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**SENATE BILL 5768**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senators Keiser, Dhingra, Cleveland, Frame, Hunt, Kuderer, Lovelett, Nobles, Pedersen, Randall, Robinson, Stanford, Trudeau, Valdez, Wellman, and C. Wilson

Read first time 04/05/23. Referred to Committee on Ways & Means.

1 AN ACT Relating to protecting access to abortion medications by  
2 authorizing the department of corrections to acquire, sell, deliver,  
3 distribute, and dispense abortion medications; amending RCW  
4 18.64.046; adding a new section to chapter 72.09 RCW; creating new  
5 sections; and declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** (1) It is the longstanding public policy  
8 of this state to promote access to affordable, high quality sexual  
9 and reproductive health care, including abortion care, without  
10 unnecessary burdens or restrictions on patients or providers. In 1970  
11 Washington was one of the first states to decriminalize abortion  
12 before *Roe v. Wade*; and in 1991 the people of Washington passed  
13 Initiative Measure 120, the reproductive privacy act, further  
14 protecting access to abortion services. It is the public policy of  
15 the state of Washington to continue to protect and advance equal  
16 rights to access abortion care that meets each individual's needs,  
17 including access to abortion medications.

18 (2) The legislature finds that the continued attack on  
19 reproductive freedoms across the country require immediate action to  
20 protect the right to abortion access in Washington. Therefore, it is

1 the intent of the legislature to ensure access to abortion  
2 medications for individuals seeking abortion care.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 72.09  
4 RCW to read as follows:

5 (1) The department is authorized to acquire, receive, possess,  
6 sell, resell, deliver, dispense, distribute, and engage in any  
7 activity constituting the practice of pharmacy or wholesale  
8 distribution with respect to abortion medications.

9 (2) The department may exercise the authority granted in this  
10 section for the benefit of any person, whether or not the person is  
11 in the custody or under the supervision of the department.

12 (3) The department shall exercise the authority granted in this  
13 section in accordance with any applicable law including, but not  
14 limited to, any applicable licensing requirements, except that the  
15 department is exempt from obtaining a wholesaler's license for any  
16 actions taken pursuant to this act as provided in RCW 18.64.046.

17 (4)(a) The department shall establish and operate a program to  
18 deliver, dispense, and distribute abortion medications described in  
19 this section. In circumstances in which the department is selling,  
20 delivering, or distributing abortion medications to a health care  
21 provider or health care entity, it may only sell, distribute, or  
22 deliver abortion medications to health care providers and health care  
23 entities that will only use the medications for the purposes of  
24 providing abortion care or medical management of early pregnancy  
25 loss.

26 (b) Any abortion medications sold, resold, delivered, dispensed,  
27 or distributed whether individually or wholesale shall be conducted  
28 at cost not to exceed list price, plus a fee of \$5 per dose to offset  
29 the cost of secure storage and delivery of medication. Revenues  
30 generated pursuant to this act shall be deposited to the general  
31 fund.

32 (5) Nothing in this section shall diminish any existing authority  
33 of the department.

34 (6) For the purposes of this section, the following definitions  
35 apply:

36 (a) "Abortion medications" means substances used in the course of  
37 medical treatment intended to induce the termination of a pregnancy  
38 including, but not limited to, mifepristone.

39 (b) "Deliver" has the same meaning as in RCW 18.64.011.

1 (c) "Dispense" has the same meaning as in RCW 18.64.011.

2 (d) "Distribute" has the same meaning as in RCW 18.64.011.

3 (e) "Health care entity" means a hospital, clinic, pharmacy,  
4 office, or similar setting where a health care provider provides  
5 health care to patients.

6 (f) "Health care provider" has the same meaning as in RCW  
7 70.02.010.

8 (g) "Person" has the same meaning as in RCW 18.64.011.

9 (h) "Practice of pharmacy" has the same meaning as in RCW  
10 18.64.011.

11 (i) "Wholesale distribution" has the same meaning as in WAC  
12 246-945-001.

