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**HOUSE BILL 2935**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Representative Klippert

AN ACT Relating to the prohibition of direct and indirect appropriation of public funds to finance convenience abortions pursuant to the establishment clause of the First Amendment of the United States Constitution and Article I, section 11 of the Washington state Constitution, establishing of the Washington foster care and adoption initiatives fund to be administered by the department of children, youth, and families for the benefit of government and, especially, nongovernment groups, and prohibiting discrimination pursuant to the free exercise clause of the First Amendment and Article I, section 11 of the Washington state Constitution; adding a new chapter to Title 70 RCW; creating new sections; and declaring an emergency.

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

NEW SECTION. **Sec.**  (1) The state of Washington facilitates the disbursement of both state and federal public funds to qualifying entities for purposes of conducting certain activities.

(2) Public dollars awarded to qualifying entities may facilitate or subsidize directly or indirectly expenses or activities not directly related to those for which the funds were intended, including without limitation shared administrative costs, overhead, employee salaries, rent, utilities, and various other expenses.

(3) It is possible that public funds made available by or through the state of Washington may be appropriated to an entity that performs convenience abortions or subsidizes or otherwise facilitates the entity's ability to perform convenience abortions although the funds were not disbursed specifically for the purpose of performing convenience abortions.

(4) As elected representatives of the people of Washington, the legislature is entrusted with ensuring that all activities conducted with the aid of public funds are in accordance with the wishes of the people of Washington, the intent of the laws of this state, and the United States Constitution.

(5) It is within the purview of the legislature to establish criteria as the basis on which public funds are disbursed unless the appropriation is prohibited by the United States Constitution.

(6) The United States is a constitutional republic that the state of Washington is part of.

(7) The United States Constitution preempts state action that conflicts with it under the doctrine of preemption.

(8) As elected representatives, the legislature has a duty under Article IV of the United States Constitution to not appropriate funds in a manner that violates the establishment clause of the United States Constitution.

(9) The free exercise clause of the First Amendment of the United States Constitution states "Congress shall make no law... prohibiting the free exercise [of religion]" and Article I, section 11 of the Washington state Constitution states, "Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state."

(10) The United States supreme court found in *Cantwell v. Connecticut*, 310 U.S. 296 (1940) that the free exercise clause of the First Amendment applies to the states through the Fourteenth Amendment.

(11) The establishment clause of the First Amendment of the United States Constitution states that "Congress shall make no law respecting an establishment of religion" and Article I, section 11 of the Washington state Constitution states, "No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment".

(12) The United States supreme court held in *Everson v. Bd of Education*, 330 U.S. 1 (1947) that the establishment clause of the First Amendment applies to the states through the Fourteenth Amendment.

(13) The United States supreme court held in *Hein v. Freedom From Religion Foundation*, 551 U.S. 587 (2007) that the establishment clause applies to the executive branch, which includes this state's executive branch.

(14) All religion amounts to is a set of unproven answers to the greater questions like, Why are we here? What gives us identity? What should we be doing as humans? and What happens after death?

(15) The establishment clause of the United States Constitution was never solely designed to prohibit the government from respecting and recognizing the doctrines of institutionalized religions but of noninstitutionalized religions, like secular humanism, as well.

(16) The religion of secular humanism is also commonly referred to by scholars as postmodern individualistic moral relativism or expressive individualism.

(17) The United States supreme court found that secular humanism is a religion for the purposes of the First Amendment establishment clause in *Torcaso v. Watkins*, 367 U.S. 488 (1961), stating "among religions in this country which do not teach what would generally be considered a belief in the existence of God are Buddhism, Taoism, Ethical Culture, Secular Humanism, and others. See *Oklahoma Ethical Society v. District of Columbia*, 101 U.S. App. D.C. 371, 249 F.2d 127; *Fellowship of Humanity v. County of Alameda*, 153 Cal. App. 2d 673, 315 P.2d 394; II Encyclopaedia of the Social Sciences 293; 4 Encyclopaedia Britannica (1957 ed.) 325-327; 21 id., at 797; Archer, Faiths Men Live By (2d ed. revised by Purinton), 120-138, 254-313; 1961 World Almanac 695, 712; Year Book of American Churches for 1961, at 29, 47."

