

WEST VIRGINIA LEGISLATURE

# SENATE JOURNAL

EIGHTY-FIFTH LEGISLATURE  
THIRD EXTRAORDINARY SESSION, 2022  
FIFTH DAY

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Charleston, West Virginia, Friday, July 29, 2022

The Senate met at 1:02 p.m.

(Senator Blair, Mr. President, in the Chair.)

On motion of Senator Takubo, at 1:03 p.m., the Senate recessed until 2:30 p.m. today.

The Senate reconvened at 2:49 p.m.

Prayer was offered by the Honorable Ryan W. Weld, a senator from the first district.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Michael A. Woelfel, a senator from the fifth district.

Pending the reading of the Journal of Thursday, July 28, 2022,

At the request of Senator Swope, unanimous consent being granted, the Journal was approved and the further reading thereof dispensed with.

The Clerk presented the following communications from various state agencies as required by the provisions of law:

Administration, Department of (State Building Commission Fund) (§5-6-1)

Deaf and Hard-of-Hearing, Commission for the (§5-14-9)

Environmental Protection, Department of (Oil and Gas Abandoned Well Plugging Fund) (§22-6-29a)

Environmental Protection, Department of (Oil and Gas Reclamation Fund) (§22-6-29)

Forestry, Division of (Outdoor Heritage Conservation Fund) (§5B-2G-6)

Miners' Health, Safety, and Training, Office of (§22A-1-4)

Municipal Bond Commission (§13-3-15)

Occupational Therapy, Board of (§30-1-12)

Tax Department, State (Innovative Mine Safety Technology Tax Credit Review and Accountability Report) (§11-13BB-11)

Treasurer, Office of the (Debt Position Quarterly Report) (§12-6A-6)

The Senate proceeded to the sixth order of business.

At the request of Senator Takubo, unanimous consent being granted, Senators Blair (Mr. President), Tarr, Roberts, Clements, Hamilton, Sypolt, Boley, Woodrum, Takubo, Maroney, Weld, Grady, Stover, Rucker, Karnes, Smith, Azinger, Maynard, Swope, Phillips, Trump, Martin, and Plymale offered the following resolution from the floor:

**Senate Resolution 303**—Resolution for meaningful tax reform and relief.

Whereas, One of the top priorities of the West Virginia Senate has been, remains, and continues to be growing West Virginia's economy and facilitating a prosperous and opportunity filled environment for West Virginia families; and

Whereas, The personal property tax on business inventory and equipment, as well as personal motor vehicles, is a regressive tax that hampers West Virginia's ability to realize its economic potential; and

Whereas, The West Virginia Legislature on April 10, 2021, passed House Joint Resolution 3, Property Tax Modernization Amendment, also known as the "Amendment Two. Property Tax Modernization Amendment"; and

Whereas, Ratification of the Property Tax Modernization Amendment would give the Legislature the authority to exempt certain classes of personal property from taxation. Specifically, passage of Amendment Two would allow for the elimination of personal property tax on the following six categories of personal property: machinery and equipment, furniture and fixtures, leasehold investments, computer equipment, inventory, and motor vehicles; and

Whereas, On November 8, 2022, the citizens of West Virginia will have the opportunity to approve or disapprove the Property Tax Modernization Amendment; and

Whereas, The relief estimated to be provided to the taxpayers of West Virginia and businesses choosing to do business in West Virginia is estimated to be approximately \$500 million if the personal property tax is eliminated as authorized by the Property Tax Modernization Amendment; and

Whereas, The Legislature has prepared for the passage of the Property Tax Modernization Amendment by deliberately and methodically passing a flat line state budget for four consecutive years; and

Whereas, The Senate understands and shares the desire to provide immediate financial relief to West Virginia citizens. To that end, the Senate also supports establishing an immediate process to refund to taxpayers the amount of personal property tax attributable to the taxpayer's motor vehicle on their 2020 personal property tax ticket; and

Whereas, the taxpayers of West Virginia have communicated to the Senate their support for elimination of what is often referred to as the '13<sup>th</sup> car payment' as authorized by the Property Tax Modernization Amendment; and

