H-2031.4

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**HOUSE BILL 2154**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 66th Legislature 2019 Regular Session**

**By** Representatives Shea, Kraft, Klippert, and Young

AN ACT Relating to abortion; amending RCW 4.20.005, 7.70.060, 9A.16.060, 9A.32.010, 9A.32.060, and 9A.36.021; reenacting and amending RCW 9A.04.110; adding new sections to chapter 9.02 RCW; adding a new section to chapter 43.10 RCW; creating new sections; repealing RCW 9.02.005, 9.02.100, 9.02.110, 9.02.120, 9.02.130, 9.02.140, 9.02.150, 9.02.160, 9.02.170, 9.02.900, 9.02.902, and 48.43.073; prescribing penalties; and declaring an emergency.

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

NEW SECTION. **Sec.**  This act may be known and cited as the abolition of abortion in Washington act.

NEW SECTION. **Sec.**  It is the intent of the legislature to: Provide to unborn children the equal protection of the laws of this state; establish that a living human child, from the moment of fertilization upon the fusion of a human spermatozoon with a human ovum, or in the case of asexual reproduction, at the equivalent stage of development, is entitled to the same rights, powers, privileges, justice, and protections as are secured or granted by the laws of this state to any other human person; and treat as void and of no effect any and all federal acts, laws, treaties, decisions, orders, or regulations that would deprive an unborn child of the right to life or prohibit the protection of such right.

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

(1) Prosecuting attorneys shall enforce chapters 9A.32 and 9A.36 RCW in relation to abortion regardless of any contrary or conflicting federal acts, laws, treaties, decisions, orders, or regulations.

(2) For purposes of this section, "abortion" means the act of using or prescribing an instrument, drug, medicine, or any other substance, device, or means to intentionally cause the death of an unborn child. "Abortion" does not include unintentionally causing the death of a human embryo or fetus or conduct that occurs after a natural death of a human embryo or fetus.

NEW SECTION. **Sec.**  A new section is added to chapter 43.10 RCW to read as follows:

(1) The attorney general has concurrent authority and power with the prosecuting attorneys to investigate crimes and initiate and conduct prosecutions under chapters 9A.32 and 9A.36 RCW in relation to abortion. The attorney general shall monitor enforcement of chapters 9A.32 and 9A.36 RCW by prosecuting attorneys in Washington state in relation to abortion regardless of any contrary or conflicting federal acts, laws, treaties, decisions, orders, or regulations.

(2) Prior to any prosecution by the attorney general under this section, the attorney general and the county in which the offense occurred must reach an agreement regarding the payment of all costs, including expert witness fees, and defense attorneys' fees associated with the prosecution.

(3) For purposes of this section, "abortion" means the act of using or prescribing an instrument, drug, medicine, or any other substance, device, or means to intentionally cause the death of an unborn child. "Abortion" does not include unintentionally causing the death of a human embryo or fetus or conduct that occurs after a natural death of a human embryo or fetus.

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

For purposes of this chapter, "human physical life" means human life beginning when a human ovum is fertilized by a human spermatozoon, or in the case of asexual reproduction, at the equivalent stage of development.

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

The basis of this state's authority to assert its interest in protecting human physical life from the moment that human physical life begins includes:

(1) The tenth amendment to the Constitution of the United States, which provides that all powers not delegated to the United States elsewhere in the Constitution are reserved to the states or to the people;

(2) The Declaration of Independence, which acknowledges that life is endowed to all persons as an inalienable right; and

(3) The fact that the governments of the United States and this state were instituted by the consent of the people in 1787 and 1889, respectively, to secure the inalienable rights acknowledged by the Declaration of Independence.

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

(1) Any act, law, treaty, order, or regulation of the United States government that denies or prohibits protection of a human person's inalienable right to life is null, void, and unenforceable in this state.

(2) The courts of the United States have no jurisdiction to interfere with this state's interest in protecting human physical life from the moment that human physical life begins.

(3) Any court decision purporting to strike down or enjoin the provisions of this chapter or enjoin this state from protecting innocent human physical life from the moment of fertilization is nonauthoritative, void, and of no force.