(18) Most of the federal courts of appeals have found that secular humanism is a religion for the purpose of the First Amendment establishment clause in cases such as *Malnak v. Yogi*, 592 F.2d 197, 200-15 (3d Cir. 1979), *Theriault v. Silber*, 547 F.2d 1279, 1281 (5th Cir. 1977), *Thomas v. Review Bd.*, 450 U.S. 707, 714, 101 S.Ct. 1425, 67 L.Ed.2d 624 (1981), *Lindell v. McCallum*, 352 F.3d 1107, 1110 (7th Cir. 2003), *Real Alternatives, Inc. v. Sec'y Dep't of Health & Human Servs.*, 150 F. Supp. 3d 419, 2017 WL3324690 (3d Cir. Aug. 4, 2017), and *Wells v. City and County of Denver*, 257 F.3d 1132, 1148 (10th Cir. 2001).

(19) The claims that "abortion is not murder," "that abortion is not immoral," and that "life does not begin at conception" are unproven faith-based assumptions and naked assertions that are implicitly religious and are inseparably linked to the religion of secular humanism.

(20) Convenience abortions fall directly within the exclusive jurisdiction of the free exercise and establishment clause of the First Amendment of the United States Constitution, having nothing to do with the Fourteenth Amendment.

(21) Attempts to shoehorn convenience abortion into a Fourteenth Amendment equal protection or substantive due process narrative by any state actor is a per se act of constitutional, political, and governmental malpractice that threatens the integrity of the Fourteenth Amendment itself.

(22) The supreme court's position in *INS v. Chada*, 462 U.S. 919 (1983) and *Nixon v. U.S.*, 506 U.S. 224 (1993) emphasized that the legislative branch must serve as a check on the judicial and executive branch, and this state has a duty owed pursuant to Article VI of the United States Constitution to hold the other branches of government accountable in both the federal and state government.

(23) The federal courts have held in cases like *Holloman v. Harland*, 3 70 F.3 1252 (11th Cir. 2004) that neither emotional appeals nor sincerity of belief can be used to usurp the establishment clause of the First Amendment.

(24) No emotional appeal can justify the state's direct or indirect funding of convenience abortions with public funds.

(25) There are taxpayers in every district who believe that convenience abortions are immoral, and they also believe that to enable acts of immorality is itself an act of immorality. Therefore, the state of Washington must always remain prohibited from appropriating public funds to convenience abortion providers because such an appropriation coercively causes many taxpayers to violate their own conscience by the simple act of paying taxes, constituting an evil that the establishment clause of the First Amendment was designed to prohibit.

(26) Some taxpayers in Washington consider convenience abortions to be modern-day child sacrifice conducted on the altar of convenience, which is a practice that is nonsecular and controversial.

(27) The establishment clause prohibits the state of Washington from enforcing, respecting, recognizing, favoring, or endorsing policies that finance convenience abortion facilities with public funds because such an appropriation fails the three prongs of the Lemon test by constituting a nonsecular sham that cultivates an indefensible legal weapon against nonobservers of the religion of secular humanism, while having the effect of excessively entangling the government with the religion of secular humanism.

(28) The direct or indirect subsidization or facilitation of abortion with funds distributed by the state constitutes paying for an abortion and, therefore, must be barred by the First Amendment establishment clause of the United States Constitution and by Article I, section 11 of the Washington state Constitution.

(29) The state of Washington may not favor or endorse one religion over another, nor may the state of Washington favor or endorse the religion of secular humanism generally over nonreligion, especially because it is a religious worldview that tends to promote licentiousness.

(30) When the state creates or enforces policies that respect or fund adoption facilities or the foster care system, it is not putting religion over nonreligion because such an appropriation is neutral, natural, noncontroversial, and secular in nature, but the same cannot be said of policies that respect and finance convenience abortion practices.

