly adopted newborn children; eliminating barriers to contraceptives; requiring the state health officer to prescribe self-administered hormonal contraceptive on statewide basis; providing civil immunity to the state health officer; requiring local boards of health provide hormonal and non-hormonal contraceptives free of charge; establishing a special revenue account; setting out purpose of the account; providing for rulemaking; and making technical corrections.”

At the respective requests of Delegate Kessinger, and by unanimous consent, reference of the bill (S. B. 3001) to a committee was dispensed with, and it was taken up for immediate consideration, read a first time and ordered to second reading.

Special Calendar

Third Reading

H. B. 302, Clarifying West Virginia’s abortion laws; on third reading, coming up in regular order, with the general right to amend, was reported by the Clerk.

An amendment was recommended by the Committee on the Judiciary, and adopted, on page 5, after line 56, by inserting the following:

“ARTICLE 2M. THE PAIN-CAPABLE UNBORN CHILD PROTECTION ACT.

§16-2M-7. Severability.

~~If any one or more provisions, sections, subsections, sentences, clauses, phrases or words of this article or the application thereof to any person or circumstance is found to be unconstitutional or temporarily or permanently restrained or enjoined by judicial order, or both, the same is declared to be severable and the balance of this article shall remain effective notwithstanding such judicial decision, including for all other applications of each of the provisions, sections, subsections, sentences, clauses, phrases or words of this article: *Provided*, That whenever any judicial decision is stayed, dissolved, or otherwise ceases to have effect, such provisions shall have full force and effect.~~

Effective from the date of passage, this article is no longer effective unless any provision of §16-2R-1 *et seq.* or any provision of §61-2-8 is found to be unconstitutional as provided in §16-2R-7.”

And,

On page 10, section 2, line 6, by inserting the following:

“‘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.”

And,

On page 10, section 2, line 9, by striking, “pregnancy in which the fetus” and inserting in lieu thereof, “fertilized egg”;

And,

On page 13, section 5, line 1, by striking “§16-2R-3(a)(1)(A)-(B)” and inserting, “§16-2R-3 (A) and (B)”;

And,

On page 14, line 28 by striking, “Attorney General” and inserting in lieu thereof, “The West Virginia Supreme Court of Appeals”;

And,

On page 16, line 77, by striking out subsection (o) in its entirety, and inserting a new subsection (o) to read as follows:

“(o) In addition to the requirements provided in this section, if a physician performs or attempts to perform an abortion, in accordance with the provisions of §16-2R-3, that results in a child being born alive the physician shall:

(1) 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

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

Delegate Young moved to amend the bill on page 19, section 26, line 54, by striking out the words “or dispensing”.

The question before the House being the adoption of the amendment, the same was put and did not prevail.

Delegate Hansen moved to amend the bill on page 13, section 5, lines 6 and 13, by striking out the words “forty-eight” and inserting in lieu thereof, the word “twelve”.

The question before the House being the adoption of the amendment, the same was put and did not prevail.

Delegate Zukoff moved to amend the bill on page 11, section 2, lines 26 through 29, by striking out the following sentence:

“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.”

The question before the House being the adoption of the amendment, the same was put and did not prevail.

Delegates Pushkin and Fleischauer moved to amend the bill on pages 20 and 21, by striking out the provisions of §61-2-8 in their entirety, and inserting in lieu thereof, the following:

“§1. Repeal of section creating a crime to intentionally cause an abortion or miscarriage.

That §61-2-8 of the Code of West Virginia, 1931, as amended, be repealed.”

On the adoption of the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 747**), and there were— yeas 21, nays 67, absent and not voting 12, with the yeas and the absent and not voting being as follows:

Yeas: Anderson, Barach, Diserio, Doyle, Ellington, Fleischauer, Fluharty, Garcia, Griffith, Hansen, Hornbuckle, J. Kelly, Pethtel, Pushkin, Rowe, Skaff, Statler, Thompson, Walker, Young and Zukoff.

Absent and Not Voting: Brown, Espinosa, Evans, Foster, Graves, D. Kelly, Lovejoy, Maynard, Reed, Rohrbach, Summers and Williams.

So, a majority of the members present not having voted in the affirmative, the amendment was rejected.

Delegates Zukoff, Fleischauer, Walker and Young moved to amend the bill on page 12, section 3, line 2, following the word “unless”, by inserting “the pregnancy was the result of rape or incest, or”.

On the adoption of the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 748**), and there were— yeas 20, nays 68, absent and not voting 12, with the yeas and the absent and not voting being as follows:

Yeas: Barach, Boggs, Diserio, Doyle, Fleischauer, Fluharty, Garcia, Griffith, Hansen, Hornbuckle, J. Kelly, Pethtel, Pushkin, Rowe, Skaff, Storch, Thompson, Walker, Young and Zukoff.

Absent and Not Voting: Brown, Espinosa, Evans, Foster, Graves, D. Kelly, Lovejoy, Maynard, Reed, Rohrbach, Summers and Williams.

