

# SENATE BILL REPORT

## EHB 1851

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As of February 21, 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:** Passed House: 2/11/22, 55-40.

**Committee Activity:** Health & Long Term Care: 2/21/22.

### Brief Summary of Bill

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

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### SENATE COMMITTEE ON HEALTH & LONG TERM CARE

**Staff:** Julie Tran (786-7283)

**Background:** Washington State enacted the Reproductive Privacy Act in 1991. The state may not deny or interfere with a 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.

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*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.*

Unless authorized by these statutory provisions, any person who performs an abortion on another person is guilty of an unranked class C felony. 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 the good faith judgment of a health care provider as to the duration of the pregnancy are defenses to prosecution. A health care provider is a physician or a person acting under the direction of a physician.

Several attorney general (AG) opinions have interpreted the statutory authorization for physicians to perform abortions as not necessarily limiting the ability of physician assistants (PAs) and advanced registered nurse practitioners (ARNPs) to perform abortions in Washington State. Most recently, an AG opinion was issued on February 1, 2019, concluding that the Reproductive Privacy Act allows PAs and ARNPs to perform aspiration abortions as long as it is consistent with their training, certification, and scope of practice.

**Summary of 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 term the health care provider is defined as 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 a woman and another individual based on her and their actual, potential, perceived, or alleged pregnancy outcomes or against an individual for aiding or assisting a pregnant woman and individual in exercising the right to reproductive freedom with her and their voluntary consent.

References to woman are changed to woman and pregnant individual.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This bill clarifies the language of existing law to ensure that the qualified abortion providers have the legal protection of the law. It establishes that those health care staff whose scopes of practice do include providing abortion care are able to provide that care with the backing of the law. Washington State statutes already regulate a provider's scope of practice and licensure to ensure that only qualified, trained providers are caring for patients. This bill does not change that fact and it

does not change any providers' existing scope of practice. This bill codifies a standing Attorney General's opinion, corrects statute language to be gender-inclusive, and ensures critical health care access for Washingtonians.

This bill without the amendment added from the house ensures that people cannot be punished for ending their own pregnancy or experiencing a pregnancy loss as people of color, immigrants, and those who are low-income are likely to be the ones who are wrongly criminalized for their pregnancy outcomes. Everyone should have access to safe abortion health care. This bill ensures that we minimize the legal system's ability to punish people for their pregnancy outcomes. The new language adopted in the House prohibits the arrest or prosecution of a woman and another individual and suggests that the state cannot penalize two people at once, but it could still penalize one single individual. The new language makes the bill vague and hard to understand. The committee should pass the bill without the house amendment.

CON: There are concerns regarding patient safety and training for the individuals performing these procedures and knowing how to deal with complications such as uterine perforation, involvement with the bile duct and bladder, and post-procedural hemorrhage. Non-physicians generally lack the training to recognize and manage complications in emergencies. The bill would lower standards for women's healthcare by allowing non-physicians to perform abortions. This bill goes far beyond the recommendations from the Attorney General and it dismantles the voter-approved provision allowing only physicians to perform abortions.

There is a provision in the bill allowing abortion practitioners no matter how incompetent, negligent, or malicious to not be penalized or prosecuted for their actions. A woman's voluntary consent would be an absolute defense to any wrongdoing no matter how egregious. It takes abortion and reproductive care beyond the reach of the state's power to regulate or prosecute and makes abortion and reproductive care the only areas of medicine immune from adverse action on behalf of the state. There are many categories of licensed and other regulated health professions in the state and this bill does not limit the possibility for other health professions to expand their scopes of practice. Increasing access by allowing providers with less rigorous training has the unfortunate side effect of reducing the quality of care and safety. DOH should perform a sunrise review before this bill is enshrined into law.

**Persons Testifying:** PRO: Haylee Anderson, Office of Washington State Attorney General Bob Ferguson; Sara Ainsworth, If When How: Lawyering for Reproductive Justice; Hilary Whitmore, Patient; Kathleen McCowan, Self.

CON: Dr. William Lile, ProLifeDoc, Inc.; Theresa Schrempp; Dr. Anita Showalter; Adrienne Corpuz Joyce, Washington State Catholic Conference.

**Persons Signed In To Testify But Not Testifying:** PRO: Elayne Wylie, Gender Justice

League.

CON: Matthew Guiher; Sarah Johnson; Jonathan Clemens; Julie Barrett, Conservative Ladies of Washington; Suzanne Kelly; Ann Ashford; Julia Wilger; Jill Ford, Citizen; Ken Long; Heather Tate; William Gray; Heidi Heikkala, 18505 51st Ave; Ashley Semann; Erin Laws, Conservative Ladies of WA; Richard Meyer; Claudia Abraham; Shannon Thompson; Sarah Braun; margaret nartea; Fred Passler; Evelyn Hoefakker; DEBORAH Cowman; Andrea Sehmel; Mary Lou Guinn; Kathleen Murphy; Laurie Layne; Kara Michael; Joseph Guinn, SR; Joseph Brian Guinn Jr; Lynette Borcharding; Jamie Peterson; Jeanette Harem; Douglas Davis; Janet Davis; Marla Husby; Kathryn Boger; Jenny Mcfarland; Stephan Rodmyre; Dr. AnnRené Joseph; Leanne Ojala; Sonja Knight; Lacey Druhot; Katharyn Getchell; Jon Higley; Katherine Cassady; Philomena McGowan; Leslie Day; Eric Minnick; AMY GALBREATH; Jessica Stober; Peggy Shashy; Kirk Hall; Susan Sutton; Catherine Jodoin; Stan De Yager; Misty Schulz, 15135 168th Dr SE; Tara Whited; Kathleen Boroughs; Olivia Cox; Brenda Oster; Leah Davis; Mary Cole; April Smith; Lynn Field; Cathy Hodges; Bethany Hodges; Rena Brown; Karen Barr; Anne Personius; Jeffrey Kissick; Candice MacPherson; Janice Haney; sandra higgins; Holly Hastings; Mary Williams; Gina Bachmeier; Susan Schlemlein; Teresa Hubert; Kayla Hitchcock ; nancy t. parks; Richie Meche; Kimberly De Lisle, 4927 N Emerald Ln; Deborah Gannon; Daniel Gannon; Teena Jones; Megan Greenfield, n/a; Monica Shaffer; Pam Shaffer; Kari Baxter; Roy Whipple; Katy Radelich; Mario Radelich; Ann Streit; Amanda Van hook; Rochelle Juetten; debbie erickson; Carmela Cerna-Brophy; Bryan Brophy; Amy Jones; Jill Nye; RACHEL BUCK; Cathie Mclain; Julie Billow; PhuongChi Nguyen; Nancy Grunewald; Heather Lenihan; Sarah Uplinger; Grace Pearson; Nancy Banister; Mary McEathron; jill nivison; Paula Taylor, Conservative Ladies of WA; Marilee Nelson; Miranda Ririe; Diana Amirehteshami; Rachel Bauer; Nancy Johnson; Linrenee Zielinski; Joan brownfield; Christine DeGregorio; Barb Beck; Shirley Burrows.