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SENATE BILL 5185

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State of Washington

68th Legislature

2023 Regular Session

By Senators Fortunato and Padden

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1 AN ACT Relating to abortion; amending RCW 9.02.110, 9.02.120,  
2 9.02.130, and 9.02.140; reenacting and amending RCW 9.02.170; adding  
3 a new section to chapter 9.02 RCW; repealing RCW 9.02.100; and  
4 declaring an emergency.

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

6 **Sec. 1.** RCW 9.02.110 and 2022 c 65 s 3 are each amended to read  
7 as follows:

8 (1) The state may not deny or interfere with a ((pregnant  
9 individual's)) woman's right to choose to have an abortion prior to  
10 ((viability of the fetus, or to protect the pregnant individual's  
11 life or health)) 24 weeks of gestational age, or in case of a medical  
12 emergency or severe fetal abnormality.

13 ((A)) (2) Except in a medical emergency or in the case of a  
14 severe fetal abnormality, a physician, physician assistant, advanced  
15 registered nurse practitioner, or other health care provider acting  
16 within the provider's scope of practice may not terminate and a  
17 health care provider may not assist a physician, physician assistant,  
18 advanced registered nurse practitioner, or other health care provider  
19 acting within the provider's scope of practice in terminating a  
20 pregnancy ((as permitted by)) if the probable gestational age of the  
21 unborn human being has been determined to be greater than 24 weeks.

1 (3) No person may perform an abortion except as authorized in  
2 this section.

3 **Sec. 2.** RCW 9.02.120 and 2022 c 65 s 8 are each amended to read  
4 as follows:

5 ~~((Unless authorized by RCW 9.02.110, any))~~ (1) Any person who  
6 performs an abortion on another person in violation of this chapter  
7 shall be guilty of a class C felony punishable under chapter 9A.20  
8 RCW. ((The state shall not penalize, prosecute, or otherwise take  
9 adverse action against an individual based on their actual,  
10 potential, perceived, or alleged pregnancy outcomes. Nor shall the  
11 state penalize, prosecute, or otherwise take adverse action against  
12 someone for aiding or assisting a pregnant individual in exercising  
13 their right to reproductive freedom with their voluntary consent.))

14 (2) Any health care provider licensed under Title 18 RCW who  
15 violates this chapter commits an act of unprofessional conduct and  
16 his or her license shall be suspended by the appropriate disciplining  
17 authority pursuant to chapter 18.130 RCW.

18 (3) A physician, physician assistant, advanced registered nurse  
19 practitioner, or health care provider who knowingly or intentionally  
20 delivers to the department of health any report required by RCW  
21 9.02.130 that is known by the physician to be false is subject to a  
22 civil penalty of up to \$500 per violation imposed by the department  
23 of health.

24 (4) The attorney general has the authority to bring an action in  
25 law or equity to enforce the provisions of this chapter on behalf of  
26 any disciplining authority as defined in chapter 18.130 RCW. The  
27 disciplining authorities also have the authority to bring such an  
28 action on their own.

29 **Sec. 3.** RCW 9.02.130 and 2022 c 65 s 4 are each amended to read  
30 as follows:

31 (1) Except in a medical emergency or in the case of a severe  
32 fetal abnormality, prior to performing an abortion as authorized in  
33 RCW 9.02.110, a physician, physician assistant, advanced registered  
34 nurse practitioner, or other health care provider acting within the  
35 provider's scope of practice shall first:

36 (a) Make a determination of the probable gestational age of the  
37 unborn human being and document that gestational age; and

1 (b) Document in the chart of the individual seeking the abortion  
2 the probable gestational age of the unborn human being.

3 (2) Whenever a physician, physician assistant, advanced  
4 registered nurse practitioner, or other health care provider acting  
5 within the provider's scope of practice performs an abortion on an  
6 unborn human being whose gestational age is greater than 24 weeks,  
7 the physician, physician assistant, advanced registered nurse  
8 practitioner, or other health care provider acting within the  
9 provider's scope of practice shall cause to be filed with the  
10 department of health, on a form supplied by the department, a report.

11 (a) The report shall contain the following:

12 (i) The date of the abortion;

13 (ii) The specific method of abortion used;

14 (iii) The probable gestational age of the unborn human being and  
15 the method used to calculate the gestational age;

16 (iv) A statement declaring that the abortion was necessary to  
17 preserve the life or physical health of the individual seeking the  
18 abortion;

19 (v) Specific medical indications supporting the abortion; and

20 (vi) Probable health consequences of the abortion and specific  
21 abortion method used.

22 (b) The report may not contain the name of the individual upon  
23 whom the abortion was performed or any other information or  
24 identifiers that would make it possible to identify, in any manner or  
25 any circumstances, an individual seeking the abortion.

26 (c) The department of health shall, within 30 days of the  
27 effective date of this section, create the forms required by this  
28 section. This subsection does not apply until at least 10 days after  
29 the requisite forms have been made available.