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

It is unlawful for any official, agent, or employee of the United States government or an employee of a private entity providing services to the United States government to enforce any act, law, treaty, order, or regulation of the united states government that interferes with this state's interest in protecting human physical life from the moment that human physical life begins.

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

A prosecuting attorney may seek injunctive relief in the appropriate state court to enjoin any official, agent, or employee of the United States government or an employee of a private entity providing services to the United States government from enforcing any act, law, treaty, order, or regulation of the United States government that interferes with this state's interest in protecting human physical life from the moment that human physical life begins.

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

This state's interest in protecting innocent human physical life from the moment of fertilization must be enforced by state government officials and agencies, regardless of any court decision to the contrary. All state officials and agencies shall comply with this chapter, consistent with the Declaration of Independence, the text of the Constitution of the United States, higher law, and the state Constitution.

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

A government agency or official of this state, including any sheriff, deputy sheriff, or other law enforcement officer, may not give force or effect to any court order that conflicts with this chapter. Cooperative agreements with federal agencies notwithstanding, a law enforcement agency or law enforcement officer in this state may not assist or cooperate in any way with the arrest or imprisonment of any government official or individual who complies with this chapter and refuses to comply with any contrary court order. Such contrary orders include, but are not limited to, any order to levy upon property, seize bank accounts, arrest the person, or serve process for the purpose of causing any person to violate this chapter, or for the purpose of punishing any person for the failure to comply with an order contrary to this chapter. A federal officer or agent who arrests any Washington government official for compliance with this chapter is subject to arrest by Washington law enforcement.

**Sec.**  RCW 4.20.005 and 1917 c 123 s 3 are each amended to read as follows:

Words in RCW 4.20.010, 4.20.020, and 4.20.030 denoting the singular shall be understood as belonging to a plurality of persons or things. The masculine shall apply also to the feminine((~~, and~~)). The word person ((~~shall~~)) includes an unborn child from the moment of fertilization upon the fusion of a human spermatozoon with a human ovum or, in the case of asexual reproduction, at the equivalent stage of development, and also ((~~apply~~)) applies to bodies politic and corporate.

**Sec.**  RCW 7.70.060 and 2012 c 101 s 1 are each amended to read as follows:

(1) If a patient while legally competent, or his or her representative if he or she is not competent, signs a consent form which sets forth the following, the signed consent form shall constitute prima facie evidence that the patient gave his or her informed consent to the treatment administered and the patient has the burden of rebutting this by a preponderance of the evidence:

(a) A description, in language the patient could reasonably be expected to understand, of:

(i) The nature and character of the proposed treatment;

(ii) The anticipated results of the proposed treatment;

(iii) The recognized possible alternative forms of treatment; and

(iv) The recognized serious possible risks, complications, and anticipated benefits involved in the treatment and in the recognized possible alternative forms of treatment, including nontreatment;

(b) Or as an alternative, a statement that the patient elects not to be informed of the elements set forth in (a) of this subsection.

(2) If a patient while legally competent, or his or her representative if he or she is not competent, signs an acknowledgment of shared decision making as described in this section, such acknowledgment shall constitute prima facie evidence that the patient gave his or her informed consent to the treatment administered and the patient has the burden of rebutting this by clear and convincing evidence. An acknowledgment of shared decision making shall include:

(a) A statement that the patient, or his or her representative, and the health care provider have engaged in shared decision making as an alternative means of meeting the informed consent requirements set forth by laws, accreditation standards, and other mandates;

(b) A brief description of the services that the patient and provider jointly have agreed will be furnished;

(c) A brief description of the patient decision aid or aids that have been used by the patient and provider to address the needs for (i) high‑quality, up‑to‑date information about the condition, including risk and benefits of available options and, if appropriate, a discussion of the limits of scientific knowledge about outcomes; (ii) values clarification to help patients sort out their values and preferences; and (iii) guidance or coaching in deliberation, designed to improve the patient's involvement in the decision process;

(d) A statement that the patient or his or her representative understands: The risk or seriousness of the disease or condition to be prevented or treated; the available treatment alternatives, including nontreatment; and the risks, benefits, and uncertainties of the treatment alternatives, including nontreatment; and

(e) A statement certifying that the patient or his or her representative has had the opportunity to ask the provider questions, and to have any questions answered to the patient's satisfaction, and indicating the patient's intent to receive the identified services.

