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HOUSE of DELEGATES

Eighty-Fifth Legislature
Third Extraordinary Session

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September 13, 2022

SIXTH DAY

Tuesday, September 13, 2022

SIXTH DAY

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

Pursuant to the July 29, 2022 motion to adjourn and the subsequent letter from the presiding officers of the two houses reconvening the Third Extraordinary session on Tuesday, September 13, 2022 at Noon, the House was called to order by the Honorable Roger Hanshaw, Speaker.

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

The Clerk proceeded to read the Journal of Friday, July 29, 2022, being the first order of business, when the further reading thereof was dispensed with and the same approved.

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had reconsidered its action and again passed, with amendment, to take effect from passage, a bill of the House of Delegates, as follows:

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

Delegate Doyle moved to concur in the following amendment of the bill by the Senate, with further amendment:

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 extenso 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.*, or §30-14-1 *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.

'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 reported the sexual assault or incest to a law enforcement agency having jurisdiction to investigate the complaint and provided the report to the licensed medical professional performing the abortion.

(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) A report of the sexual assault or incest has been made to law enforcement having jurisdiction to investigate the complaint; or

(2) The patient has 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 in a hospital, as defined in §16-5B-1 of this code, which is 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 hospital, as defined in §16-5B-1 of this code, which is licensed by the Office of Health Facility Licensure and Certification of the West Virginia Department of Health and Human Resources, and 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 within 48 hours.

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

(f) A surgical abortion performed or induced or attempted to be performed or induced pursuant to this section shall be in a hospital, as defined in §16-5B-1 of this code, which is licensed by the Office of Health Facility Licensure and Certification of the West Virginia Department of Health and Human Resources.

(g) An abortion performed or induced or attempted to be performed or induced shall be performed by a licensed medical professional who has West Virginia hospital privileges.

§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.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(9) 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.

(10) 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.

(11) 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.

(12) 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 action.

A licensed medical professional who knowingly and willfully performs, induces, or attempts to perform or induce an abortion, with the intent to violate the provisions of §16-2R-3 of this code, is subject to disciplinary action by his or her applicable licensing board. If the licensing board finds that the licensed medical professional has knowingly and willfully performed, induced, or attempted to perform or induce an abortion, with the intent to violate the provisions of §16-2R-3 of this code, the licensing board shall revoke medical professional's license.

§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 hospital in which the induced termination of pregnancy abortion was performed. If induced termination of pregnancy was performed outside an institution, it shall be reported by the attending physician. 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 registration. 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.

(c) An electronic report of the compiled information under this section shall be provided to the licensing boards of the licensed medical professionals, as defined in §16-2R-2 of this code, and the Legislative Oversight Commission on Health and Human Resources Accountability on a quarterly basis.

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.**

~~Any person who shall administer to, or cause to be taken by, a woman, any drug or other thing, or use any means, with intent to destroy her unborn child, or to produce abortion or miscarriage, and shall thereby destroy such child, or produce such abortion or miscarriage, shall be guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than three nor more than ten years; and if such woman die by reason of such abortion performed upon her, such person shall be guilty of murder. No person, by reason of any act mentioned in this section, shall be punishable where such act is done in good faith, with the intention of saving the life of such woman or child.~~

(a) Any person other than a licensed medical professional, as defined in §16-2R-2 of this code, who knowingly and willfully performs, induces, or attempts to perform or induce an abortion, as defined in §16-2R-2 of this code, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than three nor more than 10 years.

(b) A person who was formerly a licensed medical professional, as defined in §16-2R-2 of this code and whose license has been revoked pursuant to the provisions of §16-2R-7 of this code, and who knowingly and willfully performs, induces, or attempts to perform or induce a subsequent

abortion, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than three nor more than 10 years.

(c) This section shall not be construed to subject any pregnant female 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, accomplice, conspirator, or aider and abettor.

(d) The amendments to this section enacted during the third extraordinary session of the Legislature, 2022, shall be effective 90 days from passage.

