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HOUSE BILL 1519

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State of Washington

54th Legislature

1995 Regular Session

By Representatives Hargrove, Mulliken, Casada, McMahan, Fuhrman, Backlund, Goldsmith, Padden, Cairnes, Boldt, Hymes, Sherstad, Pelesky, Lambert, Sheahan, Campbell, Chandler, Crouse, Beeksma, Johnson, Thompson and Smith

Read first time 01/27/95. Referred to Committee on Law & Justice.

1 AN ACT Relating to information provided to women about abortion;  
2 adding new sections to chapter 9.02 RCW; prescribing penalties; and  
3 declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** Sections 1 through 12 of this act may be  
6 known and cited as the woman's right to know act.

7 NEW SECTION. **Sec. 2.** (1) The legislature finds that:

8 (a) It is essential to the psychological and physical well-being of  
9 a woman considering an abortion that she receive complete and accurate  
10 information on her alternatives.

11 (b) The knowledgeable exercise of a woman's decision to have an  
12 abortion depends on the extent to which the woman receives sufficient  
13 information to make an informed choice between two alternatives:  
14 Giving birth or having an abortion.

15 (c) A percentage of all abortions are performed in clinics devoted  
16 solely to providing abortions and family planning services. Most women  
17 who seek abortions at these facilities do not have any relationship  
18 with the physician who performs the abortion, before or after the

1 procedure. They do not return to the facility for postsurgical care.  
2 In most instances, the woman's only actual contact with the physician  
3 occurs simultaneously with the abortion procedure, with little  
4 opportunity to receive counseling concerning her decision.

5 (d) The decision to abort "is an important, and often a stressful  
6 one, and it is desirable and imperative that it be made with full  
7 knowledge of its nature and consequences." *Planned Parenthood v.*  
8 *Danforth*, 428 U.S. 52, 67 (1976).

9 (e) "The medical, emotional, and psychological consequences of an  
10 abortion are serious and can be lasting. . . ." *H.L. v. Matheson*, 450  
11 U.S. 398, 411 (1981).

12 (f) Abortion facilities or providers offer only limited or  
13 impersonal counseling opportunities.

14 (g) Many abortion facilities or providers hire untrained and  
15 unprofessional counselors whose primary goal is to sell abortion  
16 services.

17 (2) Based on the findings in subsection (1) of this section, it is  
18 the purpose of sections 1 through 12 of this act to:

19 (a) Ensure that every woman considering an abortion receive  
20 complete information on her alternatives and that every woman  
21 submitting to an abortion do so only after giving her voluntary and  
22 informed consent to the abortion procedure.

23 (b) Protect unborn children from a woman's uninformed decision to  
24 have an abortion.

25 (c) Reduce "the risk that a woman may elect an abortion, only to  
26 discover later, with devastating psychological consequences, that her  
27 decision was not fully informed." *Planned Parenthood v. Casey*, 112  
28 S.Ct. 2791, 2823 (1992).

29 NEW SECTION. **Sec. 3.** Unless the context clearly requires  
30 otherwise, the definitions in this section apply throughout sections 1  
31 through 12 of this act.

32 (1) "Abortion" means the use or prescription of any instrument,  
33 medicine, drug, or any other substance or device with the intent to  
34 terminate the pregnancy of a woman known by the defendant to be  
35 pregnant. Such use or prescription is not an abortion if done with the  
36 intent to (a) save the life or preserve the health of an unborn child,  
37 (b) remove a dead unborn child, or (c) deliver an unborn child

1 prematurely in order to preserve the health of both the mother and her  
2 unborn child.

3 (2) "Conception" means the fusion of a human spermatozoon with a  
4 human ovum.

5 (3) "Department" means the department of health.

6 (4) "Gestational age" means the time that has elapsed since the  
7 first day of the woman's last menstrual period.

8 (5) "Medical emergency" means that condition which, on the basis of  
9 the physician's good-faith clinical judgment, so complicates the  
10 medical condition of a pregnant woman as to necessitate the immediate  
11 abortion of her pregnancy to avert her death or for which a delay will  
12 create serious risk of substantial and irreversible impairment of a  
13 major bodily function.

14 (6) "Physician" means any person licensed to practice medicine in  
15 this state. The term includes medical doctors and doctors of  
16 osteopathy.

17 (7) "Pregnant" or "pregnancy" means that female reproductive  
18 condition of having an unborn child in the mother's body.

19 (8) "Qualified person" means an agent of the physician who is a  
20 psychologist, licensed social worker, licensed professional counselor,  
21 registered nurse, or physician.

22 (9) "Unborn child" means the offspring of human beings from  
23 conception until birth.

24 (10) "Viability" and "viable" mean that stage of fetal development  
25 when the life of the unborn child may be continued indefinitely outside  
26 the womb by natural or artificial life-supportive systems.

27 (11) "Woman" means any female person.