Whereas, West Virginia business owners have voiced their support for elimination of the personal property tax as authorized by the Property Tax Modernization Amendment; and

Whereas, The Senate also strongly supports the long term, maintainable plan for providing meaningful personal income tax relief. By enacting a formula for personal income tax reduction based upon increased economic activity, West Virginia will be on a path for sustainable tax relief; and

Whereas, While committed to a plan for income tax relief, the Senate does not believe that reducing the average West Virginia taxpayer's monthly income tax liability by \$20 will be an economic driver nor provide meaningful relief to the taxpayer; and

Whereas, The Senate is committed to obligations in statute and base budget backfill to all counties for revenue replacement in perpetuity that is above and beyond the personal property taxes to be eliminated; and

Whereas, The Senate is committed to including often overlooked retirees in the financial relief provided. The Senate strongly supports adoption of the plan developed by the Joint Committee on Pensions and Retirement that provides financial relief to retirees who receive less than \$1,000 per month.

*Resolved by the Senate:*

The Senate recognizes that the citizens of this State will have the opportunity to vote for or against the passage of the Property Tax Modernization Amendment authorizing the elimination of the personal property tax in November; and, be it

*Further resolved*, That the Senate intends to carry out the will of the voters if the Property Tax Modernization Amendment is ratified; and, be it

*Further resolved*, That the Senate is committed to carrying out the other initiatives outlined in this resolution as part of a comprehensive plan to spur economic growth and facilitate a prosperous and opportunity filled environment for West Virginia families.

At the request of Senator Takubo, unanimous consent being granted, the resolution was taken up for immediate consideration and reference to a committee dispensed with.

Following extended discussion,

(Senator Weld in the Chair.)

Following extended discussion,

(Senator Blair, Mr. President, in the Chair.)

Following discussion,

The question being on the adoption of the resolution, and on this question, Senator Tarr demanded the yeas and nays.

The roll being taken, the yeas were: Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Karnes, Maroney, Martin, Maynard, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—30.

The nays were: None.

Absent: Azinger, Jeffries, Lindsay, and Nelson—4.

So, a majority of those present and voting having voted in the affirmative, the President declared the resolution (S. R. 303) adopted.

Thereafter, at the request of Senator Takubo, and by unanimous consent, the remarks by Senators Tarr, Trump, Weld, Swope, Blair (Mr. President), Karnes, Woodrum, and Baldwin regarding the adoption of Senate Resolution 303 were ordered printed in the Appendix to the Journal.

At the request of Senator Caputo, unanimous consent being granted, the remarks by Senator Romano regarding the adoption of Senate Resolution 303 were ordered printed in the Appendix to the Journal.

The Senate proceeded to the eighth order of business.

**Eng. House Bill 302**, Clarifying West Virginia's abortion laws.

On third reading, coming up in regular order, with the right having been granted on yesterday, Thursday, July 28, 2022, for amendments to be received on third reading, was read a third time.

On motions of Senators Boley, Grady, Phillips, Roberts, Swope, Tarr, and Woodrum, the following amendment to the bill was reported by the Clerk:

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.* or §61-2-8 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.* or §61-2-8 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.* or §61-2-8 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. or §61-2-8 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. or §61-2-8 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. or §61-2-8 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 §61-2-8 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) Reported the sexual assault or incest to a law enforcement agency or other government agency legally authorized to act on reports of child abuse or abuse of incompetent or incapacitated adults; 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 to 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) 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.

(b) A licensed medical professional charged with a violation of §61-2-8 of this code may seek a hearing before his or her licensure board on the issue of whether the action or actions of the licensed medical professional were permissible under this article. The findings of the licensure board are admissible at the trial of the licensed medical professional. Upon motion by the defendant, the court shall delay the beginning of the trial to permit the licensure board to hold a hearing and issue its findings.

(c) A licensed medical professional who is convicted of a violation of §61-2-8 of this code shall have his or her license revoked.