And,

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

H. B. 302 – “A Bill to amend and reenact §9-2-11 of the Code of West Virginia, 1931, as amended; to amend and reenact §16-2F-9 of said code; 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 said code; to amend and reenact §30-1-26 of said code; to amend and reenact §33-42-8 of said code; and to amend and reenact §61-2-8 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 of abortion-related code are of no force or effect unless any provision of the Unborn Child Protection Act 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 generally; providing circumstances in which an abortion may be performed or induced including certain medical conditions, medical emergency, rape and incest; establishing predicate requirements before abortion based on rape or incest may be performed; 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; limiting where surgical abortions may be performed; requiring that a licensed medical professional have hospital privileges to perform an abortion; clarifying what is not considered an abortion; clarifying that contraceptives are not prohibited; 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 waiver related 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 the Unborn Child Protection Act is judicially determined to be unconstitutional, the 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; requiring the Department of Health and Human Resources provide routine reports detailing abortions performed to certain licensing boards and the Legislative Oversight Commission on Health and Human Resources Accountability; requiring proposed legislative rule regulating telehealth practice by a telehealth practitioner to include a prohibition on prescribing or dispensing an abortifacient via telehealth; establishing the criminal offense of performing or inducing, or attempting to perform or induce, an illegal abortion and creating penalties therefor.”

With the further amendment, sponsored by Delegates Doyle, Fleischauer and Hansen, being as follows:

On page 19, section 9, line 4, following the period by inserting a new article §16-2S-1, to read as follows:

“ARTICLE 2S. LOCAL REFERENDUM FOR ABORTION RESTRICTIONS.

§16-2S-1. Local referendum required.

(a) The provisions of HB302 enacted during the Third Extraordinary Session of 2022 do not apply in any county of this state until the county commission of the county holds an election on the question of whether the provisions of HB302 as herein enacted apply within the county and the voters approve the allowance of the limitations on abortions herein established shall be in force within the county. The election is determined by a vote of the resident voters of the county. The county commission of the county in which the limitations on abortions herein are proposed shall give notice to the public of the election by publication of the notice as a Class II-0 legal advertisement in compliance with the provisions of §51-3-1 et seq. of this code and the publication area for the publication is the county in which the election is to be held. The date of the last publication of the notice shall fall on a date within the period of the fourteen consecutive days next preceding the election.

On the local option election ballot shall be printed the following:

Shall the provisions of HB302 enacted during the Third Extraordinary Session of 2022 that limit abortions apply in _____ County?

Yes

No

(Place a cross mark in the square opposite your choice.)

Any local option election to approve or disapprove applicability of the provisions of HB302 enacted during the Third Extraordinary Session of 2022 to limit the right to abortion within a county shall be in accordance with procedures adopted by the commission. The local option election may be held in conjunction with a primary or general election or at a special election.

Approval shall be by a majority of the voters casting votes on the question of approval or disapproval that the provisions of HB302 enacted during the Third Extraordinary Session of 2022 which limits the rights to an abortion apply within the county.

If a majority votes against, an election on this issue may not be held for a period of one hundred four weeks. If a majority votes "yes", an election reconsidering the action may not be held for a period of five years. A local option election may thereafter be held if a written petition of qualified voters residing within the county equal to at least five percent of the number of persons who were registered to vote in the next preceding general election is received by the county commission of the county ask that the provisions of HB302 enacted during the Third Extraordinary Session of 2022 which limits the rights to an abortion apply within the county. The petition may be in any number of counterparts. The election shall take place at the next primary or general election or a special election scheduled more than ninety days following receipt by the county commission of the petition required by this subsection."

On the motion to concur in the Senate amendment with further amendment by Delegates Doyle, Fleischauer and Hansen, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 778**), and there were— yeas 18, nays 74, absent and not voting 8, with the yeas and the absent and not voting being as follows:

Yeas: Boggs, Diserio, Doyle, Evans, Fleischauer, Fluharty, Garcia, Griffith, Hansen, Hornbuckle, Pethtel, Pushkin, Rowe, Skaff, Thompson, Williams, Young and Zukoff.

Absent and Not Voting: A. Anderson, Barach, Bates, Brown, Lovejoy, Martin, Pinson and Walker.

So, a majority of the members present not having voted in the affirmative, the motion to concur with further amendment lost.

Delegate Kessinger then moved that the House concur with the Senate amendment and title amendment.

On this question, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 779**), and there were— yeas 76, nays 18, absent and not voting 6, with the nays and the absent and not voting being as follows:

Nays: Criss, Diserio, Doyle, Evans, Fleischauer, Fluharty, Garcia, Hansen, Hornbuckle, Pethtel, Pushkin, Rowe, Skaff, Thompson, Walker, Williams, Young and Zukoff.

Absent and Not Voting: Barach, Bates, Booth, Brown, Lovejoy and Martin.

So, a majority of the members present having voted in the affirmative, the motion to concur in the amendment of the bill by the Senate was adopted.