(3) As used in this section, "shared decision making" means a process in which the physician or other health care practitioner discusses with the patient or his or her representative the information specified in subsection (2) of this section with the use of a patient decision aid and the patient shares with the provider such relevant personal information as might make one treatment or side effect more or less tolerable than others.

(4)(a) As used in this section, "patient decision aid" means a written, audiovisual, or online tool that provides a balanced presentation of the condition and treatment options, benefits, and harms, including, if appropriate, a discussion of the limits of scientific knowledge about outcomes, for any medical condition or procedure((~~, including abortion as defined in RCW 9.02.170~~)) and:

(i)(A) That is certified by one or more national certifying organizations recognized by the medical director of the health care authority; or

(B) That has been evaluated based on the international patient decision aid standards by an organization located in the United States or Canada and has a current overall score satisfactory to the medical director of the health care authority; or

(ii) That, if a current evaluation is not available from an organization located in the United States or Canada, the medical director of the health care authority has independently assessed and certified based on the international patient decision aid standards.

(b) The health care authority may charge a fee to the certification applicant to defray the costs of the assessment and certification under this subsection.

(5) Failure to use a form or to engage in shared decision making, with or without the use of a patient decision aid, shall not be admissible as evidence of failure to obtain informed consent. There shall be no liability, civil or otherwise, resulting from a health care provider choosing either the signed consent form set forth in subsection (1)(a) of this section or the signed acknowledgment of shared decision making as set forth in subsection (2) of this section.

**Sec.**  RCW 9A.04.110 and 2011 c 336 s 350 and 2011 c 166 s 2 are each reenacted and amended to read as follows:

In this title unless a different meaning plainly is required:

(1) "Acted" includes, where relevant, omitted to act;

(2) "Actor" includes, where relevant, a person failing to act;

(3) "Benefit" is any gain or advantage to the beneficiary, including any gain or advantage to a third person pursuant to the desire or consent of the beneficiary;

(4)(a) "Bodily injury," "physical injury," or "bodily harm" means physical pain or injury, illness, or an impairment of physical condition;

(b) "Substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part;

(c) "Great bodily harm" means bodily injury which creates a probability of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ;

(5) "Building," in addition to its ordinary meaning, includes any dwelling, fenced area, vehicle, railway car, cargo container, or any other structure used for lodging of persons or for carrying on business therein, or for the use, sale, or deposit of goods; each unit of a building consisting of two or more units separately secured or occupied is a separate building;

(6) "Deadly weapon" means any explosive or loaded or unloaded firearm, and shall include any other weapon, device, instrument, article, or substance, including a "vehicle" as defined in this section, which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily harm;

(7) "Dwelling" means any building or structure, though movable or temporary, or a portion thereof, which is used or ordinarily used by a person for lodging;

(8) "Government" includes any branch, subdivision, or agency of the government of this state and any county, city, district, or other local governmental unit;

(9) "Governmental function" includes any activity which a public servant is legally authorized or permitted to undertake on behalf of a government;

(10) "Indicted" and "indictment" include "informed against" and "information", and "informed against" and "information" include "indicted" and "indictment";

(11) "Judge" includes every judicial officer authorized alone or with others, to hold or preside over a court;

(12) "Malice" and "maliciously" shall import an evil intent, wish, or design to vex, annoy, or injure another person. Malice may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty;

(13) "Officer" and "public officer" means a person holding office under a city, county, or state government, or the federal government who performs a public function and in so doing is vested with the exercise of some sovereign power of government, and includes all assistants, deputies, clerks, and employees of any public officer and all persons lawfully exercising or assuming to exercise any of the powers or functions of a public officer;

