

HOUSE BILL REPORT

EHB 1851

As Passed House:

February 11, 2022

Title: An act relating to preserving a pregnant individual's ability to access abortion care.

Brief Description: Preserving a pregnant individual's ability to access abortion care.

Sponsors: Representatives Thai, Macri, Fitzgibbon, Bateman, Berry, Cody, Duerr, Peterson, Ramel, Santos, Senn, Simmons, Chopp, Slatter, Bergquist, Valdez, Pollet, Taylor, Ormsby and Harris-Talley.

Brief History:

Committee Activity:

Health Care & Wellness: 1/20/22, 1/26/22 [DP].

Floor Activity:

Passed House: 2/11/22, 55-40.

Brief Summary of Engrossed Bill

- Grants specific statutory authorization for physician assistants, advanced registered nurse practitioners, and certain other providers acting within their scopes of practice to perform abortions.
- Prohibits the state from taking action against an individual based on pregnancy outcomes or for assisting a pregnant individual in exercising the right to reproductive freedom.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: Do pass. Signed by 9 members: Representatives Cody, Chair; Bateman, Vice Chair; Bronoske, Davis, Macri, Riccelli, Simmons, Stonier and Tharinger.

Minority Report: Do not pass. Signed by 6 members: Representatives Schmick, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Harris, Maycumber, Rude

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

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Staff: Jim Morishima (786-7191).

Background:

The state is statutorily prohibited from interfering with a pregnant woman's right to choose to have an abortion prior to viability or to protect the woman's life or health. Physicians are statutorily authorized to terminate a pregnancy in these circumstances, and health care providers are authorized to assist the physicians. The following are defenses in any proceeding alleging violations of these provisions: (1) the good faith judgment of the physician as to the viability of the fetus or as to the risk to the life or health of the woman; and (2) the good faith judgment of a health care provider as to the duration of the pregnancy. For these purposes, a health care provider is a physician or a person acting under direction of a physician.

Unless authorized by these statutory provisions, any person who performs an abortion on another person is guilty of an unranked class C felony (standard sentence range 0-12 months).

Several Attorney General Opinions (AGOs) have interpreted the statutory authorization for physicians to perform abortions as not necessarily limiting the ability physician assistants (PAs) and advanced registered nurse practitioners (ARNPs) to perform abortions. For example, the most recent AGO on this topic, which was issued in 2019, concluded that PAs and ARNPs may perform aspiration abortions as long as it is consistent with their training, certification, and scope of practice.

Summary of Engrossed Bill:

The list of providers statutorily authorized to terminate a pregnancy is expanded to include a physician assistant, an advanced registered nurse practitioner, or other health care provider acting within the provider's scope of practice. The definition of the health care provider is changed to mean a person licensed to practice health or health-related services or otherwise practicing health care services in the state consistent with state law.

The state is prohibited from penalizing, prosecuting, or otherwise taking adverse action against an individual based on the individual's actual, potential, perceived, or alleged pregnancy outcomes or against an individual for aiding or assisting a pregnant individual in exercising the pregnant individual's right to reproductive freedom with the individual's voluntary consent.

Statutory references to "woman" are changed to "woman and pregnant individual."

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Washington has a policy ensuring access to abortion services and care. This is an urgent moment for abortion rights, which are under attack. Many states are making abortions illegal or otherwise restricting abortion rights. This bill is particularly important for communities of color. Safe, comprehensive health care must be preserved for all people. Barriers to abortion make the procedures physically and emotionally painful. Ambiguities in the statute help create these barriers. This bill ensures that highly qualified professionals provide safe abortion care, affirms that abortion care is accessible and available to all regardless of gender identity, and commits to the ethical concept that health care decisions should be between medical professionals and patients, not the state.

This bill clarifies unclear language in existing law. The Attorney General's Office (AGO) has concluded that current law does not limit advanced practice clinicians from performing abortions. The AGO also recommended that the statutes be updated to reflect this. Abortion itself is safe and can be provided safely by other qualified providers. Patients are forced to wait and travel long distances because of a lack of providers and busy schedules. This bill will allow patients to be seen in a more timely fashion. Patients should have the right to choose their own providers. People often seek out advanced registered nurse practitioners and nurse-midwives to perform these services, which are in their scope of practice—these are the majority of providers in rural areas.

Using gender-neutral language will ensure access and furthers civil rights. Transgendered persons often feel awkward when interacting with the health care system, which leads to inadequate health care. Transgender men get pregnant and need abortion services. The last thing they need is a system that does not respect them. Being misgendered causes trauma. All people deserve equal protection under the law. This bill does not dehumanize people, but rather removes stigma from people who are pregnant and need care. Everyone who needs abortion care should be able to access safe, inclusive care. This bill fully recognizes the gender-diverse community that accesses abortions. Statutory language needs to be modernized to recognize people regardless of gender identity.

People are being criminalized for miscarriages and self-administered abortions. Washington has not authorized or supported this, but people are still being harassed for pregnancy outcomes. They are being targeted using the criminal law. People should not be punished for terminating or experiencing pregnancy loss.

(Opposed) Every human life is valuable—a human fetus is a human life and is the likeness of God. Every society is judged by how it treats its most vulnerable. Washington has many

financial and natural resources, yet the lives of the unborn are devalued and women are dehumanized.

The initiative that established these provisions was passed in 1991 and has not been changed since then. The initiative sponsors noted the fact that only physicians could provide abortions as one of the reasons voters should support the measure. This bill will lower standards of care established by that initiative by allowing non-physicians to perform abortions. The system should not be dumbed down. The physician-only provisions should be respected alongside the rest of the initiative. This bill goes beyond the AGO's opinions, which only addressed early, non-clinical abortions. Later term abortions require more skill, which these professions do not possess. The professions added by this bill also are unable to manage emergencies and complicated procedures and lack the training and experience to evaluate gestational age. The rate of complications for medication abortions is four times greater than for surgical abortions. This bill places women, including those in vulnerable minority groups, in danger. This bill takes the power of life from the Creator God Almighty and the Great Physician and puts it in the hands of practitioners, which lowers the standard of care.

Allowing a lower standard of care for women is discrimination. The standard of care should be protected for all women. Children in the womb are already dehumanized. Women are not being helped by this bill and are not demanding a lower standard of care. This bill is about organizations wanting to lower costs to increase profit margins.

"Individual" is a dehumanizing term and represents the marginalization of women and the patriarchy. This bill takes the word "mother" out of a bill about abortion. God created two distinct genders, male and female. Gender neutrality is not in the Bible. This reflects the reality of a fallen world and the consequences of sin.

The provisions at the end of this bill make no sense—they prohibit the state from taking action against an individual based on pregnancy outcomes. Who is the individual? What problem is this provision intended to address? This bill takes away consequences for bad actors.

Persons Testifying: (In support) Representative My-Linh Thai, prime sponsor; Jennifer Chin, The American College of Obstetricians and Gynecologists; Keely Robinson, Midwives For Universal Health Care; Sara Ainsworth, If/When/How: Lawyering for Reproductive Justice; Elayne Wylie, Gender Justice League; Faviola Lopez, Washington State Women's Commission; Samie Detzer; Roberta Garcia; and Haylee Anderson, Office of the Washington State Attorney General.

(Opposed) Theresa Schrempp; Beth Daranciang; Mario Villanueva, Washington State Catholic Conference; Brad Payne, Family Policy Institute of Washington; Sarah Davenport-Smith, Human Life of Washington; and Rebecca Anderson.

Persons Signed In To Testify But Not Testifying: Rachel Herbst; Lily Aguilar; and Han Tran.