#### **§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.* or §61-2-8 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.* or §61-2-8 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) A person 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 guilty of a felony.

(b) Except as provided in subsection (c) of this section, a person convicted of a violation of subsection (a) of this section shall upon conviction be imprisoned in a state correctional facility for not less than three nor more than 10 years.

(c) Notwithstanding the provisions of subsection (b) of this section, if the violation of subsection (a) of this section causes the death of a patient, the person, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than 10 nor more than 40 years. A person imprisoned pursuant to this subsection is not eligible for parole prior to having served a minimum of 10 years.

(d) 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.

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

On motions of Senators Baldwin, Beach, Brown, Caputo, Geffert, Jeffries, Lindsay, Stollings, Romano, and Woelfel, the following amendments to the amendment offered by Senators Boley, et al., to the bill (Eng. H. B. 302) were reported by the Clerk and considered simultaneously:

On page thirteen, section three, subsection (b), line ten, by striking out all of subdivision (1) and inserting in lieu thereof a new subdivision (1), to read as follows:

"(1) Persons mandated to report, as defined by West Virginia Code §49-2-803; or";

And,

On page thirteen, section three, subsection (c), line twenty-one, by striking out all of subdivision (1) and inserting in lieu thereof a new subdivision (1), to read as follows:

"(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".

Following extended discussion,

At the request of Senator Baldwin, unanimous consent being granted, Senator Baldwin's request that the amendments offered by Senators Baldwin, et al., to the amendment offered by Senators Boley, et al., to the bill be considered simultaneously was withdrawn.

Whereupon, the question now being on the adoption of the amendment offered by Senators Baldwin, et al., to the amendment offered by Senators Boley, et al., on page thirteen, section three, subsection (b), line ten, by striking out all of subdivision (1) and inserting in lieu thereof a new subdivision (1), to read as follows:

"(1) Persons mandated to report, as defined by West Virginia Code §49-2-803; or".

Following discussion,

The question being on the adoption of the amendment offered by Senators Baldwin, et al., to the amendment offered by Senators Boley, et al., to the bill, and on this question, Senator Baldwin demanded the yeas and nays.

The roll being taken, the yeas were: Baldwin, Beach, Brown, Caputo, Geffert, Maroney, Plymale, Romano, Stollings, Weld, and Woelfel—11.

The nays were: Azinger, Boley, Clements, Grady, Hamilton, Karnes, Martin, Maynard, Phillips, Roberts, Rucker, Smith, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Woodrum, and Blair (Mr. President)—20.

Absent: Jeffries, Lindsay, and Nelson—3.

So, a majority of those present and voting not having voted in the affirmative, the President declared the amendment offered by Senators Baldwin, et al., to the amendment offered by Senators Boley, et al., to the bill rejected.

On motion of Senator Trump, the Senate reconsidered its action by which immediately hereinbefore it rejected the amendment offered by Senators Baldwin, et al., to the amendment offered by Senators Boley, et al., to the bill.

The vote thereon having been reconsidered,

The question again being on the adoption of the amendment offered by Senators Baldwin, et al., to the amendment offered by Senators Boley, et al., to the bill.

Following discussion,

The question being on the adoption of the amendment offered by Senators Baldwin, et al., to the amendment offered by Senators Boley, et al., to the bill, and on this question, Senator Caputo demanded the yeas and nays.

The roll being taken, the yeas were: Baldwin, Beach, Brown, Caputo, Geffert, Plymale, Romano, Stollings, and Woelfel—9.

The nays were: Azinger, Boley, Clements, Grady, Hamilton, Karnes, Maroney, Martin, Maynard, Phillips, Roberts, Rucker, Smith, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—22.

Absent: Jeffries, Lindsay, and Nelson—3.

So, a majority of those present and voting not having voted in the affirmative, the President declared the amendment offered by Senators Baldwin, et al., to the amendment offered by Senators Boley, et al., to the bill rejected.