(14) "Omission" means a failure to act;

(15) "Peace officer" means a duly appointed city, county, or state law enforcement officer;

(16) "Pecuniary benefit" means any gain or advantage in the form of money, property, commercial interest, or anything else the primary significance of which is economic gain;

(17) "Person," "he or she," and "actor" include any natural person, including an unborn child at every stage of gestation from fertilization upon the fusion of a human spermatozoon with a human ovum, or in the case of asexual reproduction, at the equivalent stage of development, until birth, and, where relevant, a corporation, joint stock association, or an unincorporated association;

(18) "Place of work" includes but is not limited to all the lands and other real property of a farm or ranch in the case of an actor who owns, operates, or is employed to work on such a farm or ranch;

(19) "Prison" means any place designated by law for the keeping of persons held in custody under process of law, or under lawful arrest, including but not limited to any state correctional institution or any county or city jail;

(20) "Prisoner" includes any person held in custody under process of law, or under lawful arrest;

(21) "Projectile stun gun" means an electronic device that projects wired probes attached to the device that emit an electrical charge and that is designed and primarily employed to incapacitate a person or animal;

(22) "Property" means anything of value, whether tangible or intangible, real or personal;

(23) "Public servant" means any person other than a witness who presently occupies the position of or has been elected, appointed, or designated to become any officer or employee of government, including a legislator, judge, judicial officer, juror, and any person participating as an advisor, consultant, or otherwise in performing a governmental function;

(24) "Signature" includes any memorandum, mark, or sign made with intent to authenticate any instrument or writing, or the subscription of any person thereto;

(25) "Statute" means the Constitution or an act of the legislature or initiative or referendum of this state;

(26) "Strangulation" means to compress a person's neck, thereby obstructing the person's blood flow or ability to breathe, or doing so with the intent to obstruct the person's blood flow or ability to breathe;

(27) "Suffocation" means to block or impair a person's intake of air at the nose and mouth, whether by smothering or other means, with the intent to obstruct the person's ability to breathe;

(28) "Threat" means to communicate, directly or indirectly the intent:

(a) To cause bodily injury in the future to the person threatened or to any other person; or

(b) To cause physical damage to the property of a person other than the actor; or

(c) To subject the person threatened or any other person to physical confinement or restraint; or

(d) To accuse any person of a crime or cause criminal charges to be instituted against any person; or

(e) To expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt, or ridicule; or

(f) To reveal any information sought to be concealed by the person threatened; or

(g) To testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(h) To take wrongful action as an official against anyone or anything, or wrongfully withhold official action, or cause such action or withholding; or

(i) To bring about or continue a strike, boycott, or other similar collective action to obtain property which is not demanded or received for the benefit of the group which the actor purports to represent; or

(j) To do any other act which is intended to harm substantially the person threatened or another with respect to his or her health, safety, business, financial condition, or personal relationships;

(29) "Vehicle" means a "motor vehicle" as defined in the vehicle and traffic laws, any aircraft, or any vessel equipped for propulsion by mechanical means or by sail;

(30) Words in the present tense shall include the future tense; and in the masculine shall include the feminine and neuter genders; and in the singular shall include the plural; and in the plural shall include the singular.

**Sec.**  RCW 9A.16.060 and 1999 c 60 s 1 are each amended to read as follows:

(1) In any prosecution for a crime, it is a defense that:

(a) The actor participated in the crime under compulsion by another who by threat or use of force created an apprehension in the mind of the actor that in case of refusal he or she or another would be liable to immediate death or immediate grievous bodily injury; and

(b) That such apprehension was reasonable upon the part of the actor; and

(c) That the actor would not have participated in the crime except for the duress involved.

(2) Except for homicide by abortion under RCW 9A.32.010, the defense of duress is not available if the crime charged is murder, manslaughter, or homicide by abuse.

(3) The defense of duress is not available if the actor intentionally or recklessly places himself or herself in a situation in which it is probable that he or she will be subject to duress.

