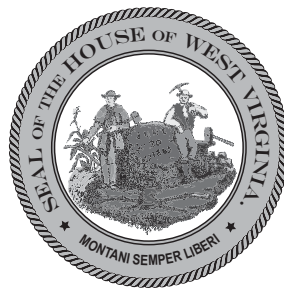


West Virginia Legislature

JOURNAL
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July 29, 2022
FIFTH DAY

Friday, July 29, 2022

FIFTH DAY

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

The House of Delegates 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 Thursday, July 28, 2022, being the first order of business, when the further reading thereof was dispensed with and the same approved.

Resolutions Introduced

Delegates McGeehan, Kessinger, Phillips, Conley, Kimble, Riley and Martin offered the following resolution, which was introduced pursuant to House Rule 109 and reported by the Clerk:

H. R. 301 - "Providing for a statement of the sentiments of the House of Delegates upon the passage of HB 302, West Virginia's law governing abortion."

Whereas, Through *Roe v. Wade* and *Planned Parenthood v. Casey*, the Supreme Court of the United States effectively granted every American woman a constitutional right to abortion, which individual states could restrict or expand, but never eliminate entirely; and

Whereas, The Supreme Court has overturned these decisions as attempts to legislate through the judicial power, has declared itself ignorant as to the moral character of the act of abortion, and has returned the question of abortion to the States and their elected representatives; and

Whereas, The consequence of this change is the immediate elimination of those West Virginia laws, now irrelevant, which limited and restricted constitutionally granted abortion access in the past, and

Whereas, The law of West Virginia now conceptually reverts to what preceded *Roe v. Wade* and *Planned Parenthood v. Casey*, whereby our law implicitly deems the act of abortion immoral for a just society; and

Whereas, West Virginians have historically rejected the status of abortion as a "right", which rejection has been most recently and explicitly confirmed in 2018, with the electorate passing an amendment to the state constitution, specifically denying that the state constitution recognizes a right to abortion; therefore, be it

Resolved by the House of Delegates:

That this Legislature reaffirms West Virginia's historic rejection of abortion as an act ill-fitting for a peaceful and virtuous people, as a society in which abortion is a right is one which devalues the source of its own existence—its mothers and their children; and, be it

Further Resolved, That the maintenance of a peaceful and prosperous society depends upon the subordination of power and interest to the well-being of mothers, as the bearing and rearing of children determines the existence and quality of our common life together with infinitely greater efficacy than any federal or state policy; and, be it

Further Resolved, That we are cognizant that, as an institution, motherhood is prior to the state, and, as such, the state should work to serve mothers and their interests, with the health of any state being determined, in the main, by their health and happiness; and, be it

Further Resolved, That the now defunct legal opinion that mothers must be able to abort their children, regardless of what a state's people have historically believed and legislated regarding the question, inverted this common sense; and, be it

Further Resolved, That rather than protecting the very source of our common life, the overreach of the Court allowed powerful interests to devalue motherhood into a mere option, without privilege or special importance; and, be it

Further Resolved, That the decisions of the United States Supreme Court effectively empowered those who would describe motherhood as a merely a fungible good that could and should be sacrificed to their own interests; including, most obviously, the interests of those private entities which rely on the labor of women and find their capacity to become mothers detrimental to their goals, the interests of those who directly profit from the procurement of abortion, and the interests of those men who would enjoy women merely as sexual partners without becoming partners in their sacrifice as mothers; and, be it

Further Resolved, That such a radical individualism is inconsistent with West Virginia's tradition of honoring those vocations which contribute more directly and more fundamentally to the common good than do others—such as emergency responders and members of the armed services; and, be it

Further Resolved, That by giving us life, motherhood surpasses even the sacrifices inherent in these esteemed vocations; and, be it

Further Resolved, That the state, therefore, ought to treat mothers accordingly with their sacrifices; and, be it

Further Resolved, That we are cognizant that motherhood imposes many obligations upon women; and, be it

Further Resolved, That among these are that mothers are obliged to care for their children, that all decent governments must recognize and enforce this obligation alongside the obligation of fathers, and that parents must provide for the health, safety, education, and emotional well-being of their children; and, be it

Further Resolved, That motherhood does not impose obligations only upon women, nor only upon fathers, but upon all of society, as when a woman becomes a mother she becomes the rightful recipient of society's care and solicitude; and, be it

Further Resolved, That she has a right to this care and solicitude, which empowers her in her ability to care for her children, and at the least, this right demands that the state protect her from

powerful interests that would pressure her, through threats or promises, to reject her elevated position and return her to the ranks of “normal” citizens; and, be it

Further Resolved, That society’s obligation goes beyond such minimal protections offered by the state; and, be it

Further Resolved, That society must positively serve mothers in their most profound and important vocation; and, be it

Further Resolved, That West Virginia’s historic law, which is now in effect, implicitly recognizes the obligation a mother has to her unborn child, and in doing so, it harmonizes with the pre-*Roe* mores and social norms which did, and still do, characterize the people of West Virginia, who do not countenance the neglect of children at any stage of life; and, be it

Further Resolved, That we reiterate that this law emphasizes, in a greater way, the obligation the rest of society has to its mothers, upon whose sacrifices it depends, and whose greater need demands greater care; and, be it

Further Resolved, That therefore, this legislature affirms that the law should not center on the punishment of the mother who undergoes an abortion, but rather punish those with intent to destroy her unborn child; and, be it

Further Resolved, That therefore the law clearly designates as criminal the abortionist, the propagandist, the boss, or anyone else who would abuse their position of relative power over a mother; making rewards of money, personal fidelity, career advancement, power, prestige, or any other good dependent on the destruction of her unborn child; and, be it

Further Resolved, That it was formerly a wisdom common to all participants of the abortion debate that “no woman wants an abortion”, and that even those who otherwise promoted it unreservedly defended their position as one which granted women the capacity to escape some evil—such as poverty, social exclusion, or abuse; and, be it

Further Resolved, That women should never have to make such a hard bargain, and that those persons act detrimental to fundamental social norms, who present motherhood as an obstacle to an otherwise happy life; and, be it

Further Resolved, That just governments have long asserted that they have the duty to protect women from those who would use their relative power in order to “convince” them to perform acts against their conscience; and, be it

Further Resolved, That by returning to our historic rejection of abortion, this legislature recognizes that this duty extends to motherhood; and, be it

Further Resolved, That it takes up the power of the law for the sake of mothers, who do not normally want abortion, and against those that would use their power and influence to make motherhood seem untenable, rather than make abortion seem unnecessary; and, be it

Further Resolved, That the criminalization of abortion must be only the beginning of West Virginia’s post-*Roe* initiatives, and, be it

Further Resolved, that we must turn now to the positive protection and flourishing of mothers, in a return to the most fundamental reasons for the existence of government; and, be it

Further Resolved, that as West Virginians are a moral and decent people, we must now accept the legislative challenge that this decency demands.

Delegate Kessinger asked and obtained unanimous consent that the committee reference be dispensed with, the resolution (H. R. 301) be taken up for immediate consideration.

Subsequently, Delegate Zukoff asked that the resolution be moved to the next afternoon session.

There being no objection, the resolution was moved to after consideration of bills on third reading.

Special Calendar

Third Reading

S. B. 3001, Relating to family planning services; on third reading, coming up in regular order, with amendments pending and the right to amend, was reported by the Clerk.

Delegate Householder moved to amend the bill on page one, following the enacting clause, by striking out the remainder of the bill and inserting the following:

“CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-7h. Required coverage for certain medical sterilization procedures.

(a) The agency shall provide coverage for the cost of health care services pursuant to this article for the cost of the following health care services:

(1) A tubal ligation, bilateral salpingectomy or hysterectomy for female sterilization. For purposes of this section the term ‘tubal ligation’ shall mean a medical procedure that severs and ties the fallopian tubes to prevent pregnancy by blocking the passage of eggs from the ovaries to the uterus; the term ‘salpingectomy’ shall mean a surgical procedure where one or both of a woman’s fallopian tubes are removed; and the term ‘hysterectomy’ shall mean a surgery to remove a woman’s uterus; and

(2) A vasectomy for male sterilization. For purposes of this section the term ‘vasectomy’ shall mean a medical procedure that prevents the supply of sperm from entering the urethra by cutting and/or sealing the vas deferens tube that carries semen.

(b) The coverage for these health care services shall not require multiple office visits, waiting periods, or prior authorization prior to the delivery of health care services as set forth in this section.

(c) This section applies to all coverage issued by this agency delivered, issued for delivery, reissued, or extended in the state on and after January 1, 2023, or at any time thereafter when any term of the policy, contract, or plan is changed, or any premium adjustment is made.

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-10a. Credit for nonfamily adoption Adoption tax credit.

(a) For tax years beginning before December 31, 2022, A a one time credit against the tax imposed by the provisions of this article shall be allowed as follows:

Nonfamily adoptions. — For nonfamily adoptions, the credit is equal to \$4,000 which may be taken in the year of the adoption of each nonfamily child, whose age at adoption is under eighteen years. This credit may, at the option of the taxpayer, be taken over a period of three years.

For the purpose of this section and credit ‘nonfamily adoptions’ means adoptions of a child or children by a taxpayer or taxpayers who are not the father, mother, or stepparent of the child.

(b) For tax years beginning after December 31, 2022, a tax credit against the tax imposed by the provisions of this article is allowed for a taxpayer for the qualified expenses paid by taxpayer in the process of an adoption. The tax credit shall not exceed \$5,000 per qualified child.

(c) (1) The tax credit provided for in subsection (b) of this section shall be allowed for any expense paid or incurred before the taxable year in which the adoption was final for the taxable year following the taxable year during which the expense was paid or incurred, or

(2) In the case of an expense paid or incurred during or after the taxable year in which the adoption shall become final for the taxable year in which such expense is paid or incurred.

(3) Under no circumstances shall the total aggregate tax credit provided for in subsection (b) of this section exceed the amount of \$5,000 per qualified child.

(d) (1) For purposes of the tax credit provided for in subsection (b) of this section, the tax credit allowed may be taken by only one taxpayer if there is more than one taxpayer in the household.

(2) Married individuals filing a joint return shall be treated as one taxpayer.

(3) In the case of individuals not described in subdivision (2) of this subsection who are members of the same household, only the taxpayer with the highest adjusted gross income for the taxable year may take the credit. Once the election of who may claim the tax credit has been made, that election is binding for the tax year for which it is made and for subsequent tax years, unless changed pursuant to specific authorization of the Tax Commissioner, for good cause shown.

(e) (1) For the purposes of this section the term ‘qualified adoption expenses’ means reasonable and necessary adoption fees, court costs, attorney fees, home study expenses, and other expenses:

(A) Which are directly related to, and the principal purpose of which is for, the legal adoption of a qualified child by the taxpayer;

(B) Which are not incurred in violation of state or federal law or in carrying out any surrogate parenting arrangement;

(C) Which are not expenses in connection with the adoption by an individual of a child who is the child of such individual's spouse;

(D) Which are not reimbursed under an employer program or otherwise; and

(E) Which are not allowed as a credit pursuant to any other provision of this article.

(2) For the purposes of this section an 'qualified child' shall mean a child who meets the following criteria:

(A) A child who has not attained the age of 18 years;

(B) A child who is the subject of an adoption proceeding;

(C) A child who is a citizen or resident of the United States; and

(D) A child who is a resident of this state or, if a resident of another state, the adoptive parent is a relative of the child. For purposes of this subdivision, the term 'relative of the child' shall have the meaning ascribed in §49-1-206 of this code.

(f) The credit authorized under subsection (b) of this section may, at the election of the eligible taxpayer, be taken as a refundable tax credit in the taxable year in which the taxpayer has first established entitlement thereto as specified in this section, or at the election of the eligible taxpayer, over a period of three successive taxable years, beginning in the taxable year in which credit entitlement is authorized as specified in this section. The credit may not be carried back to any prior taxable year.

(g) The Tax Commissioner may propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code. The Tax Commissioner may also promulgate or adopt procedural or interpretive rules, as appropriate to assist in administering this section.

§11-21-16. West Virginia personal exemptions of resident individual.

(a) *General.* — For any tax imposed under the provisions of this article with respect to any taxable year prior to January 1, 1983, a resident individual shall be allowed a West Virginia exemption of \$600 for each exemption for which he or she is entitled to a deduction for the taxable year for federal income tax purposes. With respect to any taxable year beginning on or after January 1, 1983, and prior to January 1, 1984, said exemption shall be \$700; with respect to any taxable year beginning on or after January 1, 1984, said exemption shall be \$800; and with respect to any taxable year beginning on or after January 1, 1987, said exemption shall be \$2,000. In addition, for tax years beginning on or after January 1, 2023, the resident individual shall be allowed a West Virginia exemption of \$2,000 for an unborn child of the resident individual. For purposes of this section, an 'unborn child' means a member of the species homo sapiens, at any stage of development, who is carried in the womb and is not aborted.

(b) *Husband and wife.* — If the West Virginia income taxes of a husband and wife are separately determined but their federal income tax is determined on a joint return, each of them shall be separately entitled, with respect to any taxable year prior to January 1, 1983, to a West Virginia exemption of \$600 for each federal exemption to which he or she would be separately entitled for the taxable year if their federal income taxes had been determined on separate returns. With respect to any taxable year beginning on or after January 1, 1983, and prior to January 1, 1984, said exemption shall be \$700; with respect to any taxable year beginning on or after January 1, 1984, said exemption shall be \$800; and with respect to any taxable year beginning on or after January 1, 1987, said exemption shall be \$2,000.