30 (3) The good faith judgment of a physician, physician assistant,  
31 advanced registered nurse practitioner, or other health care provider  
32 acting within the provider's scope of practice as to (~~viability of~~  
33 ~~the fetus or as to the risk to life or health of a pregnant~~  
34 ~~individual~~)) the gestational age of the unborn human being, or the  
35 presence of a medical emergency or severe fetal abnormality and the  
36 good faith judgment of a health care provider as to the duration of  
37 pregnancy (~~shall be~~) is not a defense in any proceeding in which a  
38 violation of this chapter is an issue, unless all of the requirements  
39 of this section have been met.

1 (4) Determinations of gestational age under this section must be  
2 made according to standard medical practices and techniques used in  
3 the community.

4 **Sec. 4.** RCW 9.02.140 and 2022 c 65 s 5 are each amended to read  
5 as follows:

6 Any regulation promulgated by the state relating to abortion  
7 shall be valid only if((÷

8 ~~(1) The regulation is medically necessary to protect the life or~~  
9 ~~health of the pregnant individual who is terminating the pregnancy,~~

10 ~~(2) The regulation is consistent with established medical~~  
11 ~~practice, and~~

12 ~~(3) Of the available alternatives, the regulation imposes the~~  
13 ~~least restrictions on the pregnant individual's right to have an~~  
14 ~~abortion as defined by RCW 9.02.100 through 9.02.170 and 9.02.900~~  
15 ~~through 9.02.902)) consistent with the requirements of this chapter.~~

16 **Sec. 5.** RCW 9.02.170 and 2022 c 65 s 7 are each reenacted and  
17 amended to read as follows:

18 For purposes of this chapter:

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

22 (2) "Advanced registered nurse practitioner" means an advanced  
23 registered nurse practitioner licensed under chapter 18.79 RCW.

24 (3) "Gestational age" or "probable gestational age" means the age  
25 of an unborn human being as calculated from the first day of the last  
26 menstrual period of the woman.

27 (4) "Health care provider" means a person regulated under Title  
28 18 RCW to practice health or health-related services or otherwise  
29 practicing health care services in this state consistent with state  
30 law.

31 ((÷4)) (5) "Human being" means an individual member of the  
32 species homo sapiens, from and after the point of conception.

33 (6) "Major bodily function" includes, but is not limited to,  
34 functions of the immune system, normal cell growth, and digestive,  
35 bowel, bladder, neurological, brain, respiratory, circulatory,  
36 endocrine, and reproductive functions.

37 (7) "Medical emergency" means a condition in which, on the basis  
38 of a physician's good faith clinical judgment, an abortion is

1 necessary to preserve the life of a woman whose life is endangered by  
2 a physical disorder, physical illness, or physical injury, including  
3 a life-endangering physical condition arising from the pregnancy  
4 itself, or when the continuation of the pregnancy will create a  
5 serious risk of substantial and irreversible impairment of a major  
6 bodily function.

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

9 ~~((5))~~ (9) "Physician assistant" means a physician assistant  
10 licensed to practice under chapter 18.71A RCW in the state of  
11 Washington.

12 ~~((6))~~ (10) "Pregnancy" means the reproductive process beginning  
13 with the implantation of an embryo.

14 ~~((7))~~ (11) "Private medical facility" means any medical  
15 facility that is not owned or operated by the state.

16 ~~((8))~~ (12) "Severe fetal abnormality" means a life-threatening  
17 physical condition that, in reasonable medical judgment, regardless  
18 of the provision of lifesaving medical treatment, is incompatible  
19 with life outside the womb.

20 (13) "State" means the state of Washington and counties, cities,  
21 towns, municipal corporations, and quasi-municipal corporations in  
22 the state of Washington.

23 ~~((9) "Viability" means the point in the pregnancy when, in the~~  
24 ~~judgment of the physician, physician assistant, advanced registered~~  
25 ~~nurse practitioner, or other health care provider acting within the~~  
26 ~~provider's scope of practice on the particular facts of the case~~  
27 ~~before such physician, physician assistant, advanced registered nurse~~  
28 ~~practitioner, or other health care provider acting within the~~  
29 ~~provider's scope of practice, there is a reasonable likelihood of the~~  
30 ~~fetus's sustained survival outside the uterus without the application~~  
31 ~~of extraordinary medical measures.))~~

32 NEW SECTION. Sec. 6. A new section is added to chapter 9.02 RCW  
33 to read as follows:

34 Nothing in this chapter shall be construed as creating or  
35 recognizing a right to abortion or as altering generally accepted  
36 medical standards. It is not the intent of this chapter to make  
37 lawful an abortion that is otherwise unlawful. An abortion that  
38 complies with this chapter, but violates any other state law, is

1 unlawful. An abortion that complies with another state law, but  
2 violates this section, is unlawful.

3 NEW SECTION. **Sec. 7.** RCW 9.02.100 (Reproductive privacy—Public  
4 policy) and 2022 c 65 s 2 & 1992 c 1 s 1 (Initiative Measure No. 120,  
5 approved November 5, 1991) are each repealed.

6 NEW SECTION. **Sec. 8.** If any provision of this act or its  
7 application to any person or circumstance is held invalid, the  
8 remainder of the act or the application of the provision to other  
9 persons or circumstances is not affected.

10 NEW SECTION. **Sec. 9.** This act is necessary for the immediate  
11 preservation of the public peace, health, or safety, or support of  
12 the state government and its existing public institutions, and takes  
13 effect immediately.

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