(4) The defense of duress is not established solely by a showing that a married person acted on the command of his or her spouse.

**Sec.**  RCW 9A.32.010 and 1997 c 196 s 3 are each amended to read as follows:

(1) Homicide is the killing of a human being by the act, procurement, or omission of another, death occurring at any time, and is either ((~~(1)~~)) (a) murder, ((~~(2)~~)) (b) homicide by abuse, ((~~(3)~~)) (c) manslaughter, ((~~(4)~~)) (d) excusable homicide, or ((~~(5)~~)) (e) justifiable homicide.

(2) Homicide includes the killing of a natural person by abortion, which is the act of using or prescribing an instrument, drug, medicine, or any other substance, device, or means to intentionally cause the death of an unborn child.

(3)(a) It is an affirmative defense to any prosecution brought under this section that the medical practitioner was attempting to save the life of a pregnant patient and that attempt resulted in the unintended death of the human embryo or fetus.

**Sec.**  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 by inflicting any injury upon the mother of such child~~)).

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

**Sec.**  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 by intentionally and unlawfully inflicting any injury upon the mother of such child; or~~

~~(c)~~)) Assaults another with a deadly weapon; or

((~~(d)~~)) (c) 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)~~)) (d) With intent to commit a felony, assaults another; or

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

((~~(g)~~)) (f) 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.

NEW SECTION. **Sec.**  The following acts or parts of acts are each repealed:

(1)RCW 9.02.005 (Transfer of duties to the department of health) and 1989 1st ex.s. c 9 s 202 & 1985 c 213 s 3;

(2)RCW 9.02.100 (Reproductive privacy—Public policy) and 1992 c 1 s 1;

(3)RCW 9.02.110 (Right to have and provide) and 1992 c 1 s 2;

(4)RCW 9.02.120 (Unauthorized abortions—Penalty) and 1992 c 1 s 3;

(5)RCW 9.02.130 (Defenses to prosecution) and 1992 c 1 s 4;

(6)RCW 9.02.140 (State regulation) and 1992 c 1 s 5;

(7)RCW 9.02.150 (Refusing to perform) and 1992 c 1 s 6;

(8)RCW 9.02.160 (State-provided benefits) and 1992 c 1 s 7;

(9)RCW 9.02.170 (Definitions) and 1992 c 1 s 8;

(10)RCW 9.02.900 (Construction—1992 c 1 (Initiative Measure No. 120)) and 1992 c 1 s 10;

(11)RCW 9.02.902 (Short title—1992 c 1 (Initiative Measure No. 120)) and 1992 c 1 s 12; and

(12)RCW 48.43.073 (Required abortion coverage—Limitations) and 2018 c 119 s 3.

NEW SECTION. **Sec.**  In any case related to this act, as in all other criminal cases, a court on motion of the prosecuting attorney may order that a witness is not excused from giving testimony or producing any papers, documents, or things, on the ground that such testimony may tend to incriminate or subject the witness to a penalty or forfeiture; but such witness may not be prosecuted or subjected to criminal penalty or forfeiture for or on account of any transaction, matter, or fact concerning which the witness has been ordered to testify. The prosecuting attorney has authority to grant that immunity to a witness who voluntarily agrees to give testimony or produce any papers, documents, or things. The witness may nevertheless be prosecuted for failing to comply with the order to answer, or for perjury or the giving of false evidence.

NEW SECTION. **Sec.**  The provisions of this act are not severable.

NEW SECTION. **Sec.**  This act applies prospectively and not retroactively. It applies only to offenses committed, or causes of action that arise, on or after the effective date of this section. For purposes of this section, an offense is committed before the effective date of this section if any element of the offense occurs before the effective date of this section.

NEW SECTION. **Sec.**  Any federal act, law, treaty, decision, order, or regulation that purports to supersede, stay, or overrule this act is in violation of the Constitution of the state of Washington and the Constitution of the United States of America and is therefore void. The state of Washington and its political subdivisions, and agents thereof, may not enter an appearance, special or otherwise, in any federal suit challenging this act.

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

**--- END ---**