(c) *Surviving spouse.* — For taxable years beginning after December 31, 1986, a surviving spouse shall be allowed one additional exemption of \$2,000 for the two taxable years beginning after the year of death of the deceased spouse.

For purposes of this section and section twelve of this article, a surviving spouse means a taxpayer whose spouse died during the taxable year prior to the taxable year for which the annual return is being filed and who has not remarried at any time before the end of the taxable year for which the annual return is being filed.

(d) *Certain dependents.* — Notwithstanding any provisions in this section, for taxable years beginning after December 31, 1986, a resident individual whose exemption amount for federal tax purposes is zero by virtue of section 151(d)(2) of the Internal Revenue Code of 1986, shall be allowed a single West Virginia exemption in the amount of \$500.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5K. EARLY INTERVENTION SERVICES FOR CHILDREN WITH DEVELOPMENTAL DELAYS.

§16-5K-7. Early intervention services for adopted children.

(a) Effective July 1, 2023, a child or children adopted on and after that date whose adoptive parent or parents are residents of West Virginia shall be eligible for any early intervention services provided for families which may be offered by the Department of Health and Human Resources. These services shall include, but are not limited to, Right From the Start, Drug Free Moms and Babies, and Birth to Three.

(b) If an early intervention program has federal mandated eligibility requirements as a condition of the receipt of federal funds, an adoptive parent or parents and their newly adopted child or children may be required to meet those federally mandated eligibility requirements for participation in the program.

(c) The Department of Health and Human Resources shall recruit additional sites to expand the Drug Free Moms and Babies program and report back to the Legislature if additional funding becomes necessary to operate these sites.

(d) The Bureau for Medical Services shall seek approval of and implement a Medicaid state plan amendment to meet the requirements of this section if the program is offered through or funded by the state Medicaid program and a state Medicaid plan amendment would be necessary to effectuate the purposes of this section.

(e) Use of early intervention services are optional to an adoptive parent or parents and nothing in this section should be construed to require an adoptive parent or parents to use any early intervention service as provided in this section.

ARTICLE 58. FAMILY PLANNING ACCESS ACT.

§16-58-3. Authorization to dispense self-administered hormonal contraceptives.

(a) A pharmacist licensed under §30-5-1 *et seq.* of this code may dispense a self-administered hormonal contraceptive: (1) pursuant to a standing prescription drug order made in accordance with ~~§16-57-4~~ §16-58-4 of this code without any other prescription drug order from a person licensed to prescribe a self-administered hormonal contraceptive; and (2) in accordance with the dispensing guidelines in ~~§16-57-6~~ §16-58-6 of this code; ~~and (3) to a patient who is 18 years old or older.~~ Provided, That prior to dispensing a contraceptive pursuant to this section to an unemancipated minor, the pharmacist shall receive authorization in person, in writing or by telephone from the parent, guardian or custodian of the unemancipated minor.

(b) All state and federal laws governing insurance coverage of contraceptive drugs, devices, products, and services shall apply to self-administered contraceptives dispensed by a pharmacist under a standing order pursuant to this section.

§16-58-4. Standing prescription drug orders for a self-administered hormonal contraceptive.

(a) The state health officer may shall prescribe on a statewide basis a self-administered hormonal contraceptive by one or more standing orders in accordance with a protocol consistent with the United States Medical Eligibility Criteria for Contraceptive Use (MEC) Centers for Disease Control and Prevention, that requires:

(1) Use of the self-screening risk assessment questionnaire described below;

(2) Written and oral education;

(3) The timeline for renewing and updating the standing order;

(4) Who is eligible to utilize the standing order;

(5) The pharmacist to make and retain a record of each person to whom the self-administered hormonal contraceptive is dispensed, including:

(A) The name of the person;

(B) The drug dispensed; and

(C) Other relevant information.

(b) The state health officer acting in good faith in any act permitted or required by this article is immune from liability for any civil action arising out of any act or omission resulting from his or her actions related the prescribing of self-administered hormonal contraceptives unless the act or omission was the result of his or her gross negligence or willful misconduct.

§16-58-6. Guidelines for dispensing a self-administered hormonal contraceptive.

(a) A pharmacist who dispenses a self-administered hormonal contraceptive under this article:

(1) Shall obtain a completed self-screening risk assessment questionnaire that has been approved by the state health officer in collaboration with the Board of Pharmacy, the Board of Osteopathic Medicine, and the Board of Medicine from the patient before dispensing the self-administered hormonal contraceptive;

(2) Shall notify the patient's primary care provider, if provided;

(3) If when dispensing within the guidelines it is unsafe to dispense a self-administered hormonal contraceptive to a patient then the pharmacist:

(A) May not dispense a self-administered hormonal contraceptive to the patient; and

(B) Shall refer the patient to a health care practitioner or local health department;

(4) May not continue to dispense a self-administered hormonal contraceptive to the patient for more than 12 months after the date of the initial prescription without evidence that the patient has consulted with a health care practitioner during the preceding 12 months; and

(5) Shall provide the patient with:

(A) Written and verbal information regarding:

(i) The importance of seeing the patient's health care practitioner to obtain recommended tests and screening; and

(ii) The effectiveness and availability of long-acting reversible contraceptives and other effective contraceptives as an alternative to self-administered hormonal contraceptives; and

(B) A copy of the record of the encounter with the patient that includes:

(i) The patient's completed self-assessment tool; and

(ii) A description of the contraceptives dispensed, or the basis for not dispensing a contraceptive.

(b) If a pharmacist dispenses a self-administered hormonal contraceptive to a patient, the pharmacist shall, at a minimum, provide the patient counseling regarding:

(1) The appropriate administration and storage of the self-administered hormonal contraceptive;

(2) Potential side effects and risks of the self-administered hormonal contraceptive;

(3) The need for backup contraception;

(4) When to seek emergency medical attention;

(5) The risk of contracting a sexually transmitted infection or disease, and ways to reduce the risk of contraction; and

(6) Any additional counseling outlined in the protocol as prescribed in ~~§16-57-4~~ §16-58-4 of this code.

(c) The Board of Pharmacy regulates a pharmacist who dispenses a self-administered hormonal contraceptive under this article.

§16-58-7. Dispensing and payment for hormonal and non-hormonal contraceptives.

(a) Beginning July 1, 2023, a local health department as set forth in §16-2-1 et seq. shall prescribe and dispense, as appropriate and medically indicated, both hormonal and non-hormonal contraceptives free of charge.

ARTICLE 63. SUPPORT FOR MOTHERS AND BABIES ACT.

§16-63-1. Definitions.

The following terms are defined:

'Abortion Industry Organization' means any organization that performs, prescribes, refers for, encourages or promotes abortion as an option for a pregnant woman, or owns, operates, or manages a facility where abortions are performed and prescribed. The term 'Organization' means the entire legal entity, including any entity or affiliate that controls, is controlled by, or is under common control with such an entity.

'Pregnancy Help Organization' means an organization that seeks to provide a range of services to individuals facing an unintended pregnancy, with the intention of encouraging pregnant women to give birth to their unborn children. Pregnancy Help Organizations do not perform, prescribe, refer for or encourage abortion, as defined above, nor do they affiliate with any organization that performs, prescribes, refers for, or encourages abortion. Pregnancy Help Organizations include, but are not limited to, organizations traditionally known as 'crisis pregnancy organizations,' maternity homes, adoption agencies, and social services agencies that provide material support and other assistance to individuals facing an unintended pregnancy with the intent to help those individuals give birth to their unborn child.

'Management Agency' means an organization that contracts with the Bureau for Public Health, or department thereof to manage the Women and Babies Support Program.

'Subcontractor' means a Pregnancy Help Organization that contracts with the Management Agency to provide Pregnancy Support Program services to individuals.

§16-63-2. Establishing the West Virginia Mothers and Babies Pregnancy Support Program

(a) There is established the West Virginia Mothers and Babies Pregnancy Support Program under the Bureau for Public Health.

(b) The Commissioner of the Bureau for Public Health shall annually provide funding from the Bureau's budget to be distributed to Pregnancy Help Organizations.

(c) A Pregnancy Help Organization is eligible to receive funding under the Mothers and Babies Support Program, subject to meeting the standards defined by the Managing Agency.

(d) Organizations meeting the definition of an Abortion Industry Organization under this statute are specifically excluded from receiving funding under the Pregnancy Support Program.

(e) Funds distributed under the Mothers and Babies Support Program shall be distributed on a fee per service arrangement with a fee per service/hour arrangement as set by the Management Agency.

§16-63-3. Management Agency.

(a) The Bureau shall contract with one or more Management Agency that exclusively promote and support childbirth and are knowledgeable and supportive of Pregnancy Help Organization operations to receive the funds and administer the Pregnancy Support Program, as the Program's Management Agency.

(b) The Management Agency may not perform, prescribe, refer for, advocate for, or encourage abortion; nor may they affiliate or hold any relationship with any Abortion Industry Organization or any entity that controls, is controlled by, or is under common control with an Abortion Industry Organization.

(c) The Management Agency shall be tasked with the following:

(1) Locating and advertising Program participation to Pregnancy Help Organizations within the state.

(2) Establishing qualification requirements for Pregnancy Help Organization participation which may include, but are not limited to:

(A) Adherence to the 'Commitment of Care and Competence,' as established by the Leadership Alliance of Pregnancy Care Organizations.

(B) Participation in trainings organized or led by the Management Agency.

(C) Maintaining policies and processes for child abuse reporting, medical emergencies, and/or addressing client complaints.

(D) Requiring a policy that Pregnancy Help Organizations abide by all applicable federal and state laws.

(E) Requiring annual evaluations of Pregnancy Help Organization staff and volunteers that interact with clients.

(F) Registration as a 501(c)(3) nonprofit organization.

(3) Establishing Invoicing and Reimbursement for Pregnancy Help Organizations receiving funding under the Pregnancy Support Program, including a fee or service schedule whereby costs for each service are set forth.

(4) Establishing statistical standards and other reporting requirements.

(5) Establishing an auditing procedure for Pregnancy Help Organizations to ensure financial and operational accountability.

(d) The Management Agency must enter into contracts with Pregnancy Help Organizations to operate as subcontractors for serving individuals under the Pregnancy Support Program.

CHAPTER 33. INSURANCE.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-4x. Required coverage for certain medical sterilization procedures.

(a) An insurance policy or plan issued by an insurer pursuant to this article that provides coverage for contraceptives health care services shall provide coverage for the cost of the following health care services:

(1) A tubal ligation, bilateral salpingectomy or hysterectomy for female sterilization. For purposes of this section the term 'tubal ligation' shall mean a medical procedure that severs and ties the fallopian tubes to prevent pregnancy by blocking the passage of eggs from the ovaries to the uterus; the term 'salpingectomy' shall mean a surgical procedure where one or both of a woman's fallopian tubes are removed; and the term 'hysterectomy' shall mean a surgery to remove a woman's uterus; and

(2) A vasectomy for male sterilization. For purposes of this section the term 'vasectomy' shall mean a medical procedure that prevents the supply of sperm from entering the urethra by cutting and/or sealing the vas deferens tube that carries semen.

(b) The coverage for these health care services shall not require multiple office visits, waiting periods, or prior authorization prior to the delivery of health care services as set forth in this section.

(c) The requirements of this section shall apply to all insurance policies issued by an insurer pursuant to this article delivered, issued for delivery, reissued, or extended in the state on and after January 1, 2023, or at any time thereafter when any term of the policy, contract, or plan is changed, or any premium adjustment is made.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3ww. Required coverage for certain medical sterilization procedures.

(a) An insurance policy or plan issued by an insurer pursuant to this article that provides coverage for contraceptives health care services shall provide coverage for the cost of the following health care services:

(1) A tubal ligation, bilateral salpingectomy or hysterectomy for female sterilization. For purposes of this section the term 'tubal ligation' shall mean a medical procedure that severs and ties the fallopian tubes to prevent pregnancy by blocking the passage of eggs from the ovaries to the uterus; the term 'salpingectomy' shall mean a surgical procedure where one or both of a woman's fallopian tubes are removed; and the term 'hysterectomy' shall mean a surgery to remove a woman's uterus; and

(2) A vasectomy for male sterilization. For purposes of this section the term 'vasectomy' shall mean a medical procedure that prevents the supply of sperm from entering the urethra by cutting and/or sealing the vas deferens tube that carries semen.

(b) The coverage for these health care services shall not require multiple office visits, waiting periods, or prior authorization prior to the delivery of health care services as set forth in this section.

(c) The requirements of this section shall apply to all insurance policies issued by an insurer pursuant to this article delivered, issued for delivery, reissued, or extended in the state on and after January 1, 2023, or at any time thereafter when any term of the policy, contract, or plan is changed, or any premium adjustment is made.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

§33-24-7x. Required coverage for certain medical sterilization procedures.

(a) A contract, plan or agreement issued by an insurer pursuant to this article that provides coverage for contraceptives health care services shall provide coverage for the cost of the following health care services:

(1) A tubal ligation, bilateral salpingectomy or hysterectomy for female sterilization. For purposes of this section the term ‘tubal ligation’ shall mean a medical procedure that severs and ties the fallopian tubes to prevent pregnancy by blocking the passage of eggs from the ovaries to the uterus; the term ‘salpingectomy’ shall mean a surgical procedure where one or both of a woman’s fallopian tubes are removed; and the term ‘hysterectomy’ shall mean a surgery to remove a woman’s uterus; and

(2) A vasectomy for male sterilization. For purposes of this section the term ‘vasectomy’ shall mean a medical procedure that prevents the supply of sperm from entering the urethra by cutting and/or sealing the vas deferens tube that carries semen.