On motions of Senators Baldwin, Beach, Brown, Caputo, Geffert, Jeffries, Lindsay, Stollings, Romano, and Woelfel, the following amendment to the amendment offered by Senators Boley, et al., to the bill (Eng. H. B. 302) was next reported by the Clerk:

On page thirteen, section three, subsection (c), line twenty-one, by striking out all of subdivision (1) and inserting in lieu thereof a new subdivision (1), to read as follows:

"(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".

Following extended discussion,

The question being on the adoption of the amendment offered by Senators Baldwin, et al., to the amendment offered by Senators Boley, et al., to the bill, and on this question, Senator Caputo demanded the yeas and nays.

The roll being taken, the yeas were: Baldwin, Beach, Brown, Caputo, Clements, Geffert, Hamilton, Maroney, Plymale, Romano, Stollings, Stover, Swope, Takubo, Trump, Weld, and Woelfel—17.

The nays were: Azinger, Boley, Grady, Karnes, Martin, Maynard, Phillips, Roberts, Rucker, Smith, Sypolt, Tarr, Woodrum, and Blair (Mr. President)—14.

Absent: Jeffries, Lindsay, and Nelson—3.

So, a majority of those present and voting having voted in the affirmative, the President declared the amendment offered by Senators Baldwin, et al., to the amendment offered by Senators Boley, et al., to the bill adopted.

On motions of Senators Romano, Baldwin, Beach, Brown, Caputo, Geffert, Jeffries, Lindsay, and Stollings the following amendment to the amendment offered by Senators Boley, et al., to the bill (Eng. H. B. 302) was next reported by the Clerk:

On page thirteen, section three, by striking out all of section three and inserting in lieu thereof a new section three, to read:

**§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 judgement of a licensed medical professional;

(1) The embryo or fetus is nonviable;

(2) The pregnancy is ectopic;

(3) A medical emergency exists;

(4) There exists a pregnancy that is the result of sexual assault, as defined in §61-8B-1 et seq. of this code, within the first 22 weeks or pregnancy;

(5) There exists a pregnancy that is the result of incest, as defined in §61-8-12 of this code, within the first 22 weeks or pregnancy.

Following discussion,

At the request of Senator Trump, and by unanimous consent, further consideration of the pending amendment offered by Senators Romano, et al., to the amendment offered by Senators Boley, et al., was deferred until the conclusion of further amendments now lodged with the Clerk.

On motions of Senators Stollings, Baldwin, Beach, Brown, Caputo, Geffert, Jeffries, Lindsay, and Romano the following amendment to the amendment offered by Senators Boley, et al., to the bill (Eng. H. B. 302) was next reported by the Clerk:

On page twelve, section two, line forty-one, by striking out the word "not".

Following discussion,

The question being on the adoption of the amendment offered by Senators Stollings, et al., to the amendment offered by Senators Boley, et al., to the bill, and on this question, Senator Stollings demanded the yeas and nays.

The roll being taken, the yeas were: Baldwin, Beach, Brown, Caputo, Geffert, Plymale, Romano, and Stollings—8.

The nays were: Azinger, Boley, Clements, Grady, Hamilton, Karnes, Maroney, Martin, Maynard, Phillips, Roberts, Rucker, Smith, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—22.

Absent: Jeffries, Lindsay, Nelson, and Woelfel—4.

So, a majority of those present and voting not having voted in the affirmative, the President declared the amendment offered by Senators Stollings, et al., to the amendment offered by Senators Boley, et al., to the bill rejected.

On motion of Senator Maroney, the following amendment to the amendment offered by Senators Boley, et al., to the bill (Eng. H. B. 302) was next reported by the Clerk:

On page 13, section 3, line 7, by striking out "8" and inserting in lieu thereof "10".

Following discussion and a point of inquiry to the President, with resultant response thereto,

The question being on the adoption of Senator Maroney's amendment to the amendment offered by Senators Boley, et al., to the bill, and on this question, Senator Caputo demanded the yeas and nays.

The roll being taken, the yeas were: Baldwin, Beach, Brown, Caputo, Clements, Geffert, Maroney, Plymale, Romano, Stollings, Swope, Takubo, Trump, Weld, and Woelfel—15.