13 **Sec. 3.** RCW 18.64.046 and 2013 c 19 s 9 are each amended to read  
14 as follows:

15 (1) (~~The~~) Except as provided in subsection (6)(b) of this  
16 section, the owner of each place of business which sells legend drugs  
17 and nonprescription drugs, or nonprescription drugs at wholesale  
18 shall pay a license fee to be determined by the secretary, and  
19 thereafter, on or before a date to be determined by the secretary as  
20 provided in RCW 43.70.250 and 43.70.280, a like fee to be determined  
21 by the secretary, for which the owner shall receive a license of  
22 location from the department, which shall entitle such owner to  
23 either sell legend drugs and nonprescription drugs or nonprescription  
24 drugs at wholesale at the location specified for the period ending on  
25 a date to be determined by the secretary, and each such owner shall  
26 at the time of payment of such fee file with the department, on a  
27 blank therefor provided, a declaration of ownership and location,  
28 which declaration of ownership and location so filed as aforesaid  
29 shall be deemed presumptive evidence of the ownership of such place  
30 of business mentioned therein. It shall be the duty of the owner to  
31 notify immediately the department of any change of location and  
32 ownership and to keep the license of location or the renewal thereof  
33 properly exhibited in such place of business.

34 (2) Failure to conform with this section is a misdemeanor, and  
35 each day that the failure continues is a separate offense.

36 (3) In event the license fee remains unpaid on the date due, no  
37 renewal or new license shall be issued except upon compliance with  
38 administrative procedures, administrative requirements, and fees  
39 determined as provided in RCW 43.70.250 and 43.70.280.

1 (4) No wholesaler may sell any quantity of drug products  
2 containing ephedrine, pseudoephedrine, phenylpropanolamine, or their  
3 salts, isomers, or salts of isomers, if the total monthly sales of  
4 these products to persons within the state of Washington exceed five  
5 percent of the wholesaler's total prior monthly sales of  
6 nonprescription drugs to persons within the state in March through  
7 October. In November through February, no wholesaler may sell any  
8 quantity of drug products containing ephedrine, pseudoephedrine, or  
9 phenylpropanolamine, or their salts, isomers, or salts of isomers if  
10 the total monthly sales of these products to persons within the state  
11 of Washington exceed ten percent of the wholesaler's total prior  
12 monthly sales of nonprescription drugs to persons within the state.  
13 For purposes of this section, monthly sales means total dollars paid  
14 by buyers. The commission may suspend or revoke the license of any  
15 wholesaler that violates this section.

16 (5) The commission may exempt a wholesaler from the limitations  
17 of subsection (4) of this section if it finds that the wholesaler  
18 distributes nonprescription drugs only through transactions between  
19 divisions, subsidiaries, or related companies when the wholesaler and  
20 the retailer are related by common ownership, and that neither the  
21 wholesaler nor the retailer has a history of suspicious transactions  
22 in precursor drugs as defined in RCW 69.43.035.

23 (6) (a) The requirements for a license apply to all persons, in  
24 Washington and outside of Washington, who sell both legend drugs and  
25 nonprescription drugs and to those who sell only nonprescription  
26 drugs, at wholesale to pharmacies, practitioners, and shopkeepers in  
27 Washington.

28 (b) For purposes of the actions authorized by section 1 of this  
29 act, the department of corrections is exempt from obtaining a  
30 wholesaler license as required by this section.

31 (7) (a) No wholesaler may sell any product containing any  
32 detectable quantity of ephedrine, pseudoephedrine,  
33 phenylpropanolamine, or their salts, isomers, or salts of isomers, to  
34 any person in Washington other than a pharmacy licensed under this  
35 chapter, a shopkeeper or itinerant vendor registered under this  
36 chapter, a practitioner as defined in RCW 18.64.011, or a traditional  
37 Chinese herbal practitioner as defined in RCW 69.43.105.

38 (b) A violation of this subsection is punishable as a class C  
39 felony according to chapter 9A.20 RCW, and each sale in violation of  
40 this subsection constitutes a separate offense.

1        NEW SECTION.     **Sec. 4.**     This act applies retroactively and  
2 prospectively.

3        NEW SECTION.     **Sec. 5.**     The provision of this act shall be  
4 liberally construed to give effect to the policies and purposes of  
5 this act.

6        NEW SECTION.     **Sec. 6.**     This act is necessary for the immediate  
7 preservation of the public peace, health, or safety, or support of  
8 the state government and its existing public institutions, and takes  
9 effect immediately.

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