(b) The coverage for these health care services shall not require multiple office visits, waiting periods, or prior authorization prior to the delivery of health care services as set forth in this section.

(c) The requirements of this section shall apply to all insurance policies issued by an insurer pursuant to this article delivered, issued for delivery, reissued, or extended in the state on and after January 1, 2023, or at any time thereafter when any term of the policy, contract, or plan is changed, or any premium adjustment is made.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8u. Required coverage for certain medical sterilization procedures.

(a) A contract, plan or agreement issued by an insurer pursuant to this article that provides coverage for contraceptives health care services shall provide coverage for the cost of the following health care services:

(1) A tubal ligation, bilateral salpingectomy or hysterectomy for female sterilization. For purposes of this section the term ‘tubal ligation’ shall mean a medical procedure that severs and ties the fallopian tubes to prevent pregnancy by blocking the passage of eggs from the ovaries to the uterus; the term ‘salpingectomy’ shall mean a surgical procedure where one or both of a

woman's fallopian tubes are removed; and the term 'hysterectomy' shall mean a surgery to remove a woman's uterus; and

(2) A vasectomy for male sterilization. For purposes of this section the term 'vasectomy' shall mean a medical procedure that prevents the supply of sperm from entering the urethra by cutting and/or sealing the vas deferens tube that carries semen.

(b) The coverage for these health care services shall not require multiple office visits, waiting periods, or prior authorization prior to the delivery of health care services as set forth in this section.

(c) The requirements of this section shall apply to all insurance policies issued by an insurer pursuant to this article delivered, issued for delivery, reissued, or extended in the state on and after January 1, 2023, or at any time thereafter when any term of the policy, contract, or plan is changed, or any premium adjustment is made.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8x. Required coverage for certain medical sterilization procedures.

(a) A contract, plan or agreement issued by an insurer pursuant to this article that provides coverage for contraceptives health care services shall provide coverage for the cost of the following health care services:

(1) A tubal ligation, bilateral salpingectomy or hysterectomy for female sterilization. For purposes of this section the term 'tubal ligation' shall mean a medical procedure that severs and ties the fallopian tubes to prevent pregnancy by blocking the passage of eggs from the ovaries to the uterus; the term 'salpingectomy' shall mean a surgical procedure where one or both of a woman's fallopian tubes are removed; and the term 'hysterectomy' shall mean a surgery to remove a woman's uterus; and

(2) A vasectomy for male sterilization. For purposes of this section the term 'vasectomy' shall mean a medical procedure that prevents the supply of sperm from entering the urethra by cutting and/or sealing the vas deferens tube that carries semen.

(b) The coverage for these health care services shall not require multiple office visits, waiting periods, or prior authorization prior to the delivery of health care services as set forth in this section.

(c) The requirements of this section shall apply to all insurance policies issued by an insurer pursuant to this article delivered, issued for delivery, reissued, or extended in the state on and after January 1, 2023, or at any time thereafter when any term of the policy, contract, or plan is changed, or any premium adjustment is made.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 11. SUPPORT OF CHILDREN.

§48-11-101. General provisions relating to child support.

(a) It is one of the purposes of the Legislature in enacting this chapter to improve and facilitate support enforcement efforts in this state, with the primary goal being to establish and enforce reasonable child support orders and thereby improve opportunities for children. It is the intent of the Legislature that to the extent practicable, the laws of this state should encourage and require a child's parents to meet the obligation of providing that child with adequate food, shelter, clothing, education, and health and child care.

(b) When the domestic relations action involves a minor child or children, the court shall require either party to pay child support in the form of periodic installments for the maintenance of the minor children of the parties in accordance with support guidelines promulgated pursuant to article 13-101, *et seq.*, of this chapter. Payments of child support are to be ordinarily made from a party's income, but in cases when the income is not sufficient to adequately provide for those payments, the court may, upon specific findings set forth in the order, order the party required to make those payments to make them from the corpus of his or her separate estate.

(c) A pregnant mother may seek child support from the father for her unborn child for up to the total cost of all direct pregnancy-related medical expenses. Once the child is born, the current child support law would take effect.

CHAPTER 49. CHILD WELFARE.

ARTICLE 4. COURT ACTIONS.

§49-4-405. Multidisciplinary treatment planning process involving child abuse and neglect; team membership; duties; reports; admissions.

(a) Within 30 days of the initiation of a judicial proceeding pursuant to ~~part six, of this article §49-4-601~~ of this code, the Department of Health and Human Services shall convene a multidisciplinary treatment team to assess, plan, and implement a comprehensive, individualized service plan for children who are victims of abuse or neglect and their families. The circuit court shall set aside one day each month to enable multidisciplinary treatment teams to meet. The multidisciplinary team shall obtain and utilize any assessments for the children or the adult respondents that it deems necessary to assist in the development of that plan.

(b) In a case initiated pursuant to ~~part six of this article §49-4-601~~ of this code, the treatment team consists of:

- (1) The child or family's case manager in the Department of Health and Human Resources;
- (2) The adult respondent or respondents;
- (3) The child's parent or parents, guardians, any co-petitioners, custodial relatives of the child, foster or preadoptive parents;
- (4) Any attorney representing an adult respondent or other member of the treatment team;
- (5) The child's counsel or the guardian ad litem;
- (6) The prosecuting attorney or his or her designee;

(7) A member of a child advocacy center when the child has been processed through the child advocacy center program or programs or it is otherwise appropriate that a member of the child advocacy center participate;

(8) Any court-appointed special advocate assigned to a case;

(9) Any other person entitled to notice and the right to be heard;

(10) An appropriate school official; and

(11) The managed care case coordinator;

(12) The child placing agency case coordinator; and

~~(11)~~(13) Any other person or agency representative who may assist in providing recommendations for the particular needs of the child and family, including domestic violence service providers.

The child may participate in multidisciplinary treatment team meetings if the child's participation is deemed appropriate by the multidisciplinary treatment team. Unless otherwise ordered by the court, a party whose parental rights have been terminated and his or her attorney may not be given notice of a multidisciplinary treatment team meeting and does not have the right to participate in any treatment team meeting.

(c) Prior to disposition in each case which a treatment planning team has been convened, the team shall advise the court as to the types of services the team has determined are needed and the type of placement, if any, which will best serve the needs of the child. If the team determines that an out-of-home placement will best serve the needs of the child, the team shall first consider placement with appropriate relatives then with foster care homes, facilities or programs located within the state. The team may only recommend placement in an out-of-state facility if it concludes, after considering the best interests and overall needs of the child, that there are no available and suitable in-state facilities which can satisfactorily meet the specific needs of the child.

(d) The multidisciplinary treatment team shall submit written reports to the court as required by the rules governing this type of proceeding or by the court, and shall meet as often as deemed necessary but at least every three months until the case is dismissed from the docket of the court. The multidisciplinary treatment team shall be available for status conferences and hearings as required by the court.

(e) If a respondent or co-petitioner admits the underlying allegations of child abuse or neglect, or both abuse and neglect, in the multidisciplinary treatment planning process, his or her statements may not be used in any subsequent criminal proceeding against him or her, except for perjury or false swearing.

§49-4-406. Multidisciplinary treatment process for status offenders or delinquents; requirements; custody; procedure; reports; cooperation; inadmissibility of certain statements.

(a) When a juvenile is adjudicated as a status offender pursuant to §49-4-711 of this code, the Department of Health and Human Resources shall promptly convene a multidisciplinary

treatment team and conduct an assessment, utilizing a standard uniform comprehensive assessment instrument or protocol, including a needs assessment, to determine the juvenile's mental and physical condition, maturity and education level, home and family environment, rehabilitative needs and recommended service plan, which shall be provided in writing to the court and team members. Upon completion of the assessment, the treatment team shall prepare and implement a comprehensive, individualized service plan for the juvenile.

(b) When a juvenile is adjudicated as a delinquent or has been granted a pre-adjudicatory community supervision period pursuant to §49-4-708 of this code, the court, either upon its own motion or motion of a party, may require the Department of Health and Human Resources to convene a multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform comprehensive assessment instrument or protocol, including a needs assessment, to determine the juvenile's mental and physical condition, maturity and education level, home and family environment, rehabilitative needs and recommended service plan, which shall be provided in writing to the court and team members. A referral to the Department of Health and Human Resources to convene a multidisciplinary treatment team and to conduct such an assessment shall be made when the court is considering placing the juvenile in the department's custody or placing the juvenile out-of-home at the department's expense pursuant to §49-4-714 of this code. In any delinquency proceeding in which the court requires the Department of Health and Human Resources to convene a multidisciplinary treatment team, the probation officer shall notify the department at least 15 working days before the court proceeding in order to allow the department sufficient time to convene and develop an individualized service plan for the juvenile.

(c) When a juvenile has been adjudicated and committed to the custody of the Director of the Division of Corrections and Rehabilitation, including those cases in which the juvenile has been committed for examination and diagnosis, or the court considers commitment for examination and diagnosis, the Division of Corrections and Rehabilitation shall promptly convene a multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform comprehensive assessment instrument or protocol, including a needs assessment, to determine the juvenile's mental and physical condition, maturity and education level, home and family environment, rehabilitative needs and recommended service plan. Upon completion of the assessment, the treatment team shall prepare and implement a comprehensive, individualized service plan for the juvenile, which shall be provided in writing to the court and team members. In cases where the juvenile is committed as a post-sentence disposition to the custody of the Division of Corrections and Rehabilitation, the plan shall be reviewed quarterly by the multidisciplinary treatment team. Where a juvenile has been detained in a facility operated by the Division of Corrections and Rehabilitation without an active service plan for more than 60 days, the director of the facility may call a multidisciplinary team meeting to review the case and discuss the status of the service plan.

(d)(1) The rules of juvenile procedure shall govern the procedure for obtaining any assessment of a juvenile, preparing an individualized service plan and submitting the plan and any assessment to the court.

(2) In juvenile proceedings conducted pursuant to §49-4-701 *et seq.* of this code, the following representatives shall serve as members and attend each meeting of the multidisciplinary treatment team, so long as they receive notice at least seven days prior to the meeting:

(A) The juvenile;

(B) The juvenile's case manager in the Department of Health and Human Resources or the Division of Corrections and Rehabilitation;

(C) The juvenile's parent, guardian or custodian;

(D) The juvenile's attorney;

(E) Any attorney representing a member of the multidisciplinary treatment team;

(F) The prosecuting attorney or his or her designee;

(G) The county school superintendent or the superintendent's designee;

(H) A treatment or service provider with training and clinical experience coordinating behavioral or mental health treatment; ~~and~~

(I) The managed care case coordinator; and

(J) Any other person or agency representative who may assist in providing recommendations for the particular needs of the juvenile and family, including domestic violence service providers. In delinquency proceedings, the probation officer shall be a member of a multidisciplinary treatment team. When appropriate, the juvenile case manager in the Department of Health and Human Resources and the Division of Corrections and Rehabilitation shall cooperate in conducting multidisciplinary treatment team meetings when it is in the juvenile's best interest.

(3) Prior to disposition, in each case in which a treatment planning team has been convened, the team shall advise the court as to the types of services the team has determined are needed and type of placement, if any, which will best serve the needs of the child. If the team determines that an out-of-home placement will best serve the needs of the child, the team shall first consider placement at facilities or programs located within the state. The team may only recommend placement in an out-of-state facility if it concludes, after considering the best interests and overall needs of the child, that there are no available and suitable in-state facilities which can satisfactorily meet the specific needs of the child. The multidisciplinary treatment team shall also determine and advise the court as to the individual treatment and rehabilitation plan recommended for the child for either out-of-home placement or community supervision. The plan may focus on reducing the likelihood of reoffending, requirements for the child to take responsibility for his or her actions, completion of evidence-based services or programs or any other relevant goal for the child. The plan may also include opportunities to incorporate the family, custodian or guardian into the treatment and rehabilitation process.

(4) The multidisciplinary treatment team shall submit written reports to the court as required by applicable law or by the court, shall meet with the court at least every three months, as long as the juvenile remains in the legal or physical custody of the state, and shall be available for status conferences and hearings as required by the court. The multidisciplinary treatment team shall monitor progress of the plan identified in subdivision (3) of this subsection and review progress of the plan at the regular meetings held at least every three months pursuant to this section, or at shorter intervals, as ordered by the court, and shall report to the court on the progress of the plan or if additional modification is necessary.

(5) In any case in which a juvenile has been placed out of his or her home except for a temporary placement in a shelter or detention center, the multidisciplinary treatment team shall

cooperate with the state agency in whose custody the juvenile is placed to develop an after-care plan. The rules of juvenile procedure and §49-4-409 of this code govern the development of an after-care plan for a juvenile, the submission of the plan to the court and any objection to the after-care plan.

(6) If a juvenile respondent admits the underlying allegations of the case initiated pursuant to §49-4-701 through §49-4-725 of this code, in the multidisciplinary treatment planning process, his or her statements may not be used in any juvenile or criminal proceedings against the juvenile, except for perjury or false swearing.