The nays were: Azinger, Boley, Grady, Hamilton, Karnes, Martin, Maynard, Phillips, Roberts, Rucker, Smith, Stover, Sypolt, Tarr, Woodrum, and Blair (Mr. President)—16.

Absent: Jeffries, Lindsay, and Nelson—3.

So, a majority of those present and voting not having voted in the affirmative, the President declared Senator Maroney's amendment to the amendment offered by Senators Boley, et al., to the bill rejected.

On motions of Senators Takubo and Maroney, the following amendments to the amendment offered by Senators Boley, et al., to the bill (Eng. H. B. 302) were next reported by the Clerk and considered simultaneously:

On page 2, article 2F, section 9, lines 5 and 6, by striking out the words "or §61-2-8";

On page 2, article 2I, section 9, lines 9 and 10, by striking out the words "or §61-2-8";

On page 3, section 7, lines 10 and 11, by striking out the words "or §61-2-8";

On page 5, article 2O, section 1, line 56, by striking out the words "or §61-2-8";

On page 7, article 2P, section 1, line 40, by striking out the words "or §61-2-8";

On page 10, article 2Q, section 1, line 81, by striking out the words "or §61-2-8";

On page 10, section 2, lines 1 and 2, by striking out the words "and §61-2-8";

On pages 17 and 18, by striking out all of section 7 and inserting in lieu thereof a new section 7, to read as follows:

**§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.;

On page 19, section 9, line 1, by striking out the words "or §61-2-8";

On page 24, article 42, section 8, line 16, by striking out the words "or §61-2-8";

And,

On pages 24 and 25, article 2, by striking out all of section 8 and inserting in lieu thereof a new section 8, to read as follows:

**§61-2-8 Abortion; penalty.**

[Repealed.]

Following extended discussion,

Senator Romano arose to a point of order stating that under Rule 8 of the Rules of the Senate, which states in part "Every member desiring to speak shall . . . [avoid] all indecorous or disrespectful language", Senator Rucker's use of the term "murder" was indecorous.

Which point of order, the President ruled not well taken.

(Senator Tarr in the Chair.)

Following discussion,

(Senator Blair, Mr. President, in the Chair.)

Following discussion,

The question being on the adoption of the amendments offered by Senators Takubo and Maroney to the amendment offered by Senators Boley, et al., to the bill, and on this question, Senator Stollings demanded the yeas and nays.

The roll being taken, the yeas were: Baldwin, Beach, Brown, Caputo, Clements, Geffert, Hamilton, Maroney, Plymale, Romano, Stollings, Stover, Swope, Takubo, Trump, Weld, Woelfel, and Woodrum—18.

The nays were: Azinger, Boley, Grady, Karnes, Martin, Maynard, Phillips, Roberts, Rucker, Smith, Sypolt, Tarr, and Blair (Mr. President)—13.

Absent: Jeffries, Lindsay, and Nelson—3.

So, a majority of those present and voting having voted in the affirmative, the President declared the amendments offered by Senators Takubo and Maroney to the amendment offered by Senators Boley, et al., to the bill adopted.

On motion of Senator Tarr, the following amendment to the amendment offered by Senators Boley, et al., to the bill (Eng. H. B. 302) was next reported by the Clerk:

On page 18, section 7, after line 12, by adding thereto a new section, designated section 7a, to read as follows:

**§16-2R-7a. Abortion Assessment Advisory Board.**

(a)(1) There is hereby created the Abortion Assessment Advisory Board. The Board shall consist of the following persons:

(A) A person licensed to practice pursuant to §30-3-1 et seq. of this code with training and experience in obstetrics and gynecology.

(B) A person licensed to practice pursuant to §30-14-1 et seq. of this code with training and experience in obstetrics and gynecology.

(C) A person licensed to practice pursuant to §30-15-1 et seq. of this code with training and experience in obstetrics and gynecology.

(2) The members of the board also along with alternate members shall be appointed by the board of each respective professional board.