So, a majority of the members present not having voted in the affirmative, the amendment was rejected.

Delegate Hardy moved to amend the bill on page 11, section 2, by inserting the following definitions in alphabetical order:

“‘Fetal gestational age’ means the time period since the first day of the woman’s last menstrual period.

‘Incest’ means an act which is prohibited by §61-8-12(b).

'Qualified law-enforcement officer' means a law-enforcement officer authorized by §7-14-1 et seq., §8-14-1 et seq., §15-2-1 et seq., and §18B-4-5 of this code: *Provided*, That those persons have been trained and certified as law-enforcement officers and that certification is currently active.

'Probable gestational age of the fetus' means, in reasonable medical judgment and with reasonable probability, the fetal gestational age at the time an abortion is planned to be performed.

'Sexual assault' means an act which is prohibited by §61-8B-3(a), §61-8B-4(a), §61-8B-5(a)(1) and §61-8D-5.'

And,

On page 12, section 3, line 5, by inserting the following:

"In addition to the exceptions provided in §16-2R-3(A)-(C), an abortion may be performed by a licensed medical professional when:

(1) the patient is a victim of sexual assault or incest;

(2) a report is made to a qualified law enforcement officer;

(3) the licensed medical professional determines that probable gestational age of fetus has not exceed 14 weeks; and

(4) the licensed medical professional complies with the provisions of §16-2R-5."

During debate on the amendment, Delegate Fast arose to ask for a ruling of the Chair regarding whether the amendment conflicted or was competing with a pending amendment from Delegate Westfall.

The Speaker replied that adoption of the amendment would preclude consideration of the next amendment.

On the adoption of the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 749**), and there were, including pairs—yeas 46, nays 43, absent and not voting 11, with the paired, the nays and the absent and not voting being as follows:

Pursuant to House Rule 43, the following pairing was filed and announced by the Clerk:

Paired:

Yea: Rohrbach

Nay: Jeffries

Nays: Barnhart, Barrett, Bates, Booth, Burkhammer, Cannon, Conley, Crouse, Dean, Fast, Gearheart, Hanna, Holstein, Honaker, Horst, Householder, Howell, Jennings, Keaton, Kessinger, Kimble, Kimes, Linville, Longanacre, Mallow, Mandt, Martin, Maynor, Mazzocchi, McGeehan,

Miller, Nestor, Paynter, Phillips, Pinson, Pritt, Steele, Sypolt, Toney, B. Ward, G. Ward and Worrell.

Absent and Not Voting: Brown, Espinosa, Evans, Foster, Graves, D. Kelly, Lovejoy, Maynard, Reed, Summers and Williams.

So, a majority of the members present having voted in the affirmative, the amendment was adopted.

The amendment offered by Delegate Westfall which was precluded from consideration by adoption of the amendment by Delegate Hardy, was on page 10, section 2, by inserting the following definitions in alphabetical order within this section:

“Fetal gestational age’ means the time period since the first day of the woman’s last menstrual period.

‘Incest’ means an act which is prohibited by §61-8-12(b).

‘Qualified law-enforcement officer’ means a law-enforcement officer authorized by §7-14-1 et seq., §8-14-1 et seq., §15-2-1 et seq., and §18B-4-5 of this code: *Provided*, That those persons have been trained and certified as law-enforcement officers and that certification is currently active.

‘Minor’ means any child under eighteen years of age.

‘Probable gestational age of the fetus’ means, in reasonable medical judgment and with reasonable probability, the fetal gestational age at the time an abortion is planned to be performed.

‘Sexual assault’ means an act which is prohibited by §61-8B-3(a), §61-8B-4(a), §61-8B-5(a)(1) and §61-8D-5.”

And,

On page 12, section 3, line 5 by inserting the following:

“In addition to the exceptions provided in §16-2R-3(A)-(C), an abortion may be performed by a licensed medical professional when:

(1) the patient is a minor;

(2) the patient is a victim of sexual assault or incest;

(3) a report is made to a qualified law enforcement officer;

(4) the licensed medical professional determines that probable gestational age of fetus has not exceed 14 weeks; and

(5) the licensed medical professional complies with the provisions of §16-2R-5.”

Delegate Fast moved to amend the bill on page 16, section 6, line 1, by striking the word, “is”.

On the adoption of the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 750**), and there were—yeas 77, nays 5, absent and not voting 18, with the nays and the absent and not voting being as follows:

Nays: Doyle, Fleischauer, Griffith, Hansen and Pushkin.

Absent and Not Voting: Bridges, Brown, Burkhammer, Espinosa, Evans, Foster, Garcia, Graves, D. Kelly, Linville, Lovejoy, Maynard, Miller, Pack, Reed, Rohrbach, Summers and Williams.

So, a majority of the members present having voted in the affirmative, the amendment was adopted.

On motion of Delegate Fast, the bill was amended on page 8, line 41, by striking, “(g)” inserting (e) and relettering the remaining subsections accordingly.