28 NEW SECTION. **Sec. 4.** No abortion shall be performed or induced  
29 without the voluntary and informed consent of the woman upon whom the  
30 abortion is to be performed or induced. Except in the case of a  
31 medical emergency, consent to an abortion is voluntary and informed if  
32 and only if:

33 (1) At least twenty-four hours before the abortion, the physician  
34 who is to perform the abortion or the referring physician has informed  
35 the woman, orally and in person, of:

36 (a) The name of the physician who will perform the abortion.

37 (b) A description of the proposed abortion method and of those  
38 risks, including risks to the woman's reproductive health, and

1 alternatives to the abortion that a reasonable patient would consider  
2 material to the decision of whether or not to undergo the abortion.

3 (c) The probable gestational age of the unborn child at the time  
4 the abortion is to be performed. If the unborn child is viable or has  
5 reached the gestational age of twenty-four weeks, that (i) the unborn  
6 child may be able to survive outside the womb; (ii) the woman has the  
7 right to request the physician to use the method of abortion that is  
8 most likely to preserve the life of the unborn child; and (iii) if the  
9 unborn child is born alive, the attending physician has the legal  
10 obligation to take all reasonable steps necessary to maintain the life  
11 and health of the child.

12 (d) The probable anatomical and physiological characteristics of  
13 the unborn child at the time the abortion is to be performed.

14 (e) The medical risks associated with carrying her child to term.

15 (f) Any need for anti-Rh immune globulin therapy, and if she is Rh-  
16 negative, the likely consequences of refusing such therapy and the cost  
17 of the therapy.

18 (2) At least twenty-four hours before the abortion, the physician  
19 who is to perform the abortion, the referring physician, or a qualified  
20 person has informed the woman, orally and in person, that:

21 (a) Medical assistance benefits may be available for prenatal care,  
22 childbirth, and neonatal care, and that more detailed information on  
23 the availability of such assistance is contained in the printed  
24 materials given to her and described in section 5 of this act.

25 (b) The printed materials in section 5 of this act describe the  
26 unborn child and list agencies that offer alternatives to abortion.

27 (c) The father of the unborn child is liable to assist in the  
28 support of her child, even in instances where he has offered to pay for  
29 the abortion. In the case of rape, this information may be omitted.

30 (d) She is free to withhold or withdraw her consent to the abortion  
31 at anytime before or during the abortion without affecting her right to  
32 future care or treatment and without the loss of any state or federally  
33 funded benefits to which she might otherwise be entitled.

34 (3) The information in subsections (1) and (2) of this section is  
35 provided to the woman individually and in a private room to protect her  
36 privacy and maintain the confidentiality of her decision and to ensure  
37 that the information focuses on her individual circumstances and that  
38 she has an adequate opportunity to ask questions.

1 (4) At least twenty-four hours before the abortion, the woman is  
2 given a copy of the printed materials described in section 5 of this  
3 act. If the woman is unable to read the materials, they shall be read  
4 to her. If the woman asks questions concerning any of the information  
5 or materials, answers shall be provided to her in her own language.

6 (5) The woman certifies in writing on a form provided by the  
7 department, prior to the abortion, that the information required to be  
8 provided under subsections (1), (2), and (4) of this section has been  
9 provided. All physicians who perform abortions shall report the total  
10 number of certifications received monthly to the department. The  
11 department shall make the number of certifications received available  
12 on an annual basis.

13 (6) Prior to the performance of the abortion, the physician who is  
14 to perform the abortion or the physician's agent receives a copy of the  
15 written certification prescribed by subsection (5) of this section.

16 (7) The woman is not required to pay any amount for the abortion  
17 procedure until the twenty-four hour waiting period has expired.

18 NEW SECTION. **Sec. 5.** (1) The department shall cause to be  
19 published, within ninety days after the effective date of this act, and  
20 shall update on an annual basis, the following easily comprehensible  
21 printed materials:

22 (a) Geographically indexed materials designed to inform the woman  
23 of public and private agencies and services available to assist a woman  
24 through pregnancy, upon childbirth and while her child is dependent,  
25 including but not limited to, adoption agencies. The materials shall  
26 include a comprehensive list of the agencies, a description of the  
27 services they offer, and the telephone numbers and addresses of the  
28 agencies; and inform the woman about available medical assistance  
29 benefits for prenatal care, childbirth, and neonatal care and about the  
30 support obligations of the father of a child who is born alive. The  
31 department shall ensure that the materials described in this section  
32 are comprehensive and do not directly or indirectly promote, exclude,  
33 or discourage the use of any agency or service described in this  
34 section. The materials shall also contain a toll-free, twenty-four  
35 hour a day telephone number which may be called to obtain, orally, such  
36 a list and description of agencies in the locality of the caller and of  
37 the services they offer. The materials shall state that it is unlawful  
38 for any individual to coerce a woman to undergo an abortion, that any

1 physician who performs an abortion upon a woman without her informed  
2 consent may be liable to her for damages in a civil action at law, and  
3 that the law permits adoptive parents to pay costs of prenatal care,  
4 childbirth, and neonatal care. The materials shall include the  
5 following statement:

6 There are many public and private agencies willing and able to  
7 help you to carry your child to term, and to assist you and  
8 your child after your child is born, whether you choose to keep  
9 your child or to place her or him for adoption. The state of  
10 Washington strongly urges you to contact them before making a  
11 final decision about abortion. The law requires that your  
12 physician or physician's agent give you the opportunity to call  
13 agencies like these before you undergo an abortion.