§49-4-601. Petition to court when child believed neglected or abused; venue; notice; right to counsel; continuing legal education; findings; proceedings; procedure.

(a) *Petitioner and venue.* — If the department or a reputable person believes that a child is neglected or abused, the department or the person may present a petition setting forth the facts to the circuit court in the county in which the child resides, or if the petition is being brought by the department, in the county in which the custodial respondent or other named party abuser resides, or in which the abuse or neglect occurred, or to the judge of the court in vacation. Under no circumstance may a party file a petition in more than one county based on the same set of facts.

(b) *Contents of Petition.* — The petition shall be verified by the oath of some credible person having knowledge of the facts. The petition shall allege specific conduct including time and place, how the conduct comes within the statutory definition of neglect or abuse with references to the statute, any supportive services provided by the department to remedy the alleged circumstances, and the relief sought. Each petition shall name as a party each parent, guardian, custodian, other person standing in loco parentis of or to the child allegedly neglected or abused and state with specificity whether each parent, guardian, custodian, or person standing in loco parentis is alleged to have abused or neglected the child.

(c) *Court action upon filing of petition.* — Upon filing of the petition, the court shall set a time and place for a hearing and shall appoint counsel for the child. When there is an order for temporary custody pursuant to this article, the preliminary hearing shall be held within ~~ten~~ 10 days of the order continuing or transferring custody, unless a continuance for a reasonable time is granted to a date certain, for good cause shown.

(d) *Department action upon filing of the petition.* — At the time of the institution of any proceeding under this article, the department shall provide supportive services in an effort to remedy circumstances detrimental to a child.

(e) *Notice of hearing.* —

(1) The petition and notice of the hearing shall be served by the sheriff's office, without additional compensation, upon both parents and any other guardian, custodian, or person standing in loco parentis, giving to the persons at least five days' actual notice of a preliminary hearing and at least ten days' notice of any other hearing.

(2) Notice shall be given to the department, any foster or pre-adoptive parent, and any relative providing care for the child.

(3) In cases where personal service within West Virginia cannot be obtained after due diligence upon any parent or other custodian, a copy of the petition and notice of the hearing shall

be mailed to the person by certified mail, addressee only, return receipt requested, to the last known address of the person. If the person signs the certificate, service is complete and the certificate shall be filed as proof of the service with the clerk of the circuit court.

(4) If service cannot be obtained by personal service or by certified mail, notice shall be by publication as a Class II legal advertisement in compliance with ~~article three, chapter fifty-nine~~ §59-3-1 et seq. of this code.

(5) A notice of hearing shall specify the time and place of the hearings, the right to counsel of the child, parents, and other guardians, custodians, and other persons standing in loco parentis with the child and the fact that the proceedings can result in the permanent termination of the parental rights.

(6) Failure to object to defects in the petition and notice may not be construed as a waiver.

(f) *Right to counsel.* —

(1) In any proceeding under this article, the child shall have counsel to represent his or her interests at all stages of the proceedings.

(2) The court's initial order shall appoint counsel for the child, and for any parent, guardian, custodian, or other person standing in loco parentis with the child if such person is without retained counsel.

(3) The court shall, at the initial hearing in the matter, determine whether persons other than the child for whom counsel has been appointed:

(A) Have retained counsel; and

(B) Are financially able to retain counsel.

(4) A parent, guardian, custodian, or other person standing in loco parentis with the child who is alleged to have neglected or abused the child and who has not retained counsel and is financially unable to retain counsel beyond the initial hearing, shall be afforded appointed counsel at every stage of the proceedings.

(5) Under no circumstances may the same attorney represent both the child and another party. The same attorney may not represent more than one parent or custodian: *Provided*, That one attorney may represent both parents or custodians where both parents or custodians consent to this representation after the attorney fully discloses to the client the possible conflict and where the attorney advises the court that he or she is able to represent each client without impairing his or her professional judgment; if more than one child from a family is involved in the proceeding, one attorney may represent all the children.

(6) A parent who is a co-petitioner is entitled to his or her own attorney.

(7) The court may allow to each attorney appointed pursuant to this section a fee in the same amount which appointed counsel can receive in felony cases.

(8) The court shall, sua sponte or upon motion, appoint counsel to any unrepresented party if, at any stage of the proceedings, the court determines doing so is necessary to satisfy the requirements of fundamental fairness.

(g) *Continuing education for counsel.* — Any attorney representing a party under this article shall receive a minimum of eight hours of continuing legal education training per reporting period on child abuse and neglect procedure and practice. In addition to this requirement, any attorney appointed to represent a child must first complete training on representation of children that is approved by the administrative office of the Supreme Court of Appeals. The Supreme Court of Appeals shall develop procedures for approval and certification of training required under this section. Where no attorney has completed the training required by this subsection, the court shall appoint a competent attorney with demonstrated knowledge of child welfare law to represent the parent or child. Any attorney appointed pursuant to this section shall perform all duties required of an attorney licensed to practice law in the State of West Virginia.

(h) *Right to be heard.* — In any proceeding pursuant to this article, the party or parties having custodial or other parental rights or responsibilities to the child shall be afforded a meaningful opportunity to be heard, including the opportunity to testify and to present and cross-examine witnesses. Foster parents, pre-adoptive parents, and relative caregivers shall also have a meaningful opportunity to be heard.

(i) *Findings of the court.* — Where relevant, the court shall consider the efforts of the department to remedy the alleged circumstances. At the conclusion of the adjudicatory hearing, the court shall make a determination based upon the evidence and shall make findings of fact and conclusions of law as to whether the child is abused or neglected and whether the respondent is abusing, neglecting, or, if applicable, a battered parent, all of which shall be incorporated into the order of the court. The findings must be based upon conditions existing at the time of the filing of the petition and proven by clear and convincing evidence.

(j) *Priority of proceedings.* — Any petition filed and any proceeding held under this article shall, to the extent practicable, be given priority over any other civil action before the court, except proceedings under ~~section three hundred nine, article twenty seven, chapter forty eight~~ §48-27-309 of this code and actions in which trial is in progress. Any petition filed under this article shall be docketed immediately upon filing. Any hearing to be held at the end of an improvement period and any other hearing to be held during any proceedings under this article shall be held as nearly as practicable on successive days and, with respect to the hearing to be held at the end of an improvement period, shall be held as close in time as possible after the end of the improvement period and shall be held within ~~thirty~~ 30 days of the termination of the improvement period.

(k) *Procedural safeguards.* — The petition may not be taken as confessed. A transcript or recording shall be made of all proceedings unless waived by all parties to the proceeding. The rules of evidence shall apply. Following the court's determination, it shall ask the parents or custodians whether or not an appeal is desired and the response transcribed. A negative response may not be construed as a waiver. The evidence shall be transcribed and made available to the parties or their counsel as soon as practicable, if the transcript is required for purposes of further proceedings. If an indigent person intends to pursue further proceedings, the court reporter shall furnish a transcript of the hearing without cost to the indigent person if an affidavit is filed stating that he or she cannot pay the transcript.

ARTICLE 5. RECORD KEEPING AND DATABASE.**§49-5-101. Confidentiality of records; nonrelease of records; exceptions; penalties.**

(a) Except as otherwise provided in this chapter or by order of the court, all records and information concerning a child or juvenile which are maintained by the Division of Juvenile Services, the Department of Health and Human Resources, a child agency or facility, court or law-enforcement agency are confidential and shall not be released or disclosed to anyone, including any federal or state agency.

(b) Notwithstanding the provisions of subsection (a) of this section or any other provision of this code to the contrary, records concerning a child or juvenile, except adoption records and records disclosing the identity of a person making a complaint of child abuse or neglect, may be made available:

(1) Where otherwise authorized by this chapter;

(2) To:

(A) The child;

(B) A parent whose parental rights have not been terminated; or

(C) The attorney of the child or parent;

(3) With the written consent of the child or of someone authorized to act on the child's behalf;
or

(4) Pursuant to an order of a court of record. However, the court shall review the record or records for relevancy and materiality to the issues in the proceeding and safety, and may issue an order to limit the examination and use of the records or any part thereof.

(c) In addition to those persons or entities to whom information may be disclosed under subsection (b) of this section, information related to child abuse or neglect proceedings, except information relating to the identity of the person reporting or making a complaint of child abuse or neglect, shall be made available, upon request, to:

(1) Federal, state or local government entities, or any agent of those entities, including law-enforcement agencies and prosecuting attorneys, having a need for that information in order to carry out its responsibilities under law to protect children from abuse and neglect;

(2) The child fatality review team;

(3) Child abuse citizen review panels;

(4) Multidisciplinary investigative and treatment teams; or

(5) A grand jury, circuit court or family court, upon a finding that information in the records is necessary for the determination of an issue before the grand jury, circuit court or family court.

(d) In the event of a child fatality or near fatality due to child abuse and neglect, information relating to a fatality or near fatality shall be made public by the Department of Health and Human

Resources and to the entities described in subsection (c) of this section, all under the circumstances described in that subsection. However, information released by the Department of Health and Human Resources pursuant to this subsection may not include the identity of a person reporting or making a complaint of child abuse or neglect. For purposes of this subsection, 'near fatality' means any medical condition of the child which is certified by the attending physician to be life threatening.

(e) Except in juvenile proceedings which are transferred to criminal proceedings, law-enforcement records and files concerning a child or juvenile shall be kept separate from the records and files of adults and not included within the court files. Law-enforcement records and files concerning a child or juvenile shall only be open to inspection pursuant to section one hundred three of this article.

(f) Any person who willfully violates this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$1,000, or confined in jail for not more than six months, or both fined and confined. A person convicted of violating this section is also liable for damages in the amount of \$300 or actual damages, whichever is greater.

(g) Notwithstanding the provisions of this section, or any other provision of this code to the contrary, the name and identity of any juvenile adjudicated or convicted of a violent or felonious crime shall be made available to the public;

(h)(1) Notwithstanding the provisions of this section or any other provision of this code to the contrary, the Division of Juvenile Services may provide access to and the confidential use of a treatment plan, court records or other records of a juvenile to an agency in another state which:

(A) Performs the same functions in that state that are performed by the Division of Juvenile Services in this state;

(B) Has a reciprocal agreement with this state; and

(C) Has legal custody of the juvenile.

(2) A record which is shared under this subsection may only provide information which is relevant to the supervision, care, custody and treatment of the juvenile.

(3) The Division of Juvenile Services is authorized to enter into reciprocal agreements with other states and to propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code to implement this subsection.

(4) Other than the authorization explicitly given in this subsection, this subsection may not be construed to enlarge or restrict access to juvenile records as provided elsewhere in this code.

(i) The records subject to disclosure pursuant to subsection (b) of this section shall not include a recorded/videotaped interview, as defined in subdivision (6), section two, article six-b, chapter sixty-two of this code, the disclosure of which is exclusively subject to the provisions of section six of said article.

(j) A child agency or facility may disclose otherwise confidential information to other child agencies or facilities when making referrals or providing services on behalf of the child. This information shall be maintained in the same manner as provided in this code.

(k) The department shall provide access to a child placing agency electronic information required to perform an adoption.

Delegate Zukoff moved to amend the amendment on page 1, by amending the section heading to 5-16-7h, following the words "certain medical" by inserting the words "reproduction and";

And,

On page 1, section 7h, line 8, following the words "woman's uterus;" by striking out the word "and";

And,

On page 1, section 7h, line 11, following the word "semen" by striking out the period, inserting in lieu thereof a semi-colon and the following:

"and

(3) An abortion if the pregnancy was caused by rape or incest and the abortion procedure is authorized by state law."

And,

On page 12, by amending the section heading to §33-15-4x following the words "certain medical" by inserting the words "reproduction and";

And,

On page 12, section 4x, line 9, following the words "woman's uterus;" by striking out the word "and";

And,

On page 12, section 4x, line 12, following the word "semen" by striking out the period, inserting in lieu thereof a semi-colon and the following:

"and

(3) An abortion if the pregnancy was caused by rape or incest and the abortion procedure is authorized by state law."

And,

On page 12, by amending the section heading to §33-16-3ww following the words "certain medical" by inserting the words "reproduction and";

And,

On page 13, section 3ww, line 9, following the words "woman's uterus;" by striking out the word "and";

And,

On page 13, section 3ww, line 12, following the word “semen” by striking out the period, inserting in lieu thereof a semi-colon and the following:

“and

(3) An abortion if the pregnancy was caused by rape or incest and the abortion procedure is authorized by state law.”

And,

On page 13, by amending the section heading to §33-24-7x following the words “certain medical” by inserting the words “reproduction and”;

And,

On page 14, section 7x, line 9, following the words “woman’s uterus;” by striking out the word “and”;

And,

On page 14, section 7x, line 12, following the word “semen” by striking out the period, inserting in lieu thereof a semi-colon and the following:

“and

(3) An abortion if the pregnancy was caused by rape or incest and the abortion procedure is authorized by state law.”

And,

On page 14, by amending the section heading to §33-25-8u following the words “certain medical” by inserting the words “reproduction and”;

And,

On page 15, section 8u, line 9, following the words “woman’s uterus;” by striking out the word “and”;

And,

On page 15, section 8u, line 12, following the word “semen” by striking out the period, inserting in lieu thereof a semi-colon and the following:

“and

(3) An abortion if the pregnancy was caused by rape or incest and the abortion procedure is authorized by state law.”

