
HOUSE BILL 2635

State of Washington

55th Legislature

1998 Regular Session

By Representatives Carrell, Mulliken, Boldt, Mielke, Sherstad, Sheahan, Sterk, Backlund and Thompson

Read first time 01/16/98. Referred to Committee on Law & Justice.

1 AN ACT Relating to the protection of viable children, born or
2 unborn; amending RCW 9.02.110, 9.02.170, and 18.71.240; adding new
3 sections to chapter 9.02 RCW; creating new sections; recodifying RCW
4 18.71.240; prescribing penalties; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that the right to
7 life is foundational to the securement and enjoyment of all other
8 rights, that the state has a compelling interest in protecting the life
9 of the viable fetus, and that unborn viable children have all the
10 rights to life and safety that belong to already-born children.

11 (2) The legislature further finds that although it is possible for
12 a woman to choose to terminate her pregnancy that does not include a
13 right to terminate the life of the viable fetus, born or unborn.

14 NEW SECTION. **Sec. 2.** A physician or other person may not perform,
15 or attempt to perform, any abortion with the intent to terminate the
16 life of a viable fetus, unless it is necessary to preserve the life of
17 the mother. If a pregnancy is terminated, the life of the viable fetus

1 may not be terminated, unless it is necessary to preserve the life of
2 the mother.

3 NEW SECTION. **Sec. 3.** A pregnancy shall not be terminated because
4 of the presence of any sensory, mental, or physical disability or
5 disease of the viable fetus, or of a parent of the viable fetus, unless
6 it is necessary to preserve the life or health of the mother or the
7 life or health of the viable fetus.

8 NEW SECTION. **Sec. 4.** A pregnancy may not be terminated because of
9 the race, color, national origin, sex, or age of the viable fetus, or
10 because of the race, color, national origin, creed, marital status,
11 age, employment status, or financial condition of a parent of the
12 viable fetus.

13 NEW SECTION. **Sec. 5.** (1) In any action or proceeding brought
14 under section 2 of this act, the physician performing, or attempting to
15 perform, the abortion shall substantiate with competent medical proof
16 and professional opinion, by a preponderance of the evidence, that at
17 the time the abortion was performed, or was attempted to be performed,
18 the fetus was not viable, or that the abortion was necessary to
19 preserve the life of the mother.

20 (2) In any action or proceeding brought under section 3 of this
21 act, the physician performing, or attempting to perform, the abortion
22 shall substantiate with competent medical proof and professional
23 opinion, by a preponderance of the evidence, that at the time the
24 abortion was performed, or was attempted to be performed, the fetus was
25 not viable, or that the viable fetus, or a parent of the viable fetus,
26 had a sensory, mental, or physical disability or disease, and that the
27 abortion was necessary to preserve the life or health of the mother or
28 the life or health of the viable fetus.

29 NEW SECTION. **Sec. 6.** (1) A violation of any provision of section
30 2 or 3 of this act not resulting in bodily injury to or the death of
31 the viable fetus, born or unborn, constitutes the crime of criminal
32 abortion. Criminal abortion is a gross misdemeanor.

33 (2) A violation of any provision of section 2 or 3 of this act
34 resulting in bodily injury to the viable fetus, born or unborn,
35 constitutes a crime under RCW 9A.36.011 through 9A.36.041.

1 (3) A violation of any provision of section 2 or 3 of this act
2 resulting in the death of the viable fetus, born or unborn, constitutes
3 a crime under RCW 9A.32.010 through 9A.32.070.

4 NEW SECTION. **Sec. 7.** (1) Any child born as a result of a
5 termination of pregnancy under section 2 or 3 of this act shall become
6 a ward of the state until that time as the child is adopted, if the
7 mother of the child affirmatively relinquishes the child by signing a
8 written statement of release terminating all rights and obligations
9 pertaining to the child prior to or following the termination of the
10 pregnancy.

11 (2) Prior to adoption, if paternity is established, the father of
12 the child may petition the court for custody and shall be granted
13 custody if otherwise not found to be unfit.