(b) The purpose of this board is to provide a licensed medical professional an opinion, upon his or her request, as to the necessity and advisability of performing an abortion in a situation involving a pregnant, unemancipated minor, under 23 gestational weeks, due to exceptional medical risk.

(c)(1) An opinion of the board which approves the abortion under review shall create an irrebuttable presumption that the abortion is necessary and appropriate and acts as a complete bar to any legal action, including but not limited to a criminal action, challenging the need or appropriateness of the procedure.

(2) Should medical necessity require the performance of an abortion before a requested opinion can be provided an opinion provided after the abortion shall have the same force and effect of one provided prior thereto.

(d) The Board is authorized to meet telephonically or by other electronic means and verbal approval for the abortion shall suffice: *Provided*, That a written approval is executed within three business days of the verbal approval.

(e) A decision of the board shall be by majority vote.

(f) In performing duties under this section, the board shall have access to all medical records available.

(g) Each member of the board whose regular salary is not paid by the State of West Virginia shall be paid the same compensation and expense reimbursement that is paid to members of the Legislature for their interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. Reimbursement for expenses shall not be made, except upon an itemized account, properly certified by members of the board. All reimbursement for expenses shall be paid out of the State Treasury upon a requisition upon the State Auditor.

(h) A board member shall recuse himself or herself if the board member has previously evaluated or treated the patient.

(i) The members of the board are immune from suit or liability, either personally or in their official capacity, for any claim for damage to, or loss of, property or person injury or other civil liability caused or arising out of any actual or alleged act, error, or omission that occurred within the scope of their board duties or responsibilities: *Provided*, That nothing in this subsection shall be construed to protect to protect any person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of that person.

(j) A board member is not subject to a subpoena to appear at a judicial hearing by virtue of being a member of the board or fulfilling his or her duties under this section.

Following discussion,

(Senator Woodrum in the Chair.)

Following discussion,

(Senator Blair, Mr. President, in the Chair.)

Following discussion and a point of inquiry to the President, with resultant response thereto,

Senator Tarr's foregoing amendment to the amendment offered by Senators Boley, et al., to the bill was withdrawn.

Following discussion and a point of inquiry to the President, with resultant response thereto,

Consideration of further amendments having been concluded, the Senate returned to the consideration of the amendment offered by Senators Romano, et al., to the amendment offered by Senators Boley, et al., to the bill (*shown in the Senate Journal of today, page 32*).

The question being on the adoption of the amendment offered by Senators Romano, et al., to the amendment offered by Senators Boley, et al., to the bill.

At the request of Senator Romano, and by unanimous consent, the amendment offered by Senators Romano, et al., to the amendment offered by Senators Boley, et al., to the bill was withdrawn.

On motions of Senators Romano, Baldwin, Beach, Brown, Caputo, Geffert, Jeffries, Lindsay, and Stollings, the following amendments to the amendment offered by Senators Boley, et al., to the bill (Eng. H. B. 302) were next reported by the Clerk and considered simultaneously:

On page thirteen, section three, line seven, by striking out "8" and inserting in lieu thereof "22";

And,

On page thirteen, section three, line eighteen, by striking out "14" and inserting in lieu thereof "22".

Following discussion,

The question being on the adoption of the amendments offered by Senators Romano, et al., to the amendment offered by Senators Boley, et al., to the bill, and on this question, Senator Romano demanded the yeas and nays.

The roll being taken, the yeas were: Baldwin, Beach, Brown, Caputo, Geffert, Romano, and Stollings—7.

The nays were: Azinger, Boley, Clements, Grady, Hamilton, Karnes, Maroney, Martin, Maynard, Phillips, Plymale, Roberts, Rucker, Smith, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—24.

Absent: Jeffries, Lindsay, and Nelson—3.

So, a majority of those present and voting not having voted in the affirmative, the President declared the amendments offered by Senators Romano, et al., to the amendment offered by Senators Boley, et al., to the bill rejected.

On motion of Senator Takubo, at 7:36 p.m., the Senate recessed.