And,

On page 15, by amending the section heading to §33-25A-8x following the words “certain medical” by inserting the words “reproduction and”;

And,

On page 15, section 8x, line 9, following the words “woman’s uterus;” by striking out the word “and”;

And,

On page 16, section 8x, line 12, following the word “semen”, by striking out the period, inserting in lieu thereof a semi-colon and the following:

“and

(3) An abortion if the pregnancy was caused by rape or incest and the abortion procedure is authorized by state law.”

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

The yeas and nays having been ordered, they were taken (**Roll No. 760**), and there were—yeas 14, nays 58, absent and not voting 28, with the yeas and the absent and not voting being as follows:

Yeas: Boggs, Diserio, Fluharty, Garcia, Griffith, Hansen, Hornbuckle, Nestor, Pethtel, Pushkin, Rowe, Skaff, Walker and Zukoff.

Absent and Not Voting: Barach, Bates, Bridges, Brown, Capito, Doyle, Espinosa, Evans, Fleischauer, Forsht, Foster, Graves, Hanna, Haynes, Jeffries, Lovejoy, Mandt, Maynard, Queen, Reed, Rohrbach, Summers, Thompson, Wamsley, Westfall, Williams, Worrell and Young.

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

An amendment to the amendment, offered by Delegate Zukoff, was reported by the Clerk.

Whereupon,

Delegate Zukoff obtained unanimous consent that the amendment be withdrawn.

There being two competing amendments, the first offered by Delegates Zukoff and Honaker and the second offered by Delegate Steele, the House proceeded to explanation of both amendments and then debate on both amendments.

Delegate Zukoff was recognized to explain the following amendment which she offered with Delegate Honaker, on page 17, section 101, line 16, following the period by inserting a new subsection (d) to read as follows:

“(d) The father’s parental rights shall be terminated if the unborn child is a product of rape or incest.”

Delegate Steele was recognized to explain the amendment that he offered on page 17, section 101, following line 16, by inserting new subsections (d), (e), (f), (g), (h) as follows:

“(d) Any man who purports to be the father of a child, whether born or unborn, may, pursuant to a properly filed and verified petition and parenting plan, seek a court-ordered paternity designation and an allocation of custodial responsibility, child support, decision-making authority, and visitation. Any petition regarding an unborn child, seeking court-ordered custodial responsibility, child support, decision-making authority, and visitation would take effect once the child is born. Any petition seeking a paternity designation, an allocation of custodial responsibility, a child support award, a determination of decision-making authority, or visitation shall be governed by the procedures and provisions as provided in §48-9-101 et seq. and §48-11-101 et seq. of this code.

“(e) Notwithstanding anything contained in this section, no petition may be heard by any court of this State if there has been a judicial finding, stipulation, or admission, or by the Petitioner, of abuse, neglect, or abandonment, relating to the child that is subject of the petition, under Chapter 49 of this Code, or if an adoption, relating to the child that is the subject of the petition, has been finalized pursuant to the provisions of §48-22-101 et seq. of this code.

“(f) It shall be the burden of the Petitioner to prove the facts of the petition by a preponderance of the evidence.

“(g) A judicial finding by a court of competent jurisdiction, beyond a preponderance of the evidence, that the child subject to the petition, was conceived as a result of a sexual offense as defined within §61-8B-1 et seq. or an incestuous relationship, as defined in §61-8-12 of this code, shall result in the entry of an order denying unto the offending party any and all allocation of custodial responsibility, decision-making authority, visitation or contact between the offending party and the child subject to the petition or other relief sought. The court may order that the offending party still be obligated to pay child support for the child that is the subject of the petition. Any allocation of child support shall be governed by the procedures and provisions of §48-11-101 et seq. of this code. Notwithstanding, any order entered by the court, pursuant to this sub-section, shall not preclude an order of criminal restitution by any other court.

“(h) Pursuant to the provisions contained within this section, a court of competent jurisdiction may, in its discretion, make a finding beyond a preponderance of the evidence that the costs, fees and expenses of all prenatal care and delivery, relating to the child that is the subject of the petition, shall be allocated amongst the parties.”

Unanimous consent was obtained that the amendment offered by Delegate Steele be reformed by changing “beyond” to “by” in (h) and, subsequently, making the same change in (g), with the reformed amendment being on page 17, section 101, following line 16, by inserting new subsections (d), (e), (f), (g), (h) as follows:

“(d) Any man who purports to be the father of a child, whether born or unborn, may, pursuant to a properly filed and verified petition and parenting plan, seek a court-ordered paternity designation and an allocation of custodial responsibility, child support, decision-making authority, and visitation. Any petition regarding an unborn child, seeking court-ordered custodial responsibility, child support, decision-making authority, and visitation would take effect once the child is born. Any petition seeking a paternity designation, an allocation of custodial responsibility, a child support award, a determination of decision-making authority, or visitation shall be

governed by the procedures and provisions as provided in §48-9-101 et seq. and §48-11-101 et seq. of this code.

(e) Notwithstanding anything contained in this section, no petition may be heard by any court of this State if there has been a judicial finding, stipulation, or admission, or by the Petitioner, of abuse, neglect, or abandonment, relating to the child that is subject of the petition, under Chapter 49 of this Code, or if an adoption, relating to the child that is the subject of the petition, has been finalized pursuant to the provisions of §48-22-101 et seq. of this code.

(f) It shall be the burden of the Petitioner to prove the facts of the petition by a preponderance of the evidence.

(g) A judicial finding by a court of competent jurisdiction, by a preponderance of the evidence, that the child subject to the petition, was conceived as a result of a sexual offense as defined within §61-8B-1 et seq. or an incestuous relationship, as defined in §61-8-12 of this code, shall result in the entry of an order denying unto the offending party any and all allocation of custodial responsibility, decision-making authority, visitation or contact between the offending party and the child subject to the petition or other relief sought. The court may order that the offending party still be obligated to pay child support for the child that is the subject of the petition. Any allocation of child support shall be governed by the procedures and provisions of §48-11-101 et seq. of this code. Notwithstanding, any order entered by the court, pursuant to this sub-section, shall not preclude an order of criminal restitution by any other court.

(h) Pursuant to the provisions contained within this section, a court of competent jurisdiction may, in its discretion, make a finding by a preponderance of the evidence that the costs, fees and expenses of all prenatal care and delivery, relating to the child that is the subject of the petition, shall be allocated amongst the parties.”

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

The yeas and nays having been ordered, they were taken (**Roll No. 761**), and there were— yeas 63, nays 11, absent and not voting 26, with the nays and the absent and not voting being as follows:

Nays: Diserio, Garcia, Griffith, Hansen, Honaker, Hornbuckle, Pethtel, Pritt, Pushkin, Rowe and Walker.

Absent and Not Voting: Barach, Bates, Bridges, Brown, Doyle, Espinosa, Evans, Fleischauer, Forsht, Foster, Graves, Hanna, Jeffries, Lovejoy, Mandt, Maynard, Queen, Reed, Rohrbach, Summers, Thompson, Wamsley, Westfall, Williams, Worrell and Young.

So, a majority of the members present having voted in the affirmative, the amendment to the amendment was adopted, and the amendment offered by Delegates Zukoff and Honaker was rendered moot.

An amendment to the amendment, offered by Delegate Pushkin, was read by the Clerk.

Whereupon,

Delegate Pushkin asked and obtained unanimous consent that the amendment be withdrawn.

Delegate Pushkin moved to amend the amendment on page 10, section 1, line 15 following the word “child”, by striking out the period, inserting a colon and the following proviso: “*Provided*, That an organization that is designated as a 501(c)(4) nonprofit organization is not eligible to be designated a pregnancy help organization.”;

And,

On page 10, section 1, line 17, following the word “Program” by striking out the period, inserting a colon and the following proviso: “*Provided*, That an organization that is designated as a 501(c)(4) nonprofit organization is not eligible to be designated a management agency.”.

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

Delegate Pushkin moved to amend the amendment on page 9, following the period at the end of line 3 of §16-58-7, by striking out sections §16-63-1 through §16-63-3 in their entirety.

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

The yeas and nays having been ordered, they were taken (**Roll No. 762**), and there were—yeas 8, nays 64, absent and not voting 28, with the yeas and the absent and not voting being as follows:

Yeas: Diserio, Griffith, Hansen, Hornbuckle, Pushkin, Rowe, Skaff and Walker.

Absent and Not Voting: Barach, Bates, Bridges, Brown, Conley, Doyle, Espinosa, Evans, Fleischauer, Forsht, Foster, Graves, Hanna, Jeffries, Lovejoy, Mandt, Maynard, McGeehan, Queen, Reed, Rohrbach, Summers, Thompson, Wamsley, Westfall, Williams, Worrell and Young.

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

Delegate Keaton moved to amend the amendment on page 3, section 10a, line 31, after the words, “home study expenses,” by inserting the words, “mental health services expenses,”

And,

On page 4, line 49 by inserting the new subdivision (3) to read as follows, “For the purposes of this section, mental health services means those service provide for in §9-5-30(b)(5)(A)-(I) of this code.”

The question then being on the adoption of the amendment to the amendment, the same was put and adopted.

Delegate Kessinger moved to amend the amendment on page 7, section 3, line 10, by inserting the words “ordered or” following the word “contraceptives”.

The question then being on the adoption of the amendment to the amendment, the same was put and the Speaker declared the amendment adopted.

Delegates Fast, Honaker, Longanacre, Mallow, Martin and Horst moved to amend the amendment beginning on page nine, section seven, following the words “free of charge”, by striking out the period and inserting a colon and the following: “Provided, That:

(1) Prior to dispensing a contraceptive pursuant to this section to an unemancipated minor, the local health department shall receive authorization in person, in writing or by telephone from the parent, guardian or custodian of the unemancipated minor;

(2) Prior to dispensing a contraceptive pursuant to this section to an individual, the local health department shall provide the individual education and counseling on the risks of sexually transmitted diseases and failure rates of contraceptives; and

(3) Prior to dispensing a contraceptive pursuant to this section to an unmarried individual, the local health department shall provide the individual education and counseling on the importance of abstinence.”

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

The yeas and nays having been ordered, they were taken (**Roll No. 763**), and there were—yeas 40, nays 33, absent and not voting 27, with the nays and the absent and not voting being as follows:

Nays: Barrett, Boggs, Cannon, Capito, Dean, Diserio, Ellington, Fluharty, Garcia, Gearheart, Griffith, Hamrick, Hansen, Hardy, Holstein, Hornbuckle, Howell, Nestor, Pack, Pethtel, Pinson, Pushkin, Riley, Rowe, Skaff, Smith, Statler, Storch, Sypolt, Tully, Walker, Zatezalo and Zukoff.

Absent and Not Voting: Barach, Bates, Bridges, Brown, Doyle, Espinosa, Evans, Fleischauer, Forsht, Foster, Graves, Hanna, Jeffries, Lovejoy, Mandt, Maynard, McGeehan, Queen, Reed, Rohrbach, Summers, Thompson, Wamsley, Westfall, Williams, Worrell and Young.

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

An amendment to the amendment, offered by Delegates Fast, Honaker, Longanacre, Mallow, Martin and Horst, was reported by the Clerk, on page twenty-three, by striking out section §49-4-601 in its entirety.

The question then being on the adoption of the amendment to the amendment, the same was put and adopted.

Delegate Tully moved to amend the amendment on page 9, section 7, line 3, by striking the period inserting a colon and the following: *“Provided, however,* That a patient does not have insurance or Medicaid Coverage.”

And,

On page 9, section 7, line 3 by inserting a new subsection (b) to read as follows: “(b) Nothing in this section prohibits the health department from obtaining grants or appropriations to cover the cost of the contraceptives or billing the patient’s insurance plan or Medicaid to cover the costs for the contraceptives.”

The question then being on the adoption of the amendment to the amendment, the same was put and adopted.

An amendment to the amendment, offered by Delegate Ellington, was reported by the Clerk, on page 1, section 7h, line 3, after the word, "ligation", by removing the comma and inserting the word, "or";

And,

On page 1, section 7h, line 3, by striking the words, "or hysterectomy";

And,

On page 1, section 7h, line 4, by striking the words, "severs and ties", and inserting the words, "either interrupts or severs or ties";

And,

On page 1, section 7h, line 7, after the term, "and" by striking the remainder of the subdivision (1);

And,

On one page 12, section 4x, line 4, after the word, "ligation" by removing the comma and inserting the word, "or";

And,

On page 12, section 4x, line 4, by striking the words, "or hysterectomy";

And,

On page 12, section 4x, line 5, by striking the words, "severs and ties", and inserting the words, "either interrupts or severs or ties";

And,

On page 12, section 4x, line 8, after the term, "and" by striking the remainder of the subdivision (1);

And,

On one page 13, section 3ww, line 4, after the word, "ligation" by removing the comma and inserting the word, "or";

And,

On page 13, section 3ww, line 4, by striking the words, "or hysterectomy";

And,

On page 13, section 3ww, line 5, by striking the words, “severs and ties”, and inserting the words, “either interrupts or severs or ties”;

And,

On page 13, section 3ww, line 8, after the term, “and” by striking the remainder of the subdivision (1);

And,

On one page 14, section 7x, line 4, after the word, “ligation” by removing the comma and inserting the word, “or”;

And,

On page 14, section 7x, line 4, by striking the words, “or hysterectomy”;

And,

On page 14, section 7x, line 5, by striking the words, “severs and ties”, and inserting the words, “either interrupts or severs or ties”;

And,

On page 14, section 7x, line 8, after the term, “and” by striking the remainder of the subdivision (1);

And,

On one page 14, section 8u, line 3, after the word, “ligation” by removing the comma and inserting the word, “or”;

And,

On page 14, section 8u, line 3, by striking the words, “or hysterectomy”;

And,

On page 12, section 8u, line 5, by striking the words, “severs and ties”, and inserting the words, “either interrupts or severs or ties”;

And,

On page 15, section 8u, line 8, after the term, “and” by striking the remainder of the subdivision (1);

And,

On one page 15, section 8x, line 4, after the word, “ligation” by removing the comma and inserting the word, “or”;

And,

On page 15, section 8x, line 4, by striking the words, “or hysterectomy”;

And,

On page 15, section 8x, line 5, by striking the words, “severs and ties”, and inserting the words, “either interrupts or severs or ties”;

And,

On page 15, section 8x, line 8, after the term, “and” by striking the remainder of the subdivision (1).