14 (b) Materials that inform the pregnant woman of the probable  
15 anatomical and physiological characteristics of the unborn child at  
16 two-week gestational increments from fertilization to full term,  
17 including pictures or drawings representing the development of unborn  
18 children at two-week gestational increments, and any relevant  
19 information on the possibility of the unborn child's survival. Any  
20 such pictures or drawings must contain the dimensions of the unborn  
21 child and must be realistic. The materials shall be objective,  
22 nonjudgmental, and designed to convey only accurate scientific  
23 information about the unborn child at the various gestational ages.  
24 The material shall also contain objective information describing the  
25 methods of abortion procedure commonly employed, the medical risks  
26 commonly associated with each such procedure, and the medical risks  
27 associated with carrying a child to term.

28 (c) A certification form to be used by physicians or their agents  
29 under section 4(5) of this act, which will list all the items of  
30 information which are to be given to women by physicians or their  
31 agents under sections 1 through 12 of this act.

32 (2) The materials shall be printed in a typeface large enough to be  
33 clearly legible.

34 (3) The materials required under this section shall be available at  
35 no cost from the department upon request and in appropriate number to  
36 any person, facility, or hospital.

1        NEW SECTION.     **Sec. 6.**     If a medical emergency compels the  
2 performance of an abortion, the physician shall inform the woman,  
3 before the abortion if possible, of the medical indications supporting  
4 his or her judgment that an abortion is necessary to avert her death or  
5 to avert substantial and irreversible impairment of a major bodily  
6 function.

7        NEW SECTION.     **Sec. 7.**     (1) Any person who intentionally, knowingly,  
8 or recklessly violates sections 1 through 12 of this act is guilty of  
9 a misdemeanor.

10        (2) No physician shall be guilty of violating sections 1 through 12  
11 of this act if he or she can demonstrate, by a preponderance of the  
12 evidence, that he or she reasonably believed that furnishing the  
13 information would have resulted in a severely adverse effect on the  
14 physical or mental health of the pregnant woman.

15        NEW SECTION.     **Sec. 8.**     In addition to whatever remedies are  
16 available under the common or statutory law of this state, failure to  
17 comply with the requirements of sections 1 through 12 of this act  
18 shall:

19        (1) Provide a basis for a civil malpractice action.     Any  
20 intentional violation of sections 1 through 12 of this act shall be  
21 admissible in a civil suit as prima facie evidence of a failure to  
22 obtain an informed consent.     When requested, the court shall allow a  
23 woman to proceed using solely her initials or a pseudonym and may close  
24 any proceedings in the case and enter other protective orders to  
25 preserve the privacy of the woman upon whom the abortion was performed.

26        (2) Provide a basis for professional disciplinary action under  
27 chapter 18.130 RCW.

28        (3) Provide a basis for recovery for the woman for the death of her  
29 unborn child under the wrongful death act, whether or not the unborn  
30 child was viable at the time the abortion was performed or was born  
31 alive.

32        NEW SECTION.     **Sec. 9.**     Any physician who complies with the  
33 provisions of sections 1 through 12 of this act may not be held civilly  
34 liable to his or her patient for failure to obtain informed consent to  
35 the abortion.

1        NEW SECTION.    **Sec. 10.**    If any provision of this act or its  
2 application to any person or circumstance is held invalid, the  
3 remainder of the act or the application of the provision to other  
4 persons or circumstances is not affected.

5        NEW SECTION.    **Sec. 11.**    (1) Nothing in sections 1 through 12 of  
6 this act shall be construed as creating or recognizing a right to  
7 abortion.

8        (2) It is not the intention of sections 1 through 12 of this act to  
9 make lawful an abortion that is currently unlawful.

10       NEW SECTION.    **Sec. 12.**    The legislature, by joint resolution, may  
11 appoint one or more of its members, who sponsored or cosponsored  
12 chapter . . . , Laws of 1995 (this act) in his or her official capacity,  
13 to intervene as a matter of right in any case in which the  
14 constitutionality of this law is challenged.

15       NEW SECTION.    **Sec. 13.**    Sections 1 through 12 of this act are each  
16 added to chapter 9.02 RCW.

17       NEW SECTION.    **Sec. 14.**    This act is necessary for the immediate  
18 preservation of the public peace, health, or safety, or support of the  
19 state government and its existing public institutions, and shall take  
20 effect immediately.

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