(31) The United States supreme court has consistently held that the states have a fundamental, protected, and compelling interest to uphold contemporary community standards of decency and to discourage practices that promote licentiousness.

(32) The state of Washington has a compelling interest to uphold community standards of decency and to discourage licentiousness.

(33) Abortion facilities that provide convenience abortions tend to erode community standards of decency normalizing false permission-giving beliefs about sex.

(34) It is the policy of the state of Washington to:

(a) Favor childbirth and family planning services that do not include convenience abortions or the promotion of convenience abortions within the continuum of care or services; and

(b) Avoid the direct or indirect use of public funds to promote or support convenience abortions.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Abortion referral" means the act of recommending a pregnant woman to a doctor, clinic, or other person or entity for the purpose of obtaining or learning about obtaining a convenience abortion.

(2) "Affiliate" means an individual or entity that, directly or indirectly, owns, controls, is controlled by, or is under the common control of another person or entity, in whole or in part, or a subsidiary, parent, or sibling entity.

(3) "Convenience abortion" means an elective or nontherapeutic abortion as defined in RCW 9.02.170. An act is not a convenience abortion if the act is performed with the intent to:

(a) Save the life of the mother or resolve a medical emergency;

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

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

(d) Remove an ectopic pregnancy;

(e) Abort and remove an unborn child that is the result of rape or incest reported to a law enforcement agency; or

(f) Abort and remove an unborn child because of a fetal malformation that is incompatible with the baby being born alive.

(4) "Emotional appeal" is a method of persuasion through sentiment, not logic, that is designed to create an emotional response.

(5) "Infertility prevention project" means the infertility prevention project operated by the United States centers for disease control and prevention.

(6) "Lemon test" means:

(a) A three-prong test that was originally created by the United States supreme court and now adopted by this state that is used to determine if government action is unconstitutional under the establishment clause. The test requires that state action or government policy:

(i) Have a valid secular purpose;

(ii) Not have the effect of advancing, endorsing, or inhibiting religion; and

(iii) Not foster excessive entanglement with religion.

(b) Government action violates the establishment clause if it fails to satisfy any of the prongs.

(7) "Medical emergency" means that condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

(8) "Minority HIV/AIDS initiative" means the minority HIV/AIDS initiative operated by the office of minority health in the United States department of health and human services.

(9) "Nongovernment group"​ means a nonprofit organization exempt from federal income taxation under section 501(c)(3) of the internal revenue code or any other individual or group that is working to:

(a) Advance:

(i) Birth;

(ii) The interests, knowledge, safety, health, and welfare of expecting mothers;

(iii) The facilitation of quality, safe, and healthy adoption and the cultivation of strong nurturing families; and

(iv) The quality, strength, safeness, and effectiveness of the foster care system; and

(b) Provide:

(i) Ultrasound testing;

(ii) Access to employment opportunities for single mothers who are expecting;

(iii) Counseling and therapy for expecting or new mothers;

(iv) Community for expecting or new mothers.

(10) "Nonsecular sham" means a policy, a course, or principle of action adopted or proposed by a state actor which endorses, respects, or favors the beliefs of a particular religion where the preeminent and primary force driving the state's action is not genuine, but is a sham that ultimately has a primary religious objective. The term refers to a type of policy that is predicated on a series of unproven faith-based assumptions and naked assertions that are implicitly religious.

(11) "Personal responsibility education program" means the program administered by the administration for children and families in the United States department of health and human services to educate adolescents on abstinence and contraception for the prevention of pregnancy and sexually transmitted infections.

(12) "Physician" has the same meaning as described in RCW 9.02.170(4).

(13) "Pregnant" or "pregnancy" means the female reproductive condition of having an unborn child in the woman's uterus.

(14) "Promote" means to advocate for, assist with, encourage, or popularize through advertising or publicity.

(15) "Public funds" means any funds received or controlled by this state or any agency or political subdivision thereof, including, but not limited to, funds derived from federal, state, or local taxes, gifts or grants from any source, public or private, federal grants or payments, or intergovernmental transfers.