The question then being on the adoption of the amendment to the amendment, the same was put and adopted.

The question being on the adoption of the amendment by Delegate Householder, as amended, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 764**), and there were, including pairs—yeas 73, nays 3, absent and not voting 24, 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: Honaker Nay: Fleischauer

Yea: Bridges Nay: Young

Nays: Pushkin.

Absent and Not Voting: Barach, Bates, Boggs, Brown, Doyle, Espinosa, Evans, Forsht, Foster, Graves, Hanna, Jeffries, Lovejoy, Mandt, Maynard, Queen, Reed, Rohrbach, Summers, Thompson, Wamsley, Westfall, Williams and Worrell.

So, a majority of the members present having voted in the affirmative, the amendment by Delegate Householder, as amended, was adopted.

There being no further amendments, the bill was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 765**), and there were—yeas 73, nays none, absent and not voting 27, with the absent and not voting being as follows:

Absent and Not Voting: Barach, Bates, Boggs, Bridges, Brown, Doyle, Espinosa, Evans, Fleischauer, Forsht, Foster, Graves, Hanna, Jeffries, Lovejoy, Mandt, Maynard, Queen, Reed, Rohrbach, Summers, Thompson, Wamsley, Westfall, Williams, Worrell and Young.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (S. B. 3001) passed.

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

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 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 §33-25-8u; 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 of said code; and to amend and reenact §49-5-101 of said code; all relating to promoting family health generally; requiring insurance coverage for specified sterilization procedures; providing income tax credit for adoption expenses; providing income tax personal exemption for unborn child; providing for early intervention services for adopted 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 the West Virginia Mothers and Babies Pregnancy Support Program under the Bureau for Public Health; permitting pregnant mother to seek child support from the father for her unborn child; allowing a man who purports to be the father of a child to seek a court-ordered paternity designation and other relief, and procedures relating to findings of conception as a result of a sexual offense or an incestuous relationship; providing for membership and meetings of multidisciplinary treatment teams; requiring petitions and notices of hearings in abuse and neglect cases be served by sheriff’s office, without additional compensation; providing that child agency or facility may disclose otherwise confidential information to other child agencies or facilities when making referrals or providing services on behalf of child; and requiring that the Department of Health and Human Resources must provide access to a child placing agency electronic information required to perform an adoption.”

Delegate Kessinger moved that the bill take effect July 1, 2023.

Subsequently, unanimous consent was obtained to reform the motion, so that the bill take effect January 1, 2023.

On this question, the yeas and nays were taken (**Roll No. 766**), and there were—yeas 73, nays none, absent and not voting 27, with the absent and not voting being as follows:

Absent and Not Voting: Barach, Bates, Boggs, Bridges, Brown, Doyle, Espinosa, Evans, Fleischauer, Forsht, Foster, Graves, Hanna, Jeffries, Lovejoy, Mandt, Maynard, Queen, Reed, Rohrbach, Summers, Thompson, Wamsley, Westfall, Williams, Worrell and Young.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 3001) takes effect January 1, 2023.

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

At 4:31 p.m., on motion of Delegate Kessinger, the House of Delegates recessed until 6:00 p.m.

* * * * *

Evening Session

* * * * *

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

Special Calendar

Second Reading

- continued -

S. B. 3001, Relating to family planning services, still being in possession of the Clerk, Delegate Kessinger moved the House reconsider the vote on S. B. 3001.

On the question of reconsideration of the vote on the effective date of the bill, the same was put and prevailed.

Delegate Kessinger moved to withdraw the motion on the effective date and unanimous consent was obtained to withdraw that motion.

A motion by Delegate Kessinger to reconsider the title amendment was put and prevailed.

Unanimous consent was then obtained to withdraw the title amendment.

A motion by Delegate Kessinger to reconsider the vote by which the House of Delegates passed S. B. 3001 was put and prevailed.

Delegate Steele asked and obtained unanimous consent to amend the bill on third reading, and the rule was suspended to permit the offering and consideration of an amendment on third reading.

The amendment offered by Delegate Steele was adopted, replacing his previously adopted amendment, on page 17, section 101, following line 16, by inserting new subsections (d), (e), (f), (g), (h) to read as follows:

“(d) Pursuant to the provisions of §48-24-101 (e), any man who purports to be the father of a child, whether born or unborn, may, pursuant to a properly filed and verified petition and parenting plan, seek a court-ordered paternity designation and an allocation of custodial responsibility, child support, decision-making authority, and visitation. Any petition regarding an unborn child, seeking court-ordered custodial responsibility, child support, decision-making authority, and visitation would take effect once the child is born. Any petition seeking a paternity designation, an allocation of custodial responsibility, a child support award, a determination of decision-making authority, or visitation shall be governed by the procedures and provisions as provided in §48-9-101 et seq. and §48-11-101 et seq. of this code.

(e) Notwithstanding anything contained in this section, no petition may be heard by any court of this State if there has been a judicial finding, stipulation, or admission, or by the Petitioner, of abuse, neglect, or abandonment, relating to the child that is subject of the petition, under Chapter

49 of this Code, or if an adoption, relating to the child that is the subject of the petition, has been finalized pursuant to the provisions of §48-22-101 et seq. of this code.

(f) It shall be the burden of the Petitioner to prove the facts of the petition by clear and convincing evidence.

(g) A judicial finding by a court of competent jurisdiction, by a preponderance of the evidence, that the child subject to the petition, was conceived as a result of a sexual offense as defined within §61-8B-1 et seq. or an incestuous relationship, as defined in §61-8-12 of this code, shall result in the entry of an order denying unto the offending party any and all allocation of custodial responsibility, decision-making authority, visitation or contact between the offending party and the child subject to the petition or other relief sought. The court may order that the offending party still be obligated to pay child support for the child that is the subject of the petition. Any allocation of child support shall be governed by the procedures and provisions of §48-11-101 et seq. of this code. Notwithstanding, any order entered by the court, pursuant to this sub-section, shall not preclude an order of criminal restitution by any other court.

(h) Pursuant to the provisions contained within this section, a court of competent jurisdiction may, in its discretion, make a finding by a preponderance of the evidence that the costs, fees and expenses of all prenatal care and delivery, relating to the child that is the subject of the petition, shall be allocated amongst the parties.”

The bill was read a third time, as amended, and put upon its passage.

The question being on the passage of the bill, as amended, the yeas and nays were taken (**Roll No. 767**), and there were—yeas 71, nays 1, absent and not voting 28, with the nays and the absent and not voting being as follows:

Nays: Pushkin.

Absent and Not Voting: Barach, Bates, Bridges, Brown, Cooper, Doyle, Espinosa, Evans, Fleischauer, Forsht, Foster, Graves, Griffith, Hanna, Jeffries, Lovejoy, Mandt, Maynard, Queen, Reed, Rohrbach, Summers, Thompson, Wamsley, Westfall, Williams, Worrell and Young.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (S. B. 3001) passed.

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

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 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 §33-25-8u; 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 of said code; and to amend and reenact §49-5-101 of said code; all relating to promoting family health generally; requiring insurance coverage

for specified sterilization procedures; providing income tax credit for adoption expenses; providing income tax personal exemption for unborn child; providing for early intervention services for adopted 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 the West Virginia Mothers and Babies Pregnancy Support Program under the Bureau for Public Health; permitting pregnant mother to seek child support from the father for her unborn child; allowing a man who purports to be the father of a child to seek a court-ordered paternity designation and other relief, and procedures relating to findings of conception as a result of a sexual offense or an incestuous relationship; providing for membership and meetings of multidisciplinary treatment teams; requiring petitions and notices of hearings in abuse and neglect cases be served by sheriff's office, without additional compensation; providing that child agency or facility may disclose otherwise confidential information to other child agencies or facilities when making referrals or providing services on behalf of child; and requiring that the Department of Health and Human Resources must provide access to a child placing agency electronic information required to perform an adoption."

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

Messages from the Senate

A message from the Senate, by
The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

H. B. 302, Clarifying West Virginia's abortion laws.

On motion of Delegate Kessinger, the House of Delegates refused to concur in the following amendment of the bill by the Senate, and requested the Senate to agree to the appointment of a Committee of Conference of five from each house on the disagreeing votes of the two houses:

On page one by striking out everything after the enacting clause and inserting in lieu thereof the following:

"CHAPTER 9. HUMAN SERVICES.

ARTICLE 2. COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

§9-2-11. Limitation on use of funds.

(a) No funds from the Medicaid program accounts may be used to pay for the performance of an abortion by ~~surgical or chemical means~~ unless the abortion is permitted by §16-2R-3 of this code.

~~(1) On the basis of the physician's best clinical judgment, there is:~~

~~(i) A medical emergency that so complicates a pregnancy as to necessitate an immediate abortion to avert the death of the mother or for which a delay will create grave peril of irreversible~~

loss of major bodily function or an equivalent injury to the mother: *Provided*, That an independent physician concurs with the physician's clinical judgment; or

(ii) ~~Clear clinical medical evidence that the fetus has severe congenital defects or terminal disease or is not expected to be delivered; or~~

(2) ~~The individual is a victim of incest or the individual is a victim of rape when the rape is reported to a law enforcement agency.~~

(b) ~~The Legislature intends that the state's Medicaid program not provide coverage for abortion on demand and that abortion services be provided only as expressly provided for in this section.~~

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 2F. PARENTAL NOTIFICATION OF ABORTIONS PERFORMED ON UNEMANCIPATED MINORS.

§16-2F-9. Severability.

~~The provisions of subsection (cc), section ten, article two, chapter two of this code shall apply to the provisions of this article to the same extent as if said subsection were set forth in extense herein.~~

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.

ARTICLE 2I. WOMEN'S RIGHT TO KNOW ACT.

§16-2I-9. Severability.

~~If any one or more provision, section, subsection, sentence, clause, phrase or word of this article or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of this article shall remain effective notwithstanding such unconstitutionality. The Legislature hereby declares that it would have passed this article, and each provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more provision, section, subsection, sentence, clause, phrase or word be declared unconstitutional.~~

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.

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 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.

ARTICLE 20. UNBORN CHILD PROTECTION FROM DISMEMBERMENT ABORTION ACT.

§16-20-1. 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 section two, article two-m, chapter sixteen 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 section two, article two-m, chapter sixteen of this code.

(5) 'Physician' means the same as that term is defined in section two, article two-m, chapter sixteen of this code.

(6) 'Reasonable medical judgement' means the same as that term is defined in section two, article two-M, chapter sixteen 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.* —

(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.

ARTICLE 2P. BORN-ALIVE ABORTION SURVIVORS PROTECTION ACT.

§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 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.

ARTICLE 2Q. UNBORN CHILD WITH A DISABILITY PROTECTION AND EDUCATION ACT.

§16-2Q-1. Abortion may not be performed because of a disability, except in a medical emergency.

(a) As used in this article:

'Abortion' means the same as that term is defined in §16-2F-2 of this code.

'Attempt to perform or induce an abortion' means the same as that term is defined in §16-2M-2 of this code.

'Because of a disability' means on account of the presence or presumed presence of a disability or diagnosis in a fetus including, but not limited to, chromosomal disorders or morphological malformations occurring as the result of atypical gene expressions.

'Commissioner' means the Commissioner of the Bureau for Public Health.

'Licensed medical professional' means a person licensed under Chapter 30 of this code practicing within his or her scope of practice.

'Medical emergency' means the same as that term is defined in §16-2I-1 of this code.

'Nonmedically viable fetus' means the same as that term is defined in §16-2M-2 of this code.

'Reasonable medical judgment' means the same as that term is defined in §16-2M-2 of this code.

(b) Except in a medical emergency or a nonmedically viable fetus, a licensed medical professional may not perform or attempt to perform or induce an abortion, unless the patient acknowledges that the abortion is not being sought because of a disability. The licensed medical professional shall document these facts in the patient's chart and report such with the commissioner.

(c) Except in a medical emergency or a nonmedically viable fetus, a licensed medical professional may not intentionally perform or attempt to perform or induce an abortion of a fetus, if the abortion is being sought because of a disability.

(d) (1) If a licensed medical professional performs or induces an abortion on a fetus, the licensed medical professional shall, within 15 days of the procedure, cause to be filed with the commissioner, on a form supplied by the commissioner, a report containing the following information:

(A) Date the abortion was performed;

(B) Specific method of abortion used;

(C) A statement from the patient confirming that the reason for the abortion was not because of a disability;

(D) Probable health consequences of the abortion to the patient;

(E) Whether a medical emergency existed; and

(F) Whether the fetus was a nonmedically viable fetus.