The Senate reconvened at 8:10 p.m. and resumed consideration of

**Eng. House Bill 302**, Clarifying West Virginia's abortion laws.

The question now being on the adoption of the amendment offered by Senators Boley, et al., as amended.

Following discussion,

The question being on the adoption of the amendment offered by Senators Boley, et al., as amended, and on this question, Senator Baldwin demanded the yeas and nays.

The roll being taken, the yeas were: Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Hamilton, Maroney, Phillips, Plymale, Romano, Stollings, Stover, Swope, Takubo, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—21.

The nays were: Azinger, Grady, Karnes, Martin, Maynard, Roberts, Rucker, Smith, Sypolt, and Tarr—10.

Absent: Jeffries, Lindsay, and Nelson—3.

So, a majority of those present and voting having voted in the affirmative, the President declared the amendment offered by Senators Boley, et al., as amended, to the bill adopted.

Engrossed House Bill 302, as just amended, was then put upon its passage.

Pending extended discussion,

(Senator Phillips in the Chair.)

Pending discussion,

(Senator Blair, Mr. President in the Chair.)

Pending discussion,

The question being "Shall Engrossed House Bill 302 pass?"

On the passage of the bill, the yeas were: Azinger, Boley, Clements, Geffert, Grady, Hamilton, Maroney, Martin, Maynard, Phillips, Roberts, Smith, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—22.

The nays were: Baldwin, Beach, Brown, Caputo, Karnes, Plymale, Romano, Rucker, and Stollings—9.

Absent: Jeffries, Lindsay, and Nelson—3.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 302) passed.

On motion of Senator Boley, the following amendment to the title of the bill was reported by the Clerk and adopted:

**Eng. House Bill 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.

On motion of Senator Geffert, the Senate reconsidered the vote by which in earlier proceedings today it passed

**Eng. House Bill 302**, Clarifying West Virginia's abortion laws.

The vote thereon having been reconsidered,

The question again being on the passage of the bill, the yeas were: Azinger, Boley, Clements, Grady, Hamilton, Maroney, Martin, Maynard, Phillips, Roberts, Smith, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—21.

The nays were: Baldwin, Beach, Brown, Caputo, Geffert, Karnes, Plymale, Romano, Rucker, and Stollings—10.

Absent: Jeffries, Lindsay, and Nelson—3.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 302) passed.

On motion of Senator Boley, the following amendment to the title of the bill was reported by the Clerk and adopted:

**Eng. House Bill 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.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Boley, Clements, Grady, Hamilton, Maroney, Martin, Maynard, Phillips, Plymale, Roberts, Rucker, Smith, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—23.

The nays were: Baldwin, Beach, Brown, Caputo, Geffert, Karnes, Romano, and Stollings—8.

Absent: Jeffries, Lindsay, and Nelson—3.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 302) takes effect from passage.

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

Thereafter, at the request of Senator Takubo, and by unanimous consent, the remarks by Senators Caputo, Smith, Woodrum, Grady, Roberts, Azinger, Karnes, Romano, Rucker, Geffert, and Brown regarding the passage of Engrossed House Bill 302 were ordered printed in the Appendix to the Journal.

On motion of Senator Takubo, at 9:30 p.m., the Senate recessed.

The Senate reconvened at 10:06 p.m. and again proceeded to the sixth order of business.

At the request of Senator Takubo, unanimous consent being granted, Senator Takubo offered the following resolution from the floor:

**Senate Concurrent Resolution 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 request of Senator Takubo, unanimous consent being granted, the resolution was taken up for immediate consideration and reference to a committee dispensed with.

Following a point of inquiry to the President, with resultant response thereto,



The question being on the adoption of the resolution, the same was put and prevailed.

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

A message from the Clerk of the House of Delegates announced the concurrence by that body in the adoption of

**Senate Concurrent Resolution 301**, Authorizing adjournments of Senate and House of Delegates.

On motion of Senator Takubo, under the provisions of Senate Concurrent Resolution 301, at 10:08 p.m., the Senate adjourned until called back into session by the Presiding Officer.

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