

Initiative No. 1698

February 19, 2020

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: I-3772.1/20

ATTY/TYPIST: JO:jlb

BRIEF DESCRIPTION:

Initiative No. 1698

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AN ACT Relating to abortion and enacting laws that protect the rights of unborn human beings at the first medical detection of a fetal heartbeat; amending RCW 9.02.110, 9A.32.060, 9A.36.021, 9.02.130, 9.02.170, and 9.02.120; adding a new section to chapter 9.02 RCW; and prescribing penalties.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** A new section is added to chapter 9.02 RCW to read as follows:

(1) (a) Immediately prior to, and no greater than, twenty-four hours before any abortion being performed, there shall first be performed an ultrasound test with explicit intent to determine whether or not a fetal heartbeat is present, and the results of the ultrasound shall be included in the pregnant woman's medical records, which shall be reported to the state department of health and the federal centers for disease control and prevention.

(b) Except as provided in subsections (2) through (4) of this section, it shall be unlawful for any person to knowingly perform an abortion with the specific intent of causing or abetting the termination of the life of an unborn human being when a fetal heartbeat has been detected. Any person who acts based on the exceptions provided in subsections (2) through (4) of this section shall so note in the pregnant woman's medical records and shall specify in the pregnant woman's medical records which of the exceptions the person performing the abortion has invoked.

(2) (a) A person shall not be in violation of subsection (1) of this section if the person performs a medical procedure designed or intended, in that person's reasonable medical judgment, to prevent the death of a pregnant woman or to prevent a serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman.

(b) (i) A person who performs a medical procedure as described in (a) of this subsection shall declare in writing, under penalty of perjury, that the medical procedure was necessary, to the best of that person's reasonable medical judgment, to prevent the death of the pregnant woman or to prevent a serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman. The person shall also provide in that written statement the specific medical condition of the pregnant woman that the medical procedure was performed to address and the medical rationale for the conclusion that the medical procedure was necessary to prevent the death of the pregnant woman or to prevent a serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman.

(ii) The person who performs a medical procedure as described in (a) of this subsection shall place the written documentation required by (b) (i) of this subsection in the pregnant woman's medical records, and shall maintain a copy of the written documentation for not less than seven years.

(3) A person shall not be in violation of subsection (1) of this section if the person has performed an examination for the presence of a fetal heartbeat in the unborn human individual using standard medical practice and that examination does not reveal a fetal heartbeat, or the person has been informed by a physician who has performed the examination for a fetal heartbeat that the examination did not reveal a fetal heartbeat.

(4) For purposes of this section, "abortion" may not include an abortion performed when the pregnancy is diagnosed as medically futile. This diagnosis shall be a medical judgment certified in the pregnant woman's medical record by a reasonably prudent physician who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

(5) In addition to any other grounds provided by law, it shall be grounds for the nonissuance, suspension, revocation, or restriction of a license, or the denial of reinstatement or renewal

of a license, issued by the appropriate board, commission, or agency of the state of Washington, if the applicant, licensee, or the medical facility, wherein the adjudicated illegal act was performed, has performed an abortion in violation of this section.

(6) This section shall not be construed to repeal any other provision of law that restricts or regulates the performance of an abortion by a particular method or during a particular stage of a pregnancy.

(7) For purposes of this section:

(a) "Fetal heartbeat" means cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.

(b) "Medically futile" means that, in reasonable medical judgment, the unborn child has a profound and irremediable congenital or chromosomal anomaly that is incompatible with sustaining life after birth.

(c) "Unborn human being" means an individual living member of the species *Homo sapiens* throughout the entire embryonic and fetal stages, from fertilization through full gestation and birth.

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

The state may not deny ~~((or))~~ nor interfere with a woman's right to choose to have an abortion prior to ~~((viability of the fetus,))~~ the detection of a fetal heartbeat or to protect her life or health.

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

Sec. 3. RCW 9A.32.060 and 2011 c 336 s 357 are each amended to read as follows:

(1) A person is guilty of manslaughter in the first degree when:

(a) He or she recklessly causes the death of another person; or

(b) He or she intentionally and unlawfully kills an unborn quick child or of a child who has been medically diagnosed to have a

detected fetal heartbeat by inflicting any injury upon the mother of such child.

(2) Manslaughter in the first degree is a class A felony.

Sec. 4. RCW 9A.36.021 and 2011 c 166 s 1 are each amended to read as follows:

(1) A person is guilty of assault in the second degree if he or she, under circumstances not amounting to assault in the first degree:

(a) Intentionally assaults another and thereby recklessly inflicts substantial bodily harm; or

(b) Intentionally and unlawfully causes substantial bodily harm to an unborn quick child or of a child who has been medically diagnosed to have a detected fetal heartbeat by intentionally and unlawfully inflicting any injury upon the mother of such child; or

(c) Assaults another with a deadly weapon; or

(d) With intent to inflict bodily harm, administers to or causes to be taken by another, poison or any other destructive or noxious substance; or

(e) With intent to commit a felony, assaults another; or

(f) Knowingly inflicts bodily harm which by design causes such pain or agony as to be the equivalent of that produced by torture; or

(g) Assaults another by strangulation or suffocation.

(2) (a) Except as provided in (b) of this subsection, assault in the second degree is a class B felony.

(b) Assault in the second degree with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135 is a class A felony.

Sec. 5. RCW 9.02.130 and 1992 c 1 s 4 are each amended to read as follows:

The good faith judgment of a physician (~~as to viability of the fetus~~) based on the medical test charts and results under section 1 of this act or as to the risk to life or health of a woman and the

good faith judgment of a health care provider as to the duration of pregnancy shall be a defense in any proceeding in which a violation of this chapter is an issue.

Sec. 6. RCW 9.02.170 and 1992 c 1 s 8 are each amended to read as follows:

For purposes of this chapter:

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

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

~~((3))~~ (2) "Pregnancy" means the reproductive process beginning with the implantation of an embryo.

~~((4))~~ (3) "Physician" means a physician licensed to practice under chapter 18.57 or 18.71 RCW in the state of Washington.

~~((5))~~ (4) "Health care provider" means a physician or a person acting under the general direction of a physician.

~~((6))~~ (5) "State" means the state of Washington and counties, cities, towns, municipal corporations, and quasi-municipal corporations in the state of Washington.

~~((7))~~ (6) "Private medical facility" means any medical facility that is not owned or operated by the state.

Sec. 7. RCW 9.02.120 and 1992 c 1 s 3 are each amended to read as follows:

~~((Unless authorized by RCW 9.02.110, any))~~ Any person who ~~((performs an abortion on another person))~~ violates RCW 9.02.110 shall be guilty of a class ~~((C))~~ A felony ~~((punishable under chapter 9A.20 RCW))~~ pursuant to the provisions of RCW 9A.32.010, 9A.32.060, and 9A.36.021.

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