14 (3) If paternity is not established, or the father of the child is
15 not granted custody, a maternal or paternal grandparent of the child
16 may petition the court for custody and shall be granted custody if
17 otherwise not found to be unfit. If both a maternal and paternal
18 grandparent petition the court for custody, the court shall determine
19 which placement would be in the best interest of the child.

20 (4) If the father or a grandparent is not granted custody of the
21 child, a sibling of the mother of the child or, if paternity of the
22 father has been established, a sibling of the father of the child may
23 petition the court for custody and shall be granted custody if
24 otherwise not found to be unfit. If more than one sibling petitions
25 the court for custody, the court shall determine which placement would
26 be in the best interest of the child.

27 (5) The department of social and health services shall compile a
28 list of all known public and private agencies or organizations
29 providing adoption services registered with the state, and shall make
30 the list available to the public at large.

31 (6) An agency or organization may register with the department of
32 social and health services by providing the following: (a) The name of
33 the agency; (b) phone number; (c) address, including county; and (d) a
34 brief description of the services offered.

35 **Sec. 8.** RCW 9.02.110 and 1992 c 1 s 2 are each amended to read as
36 follows:

1 The state may not deny or interfere with a woman's right to choose
2 to have an abortion (~~((prior to viability of the fetus,))~~) or to protect
3 her life or health prior to the viability of the fetus. A woman's
4 right to choose to have an abortion after the viability of the fetus
5 does not include the right to terminate the life of the unborn viable
6 fetus.

7 If a woman chooses to have an abortion after the viability of the
8 fetus, the life of the viable fetus may not be terminated, unless it is
9 necessary to preserve the life of the mother.

10 A physician may terminate and a health care provider may assist a
11 physician in terminating a pregnancy as permitted by this section.

12 **Sec. 9.** RCW 9.02.170 and 1992 c 1 s 8 are each amended to read as
13 follows:

14 For purposes of this chapter:

15 (1) "Viability" means the point in the pregnancy when, in the
16 judgment of the physician on the particular facts of the case before
17 such physician, there is a reasonable likelihood of the fetus's
18 sustained survival outside the uterus with or without the application
19 of extraordinary medical measures.

20 (2) "Abortion" means any medical treatment intended to induce the
21 termination of a pregnancy except for the purpose of producing a live
22 birth.

23 (3) "Pregnancy" means the reproductive process beginning with the
24 implantation of an embryo.

25 (4) "Physician" means a physician licensed to practice under
26 chapter 18.57 or 18.71 RCW in the state of Washington.

27 (5) "Health care provider" means a physician or a person who is an
28 employee or agent of the physician, acting in the course and scope of
29 his or her employment under the general direction of ((a)) the
30 physician.

31 (6) "State" means the state of Washington and counties, cities,
32 towns, municipal corporations, and quasi-municipal corporations in the
33 state of Washington.

34 (7) "Private medical facility" means any medical facility that is
35 not owned or operated by the state.

36 **Sec. 10.** RCW 18.71.240 and 1981 c 328 s 1 are each amended to read
37 as follows:

1 The right of medical care or treatment of an infant, including a
2 viable fetus, born alive in the course of an abortion procedure shall
3 be the same as the right of an infant born prematurely of equal
4 gestational age.

5 NEW SECTION. **Sec. 11.** RCW 18.71.240 is recodified as a section in
6 chapter 9.02 RCW.

7 NEW SECTION. **Sec. 12.** Sections 2 through 7 of this act are each
8 added to chapter 9.02 RCW.

9 NEW SECTION. **Sec. 13.** The provisions of this act are to be
10 liberally construed to effectuate the policies and purposes of this
11 act. In the event of conflict between provisions of this act and any
12 other act, the provisions of this act shall govern.

13 NEW SECTION. **Sec. 14.** If any provision of this act or its
14 application to any person or circumstance is held invalid, the
15 remainder of the act or the application of the provision to other
16 persons or circumstances is not affected.

17 NEW SECTION. **Sec. 15.** This act is necessary for the immediate
18 preservation of the public peace, health, morals, or safety, or support
19 of the state government and its existing public institutions, and takes
20 effect immediately.

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