(16) "Religion" means a set of unproven answers to the greater questions such as "Why are we here?" "What should we be doing as humans?" "How do we get our identity?" and "What happens after death?" that are predicated on an institutionalized or noninstitutionalized faith-based worldview flowing out of a community that is organized, full, and has a code by which members may guide their daily lives.

(17) "Secular abortion" means an abortion as defined in RCW 9.02.170 carried out to:

(a) Save the life of the mother or resolve a medical emergency;

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

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

(d) Remove an ectopic pregnancy;

(e) Abort and remove an unborn child that is the result of rape or incest reported to a law enforcement agency; or

(f) Abort and remove an unborn child because of a fetal malformation that is incompatible with the baby being born alive.

(18) "Secular humanism" means a faith-based worldview that is also referred to as postmodern western individualistic moral relativism, expressive individualism, or leftism. A belief system that is protected by the free exercise clause of the First Amendment of the United States Constitution and Article I, section 11 of the Washington state Constitution and centered on the unproven assumption that there are no moral absolutes and that one moral doctrine should be used as the superior basis for law and policy. The term includes a series of unproven faith-based assumptions and naked assertions that suggest that morality and truth are man-made conventions and that at the heart of liberty is man's ability to define his own meaning of the Universe. The term refers to a religion that does not fulfill any compelling state interest but instead tends to erode community standards of decency and promote harmful licentiousness. The term refers to the unproven belief that convenience abortions are moral or plausible. The term includes sexual orientation orthodoxy and nonsecular, self-asserted, sex-based identity narratives. The term refers to the belief that man is merely a bundle of chemicals, animated pieces of meat, or accidental particles and that nature is all there is. The term refers to the unproven faith-based assumption or Nietzschean theory that man evolved from monkeys and should, therefore, love one another just because.

(19) "Secular policy" means a course or principle of action adopted or proposed by a state actor that is natural, neutral, and noncontroversial that is based on self-evident morality and objective truth from the reasonable observer perspective. The term includes government procedure or state action that generally accomplishes its goals and does not tend to put religion over nonreligion or one religion over another or does not convey to a reasonable observer that the state favors one religion. The term includes a course of government action where the preeminent and primary force driving the policy is genuine, not a sham, and not merely secondary to a religious objective.

(20) "The fund" means the Washington foster care and adoption initiatives fund.

(21) "Unborn child" means the offspring of human beings from fertilization until birth.

NEW SECTION. **Sec.**  (1) An agency or instrumentality of the state is prohibited from appropriating or awarding a grant of public funds to pay the direct or indirect costs of performing, inducing, referring individuals for, or counseling in favor of convenience abortions because such state action fails the Lemon test and violates the First Amendment establishment clause of the United States Constitution and Article I, section 11 of the Washington state Constitution for:

(a) Constituting a nonsecular sham;

(b) Cultivating indefensible legal weapons against nonobservers of the religion of secular humanism; and

(c) Having the effect of excessively entangling the government with the religion of secular humanism.

(2) Because such appropriations have the effect of endorsing nonsecular practices that excessively entangles the government with the religion of secular humanism, pursuant to the First Amendment establishment clause of the United States Constitution, Article I, section 11 of the Washington state Constitution, and the state's compelling interest to discourage licentiousness, an agency or instrumentality of the state shall not grant, appropriate, or distribute a grant of public funds to an individual or entity that:

(a) Performs convenience abortions, induces convenience abortions, provides convenience abortion referrals, or counsels in favor of convenience abortions; and

(b) Is an affiliate of an individual or entity that performs abortions, induces abortions, provides abortion referrals, or counsels in favor of convenience abortions.