(2) The licensed medical professional shall sign the form as his or her attestation under oath that the information stated is true and correct to the best of his or her knowledge.

(3) Reports required and submitted under this section may not contain the name of the patient upon whom the abortion was performed or any other information or identifiers that would make it possible to identify, in any manner or under any circumstances, a woman who obtained or sought to obtain an abortion.

(g) A licensed medical professional that administers, or causes to be administered, a test for a disability or diagnosis to a fetus shall provide the patient with educational information made available by the bureau as provided in this section, within a reasonable time, if the test result confirms the presence of a disability.

(h) The Bureau for Public Health shall make the following available through the bureau's publicly accessible internet website:

(1) Up-to-date, evidence-based information about any in-utero disability or diagnosis that has been peer reviewed by medical experts and any national disability rights organizations. The information provided shall include the following:

(A) Physical, developmental, educational, and psychosocial outcomes;

(B) Life expectancy;

(C) Clinical course;

(D) Intellectual and functional development;

(E) Treatment options; and

(F) Any other information the bureau deems necessary;

(2) Contact information regarding first call programs and support services, including the following:

(A) Information hotlines specific to any in-utero fetal disabilities or conditions;

(B) Relevant resource centers or clearinghouses;

(C) Information about adoption specific to disabilities;

(D) National and local disability rights organizations; and

(E) Education and support programs.

(i) The information provided in accordance with this section shall conform to the applicable standard or standards provided in the Enhanced National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care as adopted by the United States Department of Health and Human Services and published in the Federal Register on September 24, 2013.

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

(k) A person, not subject to subsection (f) of this section, 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 §30-3-13 of this code, and upon conviction, subject to the penalties contained in that section.

(l) A penalty may not be assessed against any patient upon whom an abortion is performed or induced or attempted to be performed or induced.

(m) 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.

ARTICLE 2R. UNBORN CHILD PROTECTION ACT.

§16-2R-1. Legislative findings.

The Legislature finds that the State of West Virginia has a legitimate interest in protecting unborn lives and prohibiting abortions in West Virginia except in the circumstances set forth in this article.

§16-2R-2. Definitions.

The definitions set forth in this section are controlling for purposes of this article and of this code, irrespective of terms used in medical coding, notations, or billing documents. For purposes of this article:

'Abortion' means the use of any instrument, medicine, drug, or any other substance or device with intent to terminate the pregnancy of a patient known to be pregnant and with intent to cause the death and expulsion or removal of an embryo or a fetus. This term does not include the terms 'intrauterine fetal demise' or 'stillbirth' or 'miscarriage' as defined in this section.

'Attempt to perform or induce an abortion' means an act or the omission of an act that, under the circumstances as the person so acting or omitting to act believes them to be, constitutes a substantial step in a course of conduct intended to culminate in an abortion.

'Born alive' means the complete expulsion or extraction 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.

'Commissioner' means the Commissioner of the Bureau for Public Health of the West Virginia Department of Health and Human Resources.

'Contraception' or 'contraceptive' means the prevention of pregnancy by interfering with the process of ovulation, fertilization, or implantation.

'Ectopic' means a fertilized egg which is developing outside the uterus, or a fertilized egg is developing within parts of the uterus where it cannot be viable, including a cervical, cornual, or cesarean section scar implantations.

'Embryo' means the developing human from the time of fertilization until the end of the eighth week of gestation.

'Fertilization' means the fusion of a human spermatozoon with a human ovum.

'Fetal tissue research' means tissue or cells obtained from a dead embryo or fetus after a miscarriage, abortion, or intrauterine fetal demise.

'Fetus' means the developing human in the postembryonic period from nine weeks after fertilization until birth.

'Licensed medical professional' means a person licensed under §30-3-1 *et seq.*, §30-3E-1 *et seq.*, §30-7-1 *et seq.*, §30-7A-1 *et seq.*, §30-14-1 *et seq.*, or §30-15-1 *et seq.* of this code.

'Implantation' means when a fertilized egg has attached to the lining of the wall of the uterus.

'Intrauterine fetal demise' or 'stillbirth' means the unintended or spontaneous loss of a fetus after the 19th week of pregnancy. This term includes the medical terms 'spontaneous abortion,' 'missed abortion,' and 'incomplete abortion'.

'In vitro fertilization' means a procedure or procedures intended to improve fertility or prevent genetic problems and assist with conception.

'Medical emergency' means a condition or circumstance that so complicates the medical condition of a patient as to necessitate an abortion to avert serious risk of the patient's death or serious risk of substantial life-threatening physical impairment of a major bodily function, not including psychological or emotional conditions. This term includes a circumstance in which it is necessary to terminate a pregnancy of one or more fetuses to preserve the life of another fetus or fetuses. 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.

'Miscarriage' means the unintended or spontaneous loss of an embryo or a fetus before the 20th week of pregnancy. This term includes the medical terms 'spontaneous abortion,' 'missed abortion,' and 'incomplete abortion'.

'Nonviable' means an embryo or a fetus has a lethal anomaly which renders it incompatible with life outside of the uterus.

'Partial-birth abortion' means an abortion performed on a live fetus after partial vaginal delivery.

'Pregnancy' means the period of gestation after which a fertilized egg has implanted in the wall of a uterus.

'Reasonable medical judgment' means a medical judgment that would be made by a licensed medical professional who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

'Unemancipated minor' means a person younger than 18 years of age who is not, or has not been, married or judicially emancipated.

§16-2R-3. Prohibition to perform an abortion.

(a) An abortion may not be performed or induced or be attempted to be performed or induced unless in the reasonable medical judgment of a licensed medical professional:

(1) The embryo or fetus is nonviable;

(2) The pregnancy is ectopic; or

(3) A medical emergency exists.

(b) The prohibition set forth in subsection (a) of this section shall not apply to an adult within the first 8 weeks of pregnancy if the pregnancy is the result of sexual assault, as defined in §61-8B-1 *et seq.* of this code, or incest, as defined in §61-8-12 of this code, and at least 48 hours prior to the abortion the patient has:

(1) Reported the sexual assault or incest to a law enforcement agency; or

(2) Obtained medical treatment for the sexual assault or incest or any injury related to the sexual assault or incest from a licensed medical professional or a facility licensed by the Office of Health Facility Licensure and Certification of the West Virginia Department of Health and Human Resources: *Provided*, That the licensed medical professional or facility which performed or provided such medical treatment may not perform or provide the abortion arising from such sexual assault or incest.

(c) The prohibition set forth in subsection (a) of this section shall not apply to a minor or an incompetent or incapacitated adult within the first 14 weeks of pregnancy if the pregnancy is the result of sexual assault, as defined in §61-8B-1 *et seq.* of this code, or incest, as defined in §61-8-12 of this code, and at least 48 hours prior to the abortion the patient has:

(1) Persons mandated to report child abuse and neglect or abuse of incompetent or incapacitated adults, as defined by §49-2-803 of the West Virginia Code; or

(2) Obtained medical treatment for the sexual assault or incest or any injury related to the sexual assault or incest from a licensed medical professional or a facility licensed by the Office of Health Facility Licensure and Certification of the West Virginia Department of Health and Human Resources: *Provided*, That the licensed medical professional or facility which performed or provided such medical treatment may not perform or provide the abortion arising from such sexual assault or incest:

(d) In all cases where a report of sexual assault or incest against a minor is made pursuant this subsection (c), the agency or person to whom the report is made shall report the sexual assault or incest to the Child Abuse and Neglect Investigations Unit of the West Virginia State Police.

(e) An abortion performed pursuant to this section may not use the partial birth abortion procedure.

§16-2R-4. Not considered an abortion.

(a) Abortion does not include:

(1) A miscarriage;

(2) An intrauterine fetal demise or stillbirth;

(3) The use of existing established cell lines derived from aborted human embryos or fetuses;

(4) Medical treatment provided to a patient by a licensed medical professional that results in the accidental or unintentional injury or death of an embryo or a fetus;

(5) In vitro fertilization;

(6) Human fetal tissue research, when performed in accordance with Sections 498A and 498B of the PHS Act (42 U.S.C. 289g-1 and 289g-2) and 45 C.F.R. 46.204 and 46.206; or

(7) The prescription, sale, transfer, or use of contraceptive devices, instruments, medicines, or drugs.

(b) This article does not prevent the prescription, sale, or transfer of intrauterine contraceptive devices, other contraceptive devices, or other generally medically accepted contraceptive devices, instruments, medicines, or drugs for a patient who is not known to be pregnant and for whom the contraceptive devices, instruments, medicines, or drugs are prescribed, sold, or transferred solely for contraceptive purposes and not for the purpose of inducing or causing the termination of a known pregnancy.

§16-2R-5. Requirements when an abortion is performed on an unemancipated minor.

(a) If an abortion is performed on an unemancipated minor under the circumstances set forth in §16-2R-3(a) of this code, the licensed medical professional or his or her agent shall provide notice to the parent, guardian, or custodian of the unemancipated minor within 48 hours after the abortion is performed:

(1) Directly, in person, or by telephone to the parent, guardian, or custodian of the unemancipated minor; or

(2) By certified mail addressed to the parent, guardian, or custodian of the unemancipated minor at their usual place of residence, return receipt requested. The delivery shall be sent restricted delivery assuring that the letter is delivered only to the addressee. Time of delivery shall be deemed occur at 12:00 p.m. on the next day on which regular mail delivery takes place.

(b) If an abortion is performed on an unemancipated minor under the circumstances set forth in §16-2R-3(c) of this code, the licensed medical professional may not perform an abortion until notice of the pending abortion as required by this section is complete.

(1) A licensed medical professional or his or her agent may personally give notice directly, in person, or by telephone to the parent, guardian, or custodian of the unemancipated minor. Upon delivery of the notice, 48 hours shall pass until the abortion may be performed.

(2) A licensed medical professional or his or her agent may provide notice by certified mail addressed to the parent, guardian, or custodian of the unemancipated minor at their usual place of residence, return receipt requested. The delivery shall be sent restricted delivery assuring that the letter is delivered only to the addressee. Time of delivery shall be deemed to occur at 12:00 p.m. on the next day on which regular mail delivery takes place. Forty-eight hours shall pass from the date and time of presumed delivery until the abortion may be performed.

(4) Notice may be waived if the person entitled to notice certifies in writing that he or she has been notified. Notice is waived if the certified mail is refused.

(5) An unemancipated minor who objects to the notice being given to a parent, guardian, or custodian may petition for a waiver of the notice to the circuit court of the county in which the unemancipated minor resides. The petition shall be filed under seal.

(6) The petition is not required to be in any specific form and shall be sufficient if it fairly sets forth the facts and circumstances of the matter, but at a minimum shall contain the following information:

(A) The age and educational level of the unemancipated minor;

(B) The county in which the unemancipated minor resides; and

(C) A brief statement of the unemancipated minor's reason or reasons for the desired waiver of notification of the parent, guardian, or custodian of such unemancipated minor.

(7) A petition may not be dismissed nor may any hearing thereon be refused because of any actual or perceived defect in the form of the petition.

(8) The Supreme Court of Appeals is requested to prepare suggested form petitions and accompanying instructions and shall make the same available to the clerks of the circuit courts. The clerks shall make the form petitions and instructions available in the clerk's office.

(9) The proceedings held pursuant to this subsection shall be confidential and the court shall conduct the proceedings in camera. The court shall inform the unemancipated minor of her right to be represented by counsel. If the unemancipated minor desires the services of an attorney, an attorney shall be appointed to represent her, if the unemancipated minor advises the court under oath or affidavit that she is financially unable to retain counsel.

(10) The court shall conduct a hearing upon the petition forthwith, but may not exceed the next succeeding judicial day. The court shall render its decision immediately and enter its written order not later than 24 hours. All testimony, documents, evidence, petition, orders entered thereon and all records relating to the matter shall be sealed by the clerk and shall not be opened to any person except upon order of the court upon a showing of good cause.

(11) Notice as required by this subsection (b) shall be ordered waived by the court if the court finds either:

(A) That the unemancipated minor is sufficiently mature and informed to make the decision to proceed with the abortion independently and without the notification or involvement of her parent, guardian, or custodian; or

(B) That notification to the person or persons to whom notification would otherwise be required would not be in the best interest of the unemancipated minor.

(12) A confidential appeal to the Supreme Court of Appeals shall be available to any unemancipated minor to whom a court denies a petition under this subsection. An order authorizing an abortion without notification is not appealable.

(13) Filing fees are not required in any proceeding under this subsection.

§16-2R-6. Reporting by licensed medical professionals regarding abortion.

Any abortion performed or induced in this state is subject to the reporting requirements of §16-5-22.

§16-2R-7. Licensure revocation.

A licensed medical professional who violates the provisions of §16-2R-3 of this code is considered to have acted outside the scope of practice permitted by law or otherwise in breach of the standard of care owed to a patient, and is subject to discipline from the applicable licensure board for that conduct, including but not limited to loss of professional license to practice.

§16-2R-8. Protection of aborted fetuses born alive.(a) Whenever a licensed medical professional performs or induces, or attempts to perform or induce an abortion and the child is born alive, the licensed medical professional shall:

(1) Exercise the same degree of reasonable medical judgment to preserve the life and health of the child in the same manner as the licensed medical professional would render to any child alive at birth of the same gestational age;

(2) Ensure that the child is immediately transported and admitted to an appropriate medical facility.

