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**SENATE BILL 5227**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senator Short

AN ACT Relating to sex-selection abortions; amending RCW 9.02.110; adding a new chapter to Title 9 RCW; and prescribing penalties.

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

NEW SECTION. **Sec.**  SHORT TITLE. This chapter may be cited as the "prenatal nondiscrimination act."

NEW SECTION. **Sec.**  LEGISLATIVE FINDINGS—INTENT. (1) The legislature of the state of Washington finds that:

(a) A sex-selection abortion is used to prevent the birth of a child of an undesired sex. The victims of sex-selection abortion are overwhelmingly female.

(b) The United States, along with other countries, has petitioned the United Nations general assembly to declare sex-selection abortion a crime against women.

(c) Countries such as India, Great Britain, and China have taken steps to end sex-selection abortion. For example, China and India do not allow doctors to reveal the sex of an unborn child.

(d) Women are a vital part of our society and culture and possess the same fundamental human rights as men.

(e) The United States prohibits discrimination on the basis of sex in various areas including employment, education, athletics, and health insurance.

(f) It is undesirable to have a sex imbalance within a society, particularly when there is a shortage of women. Countries with high rates of male-preference have experienced ill effects as a result of an increasing number of young, unmarried men.

(g) A large population of young, unmarried men can be a cause of increased violence and militancy within a society.

(2) The legislature intends to ban abortions performed solely for reasons of sex selection.

NEW SECTION. **Sec.**  DEFINITIONS. As used in this chapter only:

(1) "Abortion" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of an individual with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to:

(a) Save the life or preserve the health of the unborn child;

(b) Remove a dead unborn child caused by spontaneous abortion; or

(c) Remove an ectopic pregnancy.

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

(3) "Incompetent" means any person who has been adjudged a disabled person and has had a guardian appointed for him or her under chapter 11.130 or 13.36 RCW.

(4) "Minor" means any person under the age of 18 who is not and has not been married and has not been legally emancipated.

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

(6) "Physician assistant" means a physician assistant licensed to practice under chapter 18.71A RCW in the state of Washington.

(7) "Pregnant individual" means any individual, including an individual who has not reached the age of 18, who is in the reproductive condition of having an unborn child in their uterus.

(8) "Sex-selection abortion" means an abortion performed solely on account of the sex of the unborn child.

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

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

NEW SECTION. **Sec.**  PROHIBITION ON SEX-SELECTION ABORTION. (1) No person may intentionally perform or attempt to perform an abortion with the knowledge that the pregnant individual is seeking the abortion solely on account of the sex of the unborn child.

(2) Nothing in this section shall be construed to proscribe the performance of an abortion because the unborn child has a genetic abnormality or disorder that is linked to the unborn child's sex.

(3) If this section is held invalid as applied to the period of pregnancy prior to viability, then it shall remain applicable to the period of pregnancy subsequent to viability.

NEW SECTION. **Sec.**  CRIMINAL PENALTIES. Any physician, physician assistant, advanced registered nurse practitioner, other health care provider, or person who intentionally or knowingly performs or attempts to perform an abortion prohibited by this chapter is guilty of a class C felony punishable under chapter 9A.20 RCW.

NEW SECTION. **Sec.**  CIVIL PENALTIES AND PROFESSIONAL SANCTIONS. (1) Any physician, physician assistant, advanced registered nurse practitioner, other health care provider, or person who intentionally or knowingly violates this chapter is liable for damages and shall, if applicable, have their medical license suspended or revoked. They may also be enjoined from future acts prohibited by section 4 of this act.

(2) A pregnant individual upon whom an abortion has been performed in violation of this chapter, the parent or legal guardian of the individual if they are an unemancipated minor under chapter 13.64 RCW, or the legal guardian of the individual if the individual is subject to guardianship under chapter 11.130 RCW may commence a civil action for any knowing, intentional, or reckless violation of this chapter and may seek both actual and punitive damages. Such damages shall include, but are not limited to:

(a) Money damages for all psychological and physical injuries occasioned by a violation or violations of this chapter; and

(b) Statutory damages equal to three times the cost of the abortion performed in violation of this chapter.

(3) Any physician, physician assistant, advanced registered nurse practitioner, or other health care provider who performs an abortion in violation of this chapter is considered to have engaged in unprofessional conduct for which their license to provide health care services in the state of Washington shall be suspended or revoked by the medical commission, chapter 18.71 RCW.

(4) A cause of action for injunctive relief against any physician, physician assistant, advanced registered nurse practitioner, other health care provider, or person who has knowingly violated this chapter may be maintained by the individual upon whom the abortion was performed or attempted to be performed in violation of this chapter; any person who is the spouse, parent, guardian, or a current or former licensed health care provider of the individual upon whom an abortion has been performed or attempted to be performed in violation of this chapter; or by the office of the attorney general of Washington. The injunction shall prevent the physician or person from performing further abortions in violation of this chapter.

(5) Any physician, physician assistant, advanced registered nurse practitioner, other health care provider, or person who knowingly violates the terms of an injunction issued in accordance with this chapter is subject to contempt proceedings under chapter 7.21 RCW.

NEW SECTION. **Sec.**  EXCLUSION OF LIABILITY FOR AN INDIVIDUAL WHO UNDERGOES AN ABORTION PROHIBITED UNDER THIS CHAPTER. (1) Any individual upon whom an abortion in violation of this chapter is performed or attempted may not be prosecuted under this chapter for a conspiracy to violate this chapter or otherwise held criminally or civilly liable for any violation.

(2) In any criminal proceeding or action brought under this chapter, any individual upon whom an abortion in violation of this chapter is performed or attempted is entitled to all rights, protections, and notifications afforded to crime victims under chapter 7.68 RCW.

(3) In every civil proceeding or action brought under this chapter, the anonymity of the individual upon whom an abortion is performed or attempted shall be preserved from public disclosure unless consent is given to such disclosure. A court of competent jurisdiction, upon motion or sua sponte, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms, to the extent necessary to safeguard the identity from public disclosure. In the absence of written consent of the individual upon whom an abortion has been performed or attempted, anyone who initiates a proceeding or action under section 6 (2) or (4) of this act shall do so under a pseudonym.

NEW SECTION. **Sec.**  CONSTRUCTION. (1) Nothing in this chapter shall be construed as creating or recognizing a right to abortion.

(2) It is not the intent of this chapter to make lawful an abortion that is currently unlawful.

NEW SECTION. **Sec.**  RIGHT OF INTERVENTION. The legislature, by joint resolution, may appoint one or more of its members, who sponsored or cosponsored this act in their official capacity, to intervene as a matter of right in any case in which the constitutionality of this act is challenged.

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

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

The state may not deny or interfere with ((~~a pregnant~~)) an individual's right to choose to have an abortion prior to viability of the fetus, except when prohibited by chapter 9.--- RCW (the new chapter created in section 12 of this act), or to protect ((~~the pregnant individual's~~)) their life or health.

A physician, physician assistant, advanced registered nurse practitioner, or other health care provider acting within the provider's scope of practice may terminate and a health care provider may assist a physician, physician assistant, advanced registered nurse practitioner, or other health care provider acting within the provider's scope of practice in terminating a pregnancy as permitted by this section.

NEW SECTION. **Sec.**  Sections 1 through 9 of this act constitute a new chapter in Title 9 RCW.

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