(3) Pursuant to the First Amendment establishment clause of the United States Constitution, Article I, section 11 of the Washington state Constitution, and the state's compelling interest to uphold community standards of decency, an agency or instrumentality of the state shall not appropriate or award a grant of public funds to pay the direct or indirect costs of performing, inducing, referring individuals for, or counseling in favor of convenience abortions including without limitation:

(a) Administrative costs and expenses;

(b) Overhead costs;

(c) Employee salaries;

(d) Rent and mortgage payments; and

(e) Telephone and other utility payments.

(4) Because such appropriations have the effect of endorsing nonsecular practices that excessively entangles the government with the religion of secular humanism, pursuant to the First Amendment establishment clause of the United States Constitution, the Washington state Constitution, and the state's compelling interest to discourage licentiousness, the department of health and all other state agencies shall ensure that public funds received through the federal violence against women act, the breast and cervical cancer mortality prevention act, the infertility prevention project, the minority HIV/AIDS initiative, the infant mortality reduction or infant vitality initiative, the personal responsibility education program, or any other similar federal program shall not be used to do any of the following:

(a) Perform convenience abortions;

(b) Promote convenience abortions;

(c) Contract with any entity that performs or promotes convenience abortions;

(d) Be used to affiliate with any entity that performs or promotes convenience abortions.

(5) Any taxpayer of this state or its political subdivisions shall have standing to bring suit in a court of competent jurisdiction to enforce the provisions of this section. The prevailing party may seek attorney fees, costs, and other forms of equitable relief.

(6) Any officer or employee of the state who knowingly authorizes the use of public funds prohibited by this section may have their employment immediately terminated.

(7) This section does not affect the funding of a hospital, medical school, or university.

(8) The restrictions under this section do not apply to funding available through the state's plan for medical assistance as required by Title XIX of the federal social security act, if and only if the Hyde Amendment applies and blocks public funds from being appropriated to convenience abortion providers in the state of Washington because:

(a) The underlying legal basis for the Hyde Amendment is the First Amendment establishment clause of the United States Constitution; and

(b) The First Amendment establishment clause of the United States Constitution mirrors the restrictions under Article I, section 11 of the Washington state Constitution.

NEW SECTION. **Sec.**  (1) The Washington foster care and adoption initiatives fund is created in the custody of the state treasurer.

(2) The fund shall consist of:

(a) Moneys collected from any fines imposed on convenience abortion providers for cultivating secondary harmful effects or eroding community standards of decency;

(b) Any fines or monetary penalties awarded to the state against convenience abortion providers, physicians, or facilities for violating state law under:

(i) RCW 9.02.100 through 9.02.170; and

(ii) RCW 9.02.900 and 9.02.902; and

(c) Any other appropriations, gifts, grants, donations, and bequests.

(3) Public funds that would have otherwise been appropriated in the past to facilities providing convenience abortions may be appropriated to the fund.

(4) All interest earned on the fund shall be credited to the fund.

(5) The purpose of the fund is to provide grant funding for foster care and adoption services and initiatives for both government and, especially, nongovernment groups and individuals.

(6) The department of children, youth, and families or its designee shall administer the fund and adopt rules to administer the fund. The department of children, youth, and families shall allocate moneys from the fund according to the following distribution:

(a) Fifty percent of the moneys in the fund shall be used for foster care services and initiatives; and

(b) Fifty percent of the moneys in the fund shall be used for adoption services and initiatives or to care for unborn children and their mothers.

(7) The department of children, youth, and families or its designee shall evaluate activities conducted under this section annually and, on or before February 15th, submit an annual report containing the evaluation to the secretary of the senate and the chief clerk of the house of representatives and notify the legislature that the report is available. The report must include the manner in which the funds in the account were maintained and distributed.

NEW SECTION. **Sec.**  (1) Pursuant to the free exercise clause of the First Amendment of the United States Constitution and Article I, section 11 of the Washington state Constitution:

(a) No hospital or any other state actor shall discriminate against or discipline a person because of the person's moral religious beliefs in favor or against convenience abortion or secular abortion ideology and practices;

(b) No private or denominational hospital shall be required to permit its facilities to be utilized for the performance of convenience abortions; and

(c) No person shall be required, as a condition of training, employment, pay, promotion, or privileges, to agree to perform or participate in the performing of convenience abortions.