There being no further amendments, and having been engrossed, the bill was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 751**), and there were, including pairs—yeas 69, nays 23, absent and not voting 8, with the paired, the nays and the absent and not voting being as follows:

Pursuant to House Rule 43, the following pairings were filed and announced by the Clerk:

Paired:

Yea: Espinosa Nay: J. Kelly

Yea: Rohrbach Nay: Young

Yea: Maynard Nay: Doyle

Yea: Brown Nay: Williams

Nays: Anderson, Barach, Criss, Diserio, Ellington, Fleischauer, Fluharty, Garcia, Griffith, Hansen, Hornbuckle, Pethtel, Pushkin, Rowe, Skaff, Storch, Thompson, Walker and Zukoff.

Absent and Not Voting: Evans, Foster, Graves, D. Kelly, Lovejoy, Reed, Riley and Summers.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (H. B. 302) passed.

On motion of Delegate Jeffries the title of the bill was amended to read as follows:

H. B. 302 – “A Bill to amend and reenact §9-2-11 of the code of West Virginia, 1931, as amended; to amend and reenact §16-2F-9 of said code; of said code; to amend and reenact §16-2I-9 of said code; to amend and reenact §16-2M-7 of said code; to amend and reenact §16-2O-1 of said code; to amend and reenact §16-2P-1 of said code; to amend and reenact §16-2Q-1 of

said code; to amend said code by adding thereto a new article designated, §16-2R-1, §16-2R-2, §16-2R-3, §16-2R-4, §16-2R-5, 16-2R-6 and §16-2R-7; to amend and reenact §30-1-26 of said code; to amend and reenact §33-42-8 of said code; to amend and reenact §61-2-8 of said code; all relating to abortion; providing legislative finding; defining terms; prohibiting abortions; permitting Medicaid to pay for abortions in certain circumstances; providing exemptions to abortions; declaring certain section no longer effective; requiring certain actions to be performed when an exempted abortion is performed; requiring reporting; providing for an administrative hearing; limiting the use of telehealth; prohibiting severability in certain circumstances; providing administrative penalties; and providing criminal penalties.”

Delegate Kessinger moved that the bill take effect from its passage.

On this question, the yeas and nays were taken (**Roll No. 752**), and there were—yeas 70, nays 16, absent and not voting 14, with the nays and the absent and not voting being as follows:

Nays: Barach, Diserio, Fleischauer, Fluharty, Garcia, Griffith, Hansen, Hornbuckle, Pethtel, Pushkin, Rowe, Skaff, Thompson, Walker, Young and Zukoff.

Absent and Not Voting: Brown, Doyle, Espinosa, Evans, Foster, Graves, D. Kelly, Lovejoy, Maynard, Reed, Riley, Rohrbach, Summers and Williams.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 302) takes effect from its passage.

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

Second Reading

H. B. 301, Relating to reducing the personal income tax; on second reading, coming up in regular order was read a second time.

Delegate Kessinger moved that the bill be advanced to third reading with amendments pending and the right to amend.

Objection being heard, the yeas and nays were taken (**Roll No. 753**), and there were—yeas 78, nays 8, absent and not voting 14, with the nays and the absent and not voting being as follows:

Nays: Barach, Fleischauer, Griffith, Hansen, Pushkin, Thompson, Walker and Young.

Absent and Not Voting: Brown, Doyle, Espinosa, Evans, Foster, Graves, D. Kelly, Lovejoy, Maynard, Reed, Riley, Rohrbach, Summers and Williams.

So, two thirds of the members present having voted in the affirmative, the motion was adopted.

The bill was advanced to third reading with amendments pending and the right to amend and the rule was suspended to permit the consideration of the amendments on that reading.

Leaves of Absence

Unanimous consent having been obtained, leaves of absence were granted to all members not present on today.

Miscellaneous Business

Delegate Riley noted to the Clerk that he was absent when the vote was taken on Roll No. 751, and had he been present, he would have voted "Yea" thereon.

At 4:06 p.m., the House of Delegates adjourned until Noon, Thursday, July 28, 2022.

**HOUSE OF DELEGATES
STEPHEN J. HARRISON, Clerk
Building 1, Room M-212
1900 Kanawha Blvd., East
Charleston, WV 25305-0470**

SPECIAL CALENDAR

Thursday, July 28, 2022

4th Day

12 Noon

THIRD READING

H. B. 301 - Relating to reducing the personal income tax [AMENDMENTS PENDING] [RIGHT TO AMEND] (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)

SECOND READING

S. B. 3001 - Relating to family planning services (JULY 1, 2023)

HOUSE CALENDAR

Thursday, July 28, 2022

4th Day

12 Noon

(No Bills)

**WEST VIRGINIA
HOUSE OF DELEGATES**

THURSDAY, JULY 28, 2022

HOUSE CONVENES AT 12:00 NOON

**JOINT COMMITTEE ON FINANCE
9:00 A.M. – ROOM 462 M**

HOUSE OF DELEGATES
STEPHEN J. HARRISON, Clerk
Building 1, Room M-212
1900 Kanawha Blvd., East
Charleston, WV 25305-0470