(b) Any licensed medical professional who knowingly and willfully violates subsection (a) of this section shall be considered to have breached the standard of care owed to patients and is subject to discipline from the appropriate licensure board for such conduct, including but not limited to loss of professional license to practice.

(c) Any person, not subject to subsection (a) of this section, who knowingly and willfully violates subsection (a) 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: *Provided*, That the provisions of this subsection (c) enacted during the third extraordinary session of the Legislature, 2022, shall be effective 90 days from passage.

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

(e) This section shall not be construed to subject any patient upon whom an abortion is performed or induced or attempted to be performed or induced to a criminal penalty for any violation of this section as a principal, accessory or accomplice, conspirator, or aider and abettor. §16-2R-9. Severability.

If any provision of §16-2R-1 et seq. of this code is judicially determined to be unconstitutional, this entire article shall be of no force and effect and the provisions of §16-2F-1 et seq., §16-2I-1 et seq., §16-2M-1 et seq., §16-2O-1, §16-2P-1, §16-2Q-1, and §33-42-8 of this code shall become immediately effective.

ARTICLE 5. VITAL STATISTICS.

§16-5-22. Reports of induced termination of pregnancy abortions.

(a) Each ~~induced termination of pregnancy abortion~~, as defined in §16-2R-2 of this code, which occurs in this state, regardless of the length of gestation, shall be reported to the section of vital statistics registration no later than the tenth day of the month following the month the procedure was performed by the person in charge of the institution in which the ~~induced termination of pregnancy abortion~~ was performed. If the ~~induced termination of pregnancy abortion~~ was performed outside an institution, it shall be reported by the attending physician licensed medical professional, as defined in §16-2R-2 of this code, who performed the abortion. The State Registrar shall prepare a form or provide a suitable electronic process for the transmission of the reports from the institution or physician to the section of vital statistics. Information to be collected shall include:

- (1) The gestational age of the fetus;
- (2) The state and county of residence of the ~~woman~~ patient;
- (3) The age of the ~~woman~~ patient;
- (4) The type of medical or surgical procedure performed;
- (5) The method of payment for the procedure;
- (6) Whether birth defects were known, and if so, what birth defects; ~~and~~
- (7) The date the abortion was performed;
- (8) The exception contained in §16-2R-3 of this code under which the abortion was performed;
and

(9) Related information as required by the commissioner, other applicable sections of this code, or by the legislative rule: *Provided, That:*

(A) No personal identifiers, including, but not limited to, name, street address, city, zip code, or social security number, will be collected; and

(B) Individual records may only be released for research purposes as approved by the state Registrar and may be released in a format designed to further protect the confidentiality of the woman as the state Registrar deems necessary.

(b) An analysis of the compiled information relating to induced terminations of pregnancy shall be included in the annual report of vital statistics.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-26. Telehealth practice.

(a) For the purposes of this section:

'Abortifacient' means any chemical or drug prescribed or dispensed with the intent of causing an abortion.

'Established patient' means a patient who has received professional services, face-to-face, from the physician, qualified health care professional, or another physician or qualified health care professional of the exact same specialty and subspecialty who belongs to the same group practice, within the past three years.

'Health care practitioner' means a person authorized to practice under §30-3-1 *et seq.*, §30-3E-1 *et seq.*, §30-4-1 *et seq.*, §30-5-1 *et seq.*, §30-7-1 *et seq.*, §30-7A-1 *et seq.*, §30-8-1 *et seq.*, §30-10-1 *et seq.*, §30-14-1 *et seq.*, §30-16-1 *et seq.*, §30-20-1 *et seq.*, §30-20A-1 *et seq.*, §30-21-1 *et seq.*, §30-23-1 *et seq.*, §30-26-1 *et seq.*, §30-28-1 *et seq.*, §30-30-1 *et seq.*, §30-31-1 *et seq.*, §30-32-1 *et seq.*, §30-34-1 *et seq.*, §30-35-1 *et seq.*, §30-36-1 *et seq.*, §30-37-1 *et seq.* and any other person licensed under this chapter that provides health care services.

'Interstate telehealth services' means the provision of telehealth services to a patient located in West Virginia by a health care practitioner located in any other state or commonwealth of the United States.

'Registration' means an authorization to practice a health profession regulated by §30-1-1 *et seq.* of this code for the limited purpose of providing interstate telehealth services within the registrant's scope of practice.

'Telehealth services' means the use of synchronous or asynchronous telecommunications technology or audio only telephone calls by a health care practitioner to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services; and health administration. The term does not include internet questionnaires, e-mail messages, or facsimile transmissions.

(b) Unless provided for by statute or legislative rule, a health care board, referred to in §30-1-1 *et seq.* of this code, shall propose an emergency rule for legislative approval in accordance with the provisions of §29A-3-15 *et seq.* of this code to regulate telehealth practice by a telehealth practitioner. The proposed rule shall consist of the following:

(1) The practice of the health care service occurs where the patient is located at the time the telehealth services are provided;

(2) The health care practitioner who practices telehealth shall be:

(A) Licensed in good standing in all states in which he or she is licensed and not currently under investigation or subject to an administrative complaint; and

(B) Registered as an interstate telehealth practitioner with the appropriate board in West Virginia;

(3) When the health care practitioner-patient relationship is established;

(4) The standard of care for the provision of telehealth services. The standard of care shall require that with respect to the established patient, the patient shall visit an in-person health care practitioner within 12 months of using the initial telemedicine service or the telemedicine service shall no longer be available to the patient until an in-person visit is obtained. This requirement may be suspended, in the discretion of the health care practitioner, on a case-by-case basis, and it does not to the following services: acute inpatient care, post-operative follow-up checks, behavioral medicine, addiction medicine, or palliative care;

(5) A prohibition of prescribing any controlled substance listed in Schedule II of the Uniform Controlled Substance Act, unless authorized by another section: *Provided*, That the prescribing limitations contained in this section do not apply to a physician or a member of the same group practice with an established patient;

(6) Establish the conduct of a registrant for which discipline may be imposed by the board of registration;

(7) Establish a fee, not to exceed the amount to be paid by a licensee, to be paid by the interstate telehealth practitioner registered in the state;

(8) A reference to the Board's discipline process; and

(9) A prohibition of prescribing or dispensing an abortifacient.

(c) A registration issued pursuant to the provisions of or the requirements of this section does not authorize a health care professional to practice from a physical location within this state without first obtaining appropriate licensure.

(d) By registering to provide interstate telehealth services to patients in this state, a health care practitioner is subject to:

(1) The laws regarding the profession in this state, including the state judicial system and all professional conduct rules and standards incorporated into the health care practitioner's practice act and the legislative rules of registering board; and

(2) The jurisdiction of the board with which he or she registers to provide interstate telehealth services, including such board's complaint, investigation, and hearing process.

(e) A health care professional who registers to provide interstate telehealth services pursuant to the provisions of or the requirements of this section shall immediately notify the board where he or she is registered in West Virginia and of any restrictions placed on the individual's license to practice in any state or jurisdiction.

(f) A person currently licensed in this state is not subject to registration but shall practice telehealth in accordance with the provisions of this section and the rules promulgated thereunder.

CHAPTER 33. INSURANCE.

ARTICLE 42. WOMEN'S ACCESS TO HEALTH CARE ACT.

§33-42-8. Partial-birth abortions prohibited; criminal penalties; exceptions; hearings by state board of medicine.

(a) Any person who knowingly performs a partial-birth abortion and thereby kills a human fetus is guilty of a felony and, shall be fined not less than \$10,000, nor more than \$50,000, or imprisoned not more than two years, or both fined and imprisoned. This section does not apply to a partial-birth abortion that is necessary to save the life of a mother when her life is endangered by a physical disorder, illness or injury.

(b) A physician charged pursuant to this section may seek a hearing before the West Virginia Board of Medicine on the issue of whether the physician's act was necessary to save the life of a mother pursuant to the provisions of subsection (a) of this section. The findings of the Board of Medicine are admissible on this issue at the trial of the physician. Upon a motion by the defendant, the court shall delay the beginning of trial for not more than thirty days to permit the Board of Medicine hearing to take place.

(c) No woman may be prosecuted under the provisions of this section for having a partial-birth abortion, nor may she be prosecuted for conspiring to violate the provisions of this section.

(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.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-8. Abortion; penalty."

And,

By amending the title of the bill to read as follows:

H. B. 302 – "A Bill to repeal §61-2-8 of the code of West Virginia, 1931, as amended; to amend and reenact §9-2-11 of said code; to amend and reenact §16-2F-9 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, §16-2R-7, §16-2R-8, and §16-2R-9; to amend and reenact §16-5-22 of this code; to amend and reenact §30-1-26 of said code; to amend and reenact §33-42-8 of said code, all relating to abortion; clarifying that Medicaid funds may not be used to pay for abortions not authorized by statute; declaring certain provisions are of no force or effect unless any provision of §16-2R-1 et seq. is judicially determined to be unconstitutional; creating the Unborn Child Protection Act; setting forth legislative findings;

defining terms; clarifying effect of definitions in Unborn Child Protection Act; prohibiting abortions; providing circumstances in which an abortion may be performed or induced; requiring reporting of sexual assault or incest against a minor to West Virginia State Police Child Abuse and Neglect Investigations Unit; prohibiting partial birth abortion procedure; clarifying what is not considered an abortion; clarifying that contraceptives are not prohibited; setting forth notice requirements when an abortion is performed on an unemancipated minor; setting forth notice requirements when an abortion is to be performed on an unemancipated minor; authorizing judicially approved waiver of notice to parent, guardian, or custodian; requesting Supreme Court of Appeals to prepare forms; authorizing appointment of counsel for unemancipated minor and providing for confidentiality of proceedings; setting forth criteria for waiver of notice; authorizing appeal to Supreme Court of Appeals of denial of waiver of authorization for unemancipated minor to proceed with abortion without notification; providing for waiver of filing fees in proceedings seeking waiver of notice to proceed with abortion on unemancipated minor; clarifying that any abortion performed or induced in this state shall comply with vital statistics reporting requirements; declaring that a licensed medical professional who performs an unauthorized abortion is subject to discipline by applicable licensure board; requiring licensed medical professional to take certain actions with respect to child born alive during abortion; declaring that a licensed medical professional who knowingly and willfully violates requirements regarding a child born alive during an abortion is subject to discipline by applicable licensure board; declaring that a person other than a licensed medical professional who knowingly and willfully violates requirements regarding a child born alive during an abortion is guilty of offense of unauthorized practice of medicine and establishing penalties therefor; providing that if any provision of §16-2R-3 is judicially determined to be unconstitutional, Unborn Child Protection Act is of no force and effect and provisions relating to parental notification of abortions performed on unemancipated minors, Women's Right to Know Act, The Pain-Capable Unborn Child Protection Act, The Unborn Child Protection from Dismemberment Abortion Act, Born-Alive Abortion Survivors Protection Act, Unique Child With a Disability Protection and Education Act, and Women's Access to Health Care Act become immediately effective; requiring reporting of all abortions occurring in this state to the section of vital registration of the Department of Health and Human Resources and setting forth information to be collected; and requiring proposed legislative rule regulating telehealth practice by a telehealth practitioner to include a prohibition on prescribing or dispensing an abortifacient via telehealth."

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and as follows:

S. C. R. 301 - "Authorizing adjournments of the Senate and House of Delegates."

Resolved by the Legislature of West Virginia:

That during this Third Extraordinary Session of the Eighty-Fifth Legislature, both the Senate and House of Delegates are hereby authorized to adjourn, as needed, for more than three days, pursuant to section 23, Article VI of the Constitution of the State of West Virginia.

At the respective requests of Delegate Kessinger, and by unanimous consent, reference of the resolution (S. C. R. 301) to a committee was dispensed with, and it was taken up for immediate consideration, and adopted.

In the absence of objection, the House of Delegates proceeded to the XI Order of Business.

Second Reading

Com. Sub. for H. B. 304, To promote family health; on second reading, coming up in regular order, was read a second time.

Unanimous consent having been obtained, the bill was advanced to third reading with amendment pending, and the rule was suspended to permit the offering and consideration of amendments on that reading.

Leaves of Absence

At the request of Delegate Kessinger, and by unanimous consent, leaves of absence for the day were granted Delegates Barach, Bates, Bridges, Brown, Doyle, Espinosa, Evans, Fleischauer, Forsht, Foster, Graves, Hanna, Haynes, Jeffries, Lovejoy, Mandt, Maynard, Queen, Reed, Rohrbach, Summers, Thompson, Wamsley, Westfall, Williams, Worrell and Young.

Miscellaneous Business

At 10:26 p.m., the House of Delegates adjourned until the call of the Chair.

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

SPECIAL CALENDAR

Tuesday, September 13, 2022

6th Day

12 Noon

UNFINISHED BUSINESS

H. R. 301 -

Providing for a statement of the sentiments of the House of Delegates upon the passage of H.B.302, West Virginia's law governing abortion

THIRD READING

Com. Sub. for H. B. 304 -

To promote family health [AMENDMENT PENDING] [RIGHT TO AMEND]

HOUSE CALENDAR

Tuesday, September 13, 2022

6th Day

12 Noon

(No Bills)

**WEST VIRGINIA
HOUSE OF DELEGATES**

TUESDAY, SEPTEMBER 13, 2022

HOUSE CONVENES AT 12:00 NOON

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