(2) A civil action for damages or reinstatement of employment, or both, may be brought for any violation of this subsection. The prevailing party may seek attorneys' fees, costs, and other forms of equitable relief.

NEW SECTION. **Sec.**  (1) This chapter does not create or recognize:

(a) A right to experience or provide a convenience abortion;

(b) A right to public funds, a contract, or a grant.

(2) The purpose of this chapter is not to:

(a) Prove or disprove that life begins at conception;

(b) Abolish or criminalize convenience abortion practices or ideology or other secular humanist practices or ideology;

(c) Limit convenience abortion practice to a certain time.

(3) The purpose of this chapter is to:

(a) Distinguish secular abortion from convenience abortion;

(b) Reinforce that all members of the legislature and all executive and judicial officers are bound by oath or affirmation pursuant to Article VI of the United States Constitution to not create or enforce policies that violate the establishment clause or free exercise clause of the First Amendment of the United States Constitution regardless of the members' or officers' party affiliation or personal religious beliefs;

(c) Codify the well-established jurisprudence that emotional appeals, even good ones, cannot be used to usurp the establishment clause of the First Amendment of the United States Constitution or Article I, section 11 of the Washington state Constitution in an effort to justify appropriating public funds to convenience abortion providers;

(d) Restore the integrity of the Fourteenth Amendment equal protection and substantive due process clauses that the judicial branch has misused because there is no right of privacy mentioned or implied in the United States Constitution and because the substantive due process and the equal protection clauses of the Fourteenth Amendment have nothing to do with convenience abortions and do not require the state to endorse, respect, promote, or fund convenience abortion practices that are inherently nonsecular procedures;

(e) Establish that:

(i) Convenience abortion ideology is inseparably linked to the religion of secular humanism;

(ii) While secular humanism is a religion for the purposes of the First Amendment establishment clause as the United States supreme court already resolved, secular humanism is a disfavored religion because it involves indecent speech that tends to erode community standards of decency and promote licentiousness;

(iii) This state has a protected and compelling interest to uphold community standards of decency and to discourage licentiousness;

(iv) It is the policy of this state to favor childbirth and family planning services that do not include convenience abortions or the promotion of convenience abortions within the continuum of care or services;

(v) The state of Washington has a compelling interest to not only help unborn children flourish but also born children who are subject to adoption or who are placed in the foster care system; and

(vi) Public funds that might have been appropriated to convenience abortion providers in the past could be redirected to adoption and foster care services to better enable human flourishing without violating the Constitution of the United States or of this state because such an appropriation amounts to a secular policy and a secular use of public funds.

(4) This chapter is constructed on the premise that:

(a) The state of Washington is part of a constitutional republic;

(b) The United States Constitution is the supreme sovereign law of this country that preempts all state and federal law;

(c) The First Amendment of the United States Constitution applies to the state of Washington through the Fourteenth Amendment of the United States Constitution;

(d) The establishment clause of the First Amendment of the United States Constitution and Article I, section 11 of the Washington state Constitution prohibits the appropriation of public funds to convenience abortion providers because such an appropriation constitutes state action that fails the prongs of the Lemon test established by the United States supreme court for:

(i) Constituting a nonsecular sham;

(ii) Cultivating an indefensible legal weapon against nonobservers of the religion of secular humanism; and

(iii) Having the effect of excessively entangling the government with the religion of secular humanism;

(e) The free exercise clause of the First Amendment of the United States Constitution affords a person the right to hold nonsecular moral beliefs in favor or against convenience abortion practices without fear of discrimination by a state actor;

(f) The right to form and express a religious belief is distinct from the right to practice it;

(g) Nonsecular practices that excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the state can be restricted by the state because the freedom of religion is not absolute.

NEW SECTION. **Sec.**  Sections 2 through 6 of this act constitute a new chapter in Title 70 RCW.

NEW SECTION. **Sec.**  This act may be known and cited as the life appropriations 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 ---**