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**SENATE BILL 5098**

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

**By** Senators Padden, Fortunato, McCune, Short, and Warnick

AN ACT Relating to prohibiting abortion on the basis of Down syndrome; amending RCW 9.02.110; reenacting and amending RCW 9.02.170; adding new sections to chapter 9.02 RCW; and prescribing penalties.

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

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

(1) No person may intentionally perform or induce, or attempt to perform or induce, an abortion on a woman if the person has knowledge that the woman is seeking the abortion, in whole or in part, because of any of the following:

(a) A test result indicating Down syndrome in an unborn child;

(b) A prenatal diagnosis of Down syndrome in an unborn child; or

(c) Any other reason to believe that an unborn child has Down syndrome.

(2) Whoever violates subsection (1) of this section is subject to the penalties established in RCW 9.02.120.

(3) The Washington medical commission or the board of any health profession licensed under Title 18 RCW, as applicable, must revoke the license of a physician, physician assistant, advanced registered nurse practitioner, or other health care provider who has violated subsection (1) of this section.

(4) Any physician, physician assistant, advanced registered nurse practitioner, or other health care provider who violates subsection (1) of this section is liable in a civil action for compensatory and exemplary damages, as well as reasonable attorneys' fees, to the person, or the representative of the estate of any person, who sustains injury, death, or loss to person or property as the result of the intentional performance or inducement, or the attempted performance or inducement, of the abortion. In any action under this subsection, the court may also award injunctive or other equitable relief that the court considers appropriate.

(5) A woman on whom an abortion is intentionally performed or induced, or attempted to be performed or induced, in violation of subsection (1) of this section is not guilty of violating subsection (1) of this section or attempting to commit, conspiring to commit, or complicity in committing a violation of subsection (1) of this section.

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

(1) The attending physician, physician assistant, advanced registered nurse practitioner, or other health care provider performing or inducing an abortion must indicate in a report to the department of health that the attending physician, physician assistant, advanced registered nurse practitioner, or other health care provider does not have knowledge that the woman was seeking the abortion, in whole or in part, because of any of the following:

(a) A test result indicating Down syndrome in an unborn child;

(b) A prenatal diagnosis of Down syndrome in an unborn child; or

(c) Any other reason to believe that an unborn child has Down syndrome.

(2) The department of health shall adopt rules to facilitate the submission of the reports, including establishing reporting forms and allowing for the incorporation of reporting into existing reporting requirements for hospitals and facilities where abortions are performed or induced.

**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 individual's~~)) woman's right to choose to have an abortion prior to viability of the fetus, except when prohibited by section 1 of this act, or to protect the ((~~pregnant individual's~~)) woman's 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.

**Sec.**  RCW 9.02.170 and 2022 c 65 s 7 are each reenacted and amended to read as follows:

((~~For purposes of this chapter:~~)) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Abortion" means any medical treatment intended to induce the termination of a pregnancy except for the purpose of producing a live birth.

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

(3) "Health care provider" means a person regulated under Title 18 RCW to practice health or health-related services or otherwise practicing health care services in this state consistent with state law.

(4) "Physician" means a physician licensed to practice under chapter 18.57 or 18.71 RCW in the state of Washington.

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

(6) "Pregnancy" means the reproductive process beginning with the implantation of an embryo.

(7) "Private medical facility" means any medical facility that is not owned or operated by the state.

(8) "State" means the state of Washington and counties, cities, towns, municipal corporations, and quasi-municipal corporations in the state of Washington.

(9) "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.

(10) "Down syndrome" means a chromosome disorder associated either with an extra chromosome 21, in whole or in part, or an effective trisomy for chromosome 21.

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

NEW SECTION. **Sec.**  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.

**--- END ---**