The bill, as amended by the Senate, was then put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 780**), and there were, including pairs—yeas 78, nays 17, absent and not voting 5, 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: Brown Nay: Williams

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

Absent and Not Voting*: Barach, Bates, Lovejoy, Martin and Wamsley.

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

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

[*Note: Delegate Longanacre announced that his vote did not register on Roll No. 780 and the Speaker replied that the Gentleman would be recorded as a “Yea”.]

On the question that the bill take effect from its passage, the yeas and nays were taken (**Roll No. 781**), and there were—yeas 77, nays 17, absent and not voting 6, with the nays and the absent and not voting being as follows:

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

Absent and Not Voting: Barach, Bates, Brown, Lovejoy, Martin and Wamsley.

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

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates.

Resolutions Introduced

Delegates McGeehan, Barnhart, Booth, Burkhammer, Cannon, Clark, Conley, Cooper, Crouse, Dean, Fast, Gearheart, Hamrick, Honaker, Horst, Howell, Jennings, Kimble, Kimes, Longanacre, Mallow, Maynor, Mazzocchi, Paynter, Phillips, Pinson, Pritt, Reynolds, Rowan, Steele, Sypolt, B. Ward, G. Ward and Martin offered the following resolution, which was introduced pursuant to House Rule 109 and reported by the Clerk:

H. R. 302 - “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 neutralization of those West Virginia laws, now irrelevant, which limited and restricted constitutionally granted abortion access in the past, and

Whereas, The attention to abortion's legality in West Virginia has now rightfully centered on what preceded *Roe v. Wade* and *Planned Parenthood v. Casey*, whereby our State's law implicitly declares 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 their 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 must work to serve mothers and their interests, as the health of any state can be 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 previous decisions of the United States Supreme Court effectively empowered those who would describe motherhood as 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 rejection of abortion 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 our law must always emphasize, 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 ought to designate 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 detrimentally to fundamental social morals, 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, 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, as 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 unanimous consent that reference of the resolution (H. R. 302) to a committee be dispensed with, and it be taken up for immediate consideration and put upon its adoption, which consent was not obtained, objection being heard.

Delegate Kessinger then so moved.

On this question, the yeas and nays were taken (**Roll No. 782**), and there were—yeas 70, nays 18, absent and not voting 12, with the nays and the absent and not voting being as follows:

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

Absent and Not Voting: Barach, Bates, Boggs, Brown, Lovejoy, Martin, Pinson, Reed, Storch, Tully, Wamsley and Westfall.

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

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

Having been ordered, the yeas and nays were taken (**Roll No. 783**), and there were, including pairs—yeas 66, nays 17, absent and not voting 17, 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: Pinson Nay: Williams

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

Absent and Not Voting: A. Anderson, Barach, Bates, Boggs, Brown, Clark, Fleischauer, J. Kelly, Lovejoy, Martin, Maynard, Paynter, Reed, Storch, Tully, Wamsley and Westfall.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the resolution adopted.

Committee Reports

In accordance with House Rule 68, Delegate D. Jeffries, Chair of the Joint Committee on Enrolled Bills, filed a report with the Clerk indicating that:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled and, on the 14th day of September, presented to His Excellency, the Governor, for his action, the following bill, signed by the President of the Senate and the Speaker of the House of Delegates:

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

Messages from the Executive

Subsequent to the adjournment of the session, a communication was received from His Excellency, the Governor, advising that on September 16, 2022, he approved **H. B. 302**.

Miscellaneous Business

NOTE: Delegate Andrew Anderson was appointed on August 19, 2022, to fill the seat of Delegate Larry Pack, who resigned August 8, 2022. Delegate Anderson took the oath of office on August 24, 2022. The letters of resignation and appointment are included in the Fourth Extraordinary Session Journal of September 12, 2022.

Pursuant to House Rule 132, unanimous consent was requested and obtained to print the remarks of the following Members in the Appendix to the Journal:

- Delegates Garcia, Fleischauer, Hansen, Hornbuckle, Mazzocchi, McGeehan, Pushkin, Walker and Williams regarding H. B. 302

- Delegates Kimble and Kessinger regarding H. R. 302

On motion of Delegate Summers, the House of Delegates adjourned *sine die* at 5:02 p.m. on September 13, 2022.



We hereby certify that the forgoing record of the proceedings of the House of Delegates, Third Extraordinary Session, 2022, is the Official Journal of the House of Delegates for said session.

Roger Hanshaw
Speaker of the House of Delegates

Stephen J. Harrison
Clerk of the House of Delegates

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