
HOUSE BILL 2173

State of Washington

58th Legislature

2003 Regular Session

By Representatives Schindler, Miloscia, O'Brien, Ahern, Mielke, Holmquist, Boldt, Roach, Kristiansen, Cox, Bush, Carrell, Benson, McMahan, Pearson, Campbell, Ericksen, Crouse and Hinkle

Read first time 02/28/2003. Referred to Committee on Health Care.

1 AN ACT Relating to respecting and protecting the unborn; amending
2 RCW 70.58.150, 68.50.610, 68.04.020, 68.50.110, 9.02.110, and 9.02.170;
3 adding new sections to chapter 9.02 RCW; creating a new section;
4 prescribing penalties; providing expiration dates; and declaring an
5 emergency.

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

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8 **PART 1**

9 **PROHIBITING PARTIAL BIRTH ABORTIONS**

10 NEW SECTION. **Sec. 101.** The legislature finds and declares the
11 following:

12 (1) A moral, medical, and ethical consensus exists that the
13 practice of performing a partial birth abortion, an abortion in which
14 a physician delivers an unborn child's body until only the head remains
15 inside the womb, punctures the back of the child's skull with a sharp
16 instrument, and sucks the child's brains out before completing delivery
17 of the dead infant, is a gruesome and inhumane procedure that is never
18 medically necessary and should be prohibited.

19 (2) Rather than being an abortion procedure that is embraced by the
20 medical community, particularly among physicians who routinely perform
21 other abortion procedures, partial birth abortion remains a disfavored
22 procedure that is not only unnecessary to preserve the health of the
23 mother, but in fact poses serious risks to the long-term health of
24 women and in some circumstances, their lives. As a result, at least
25 twenty-seven states banned the procedure as did the United States
26 Congress which voted to ban the procedure during the 104th, 105th, and
27 106th Congresses.

28 (3) In *Stenberg v. Carhart*, 530 U.S. 914, 932 (2000), the United
29 States supreme court opined "that significant medical authority
30 supports the proposition that in some circumstances, [partial birth
31 abortion] would be the safest procedure" for pregnant women who wish to
32 undergo an abortion. Thus, the court struck down the state of
33 Nebraska's ban on partial birth abortion procedures, concluding that it
34 placed an "undue burden" on women seeking abortions because it failed
35 to include an exception for partial birth abortions deemed necessary to
36 preserve the "health" of the mother.

1 (4) In reaching this conclusion, the court deferred to the federal
2 district court's factual findings that the partial birth abortion
3 procedure was statistically and medically as safe as, and in many
4 circumstances safer than, alternative abortion procedures.

5 (5) However, the great weight of evidence presented at the Stenberg
6 trial and other trials challenging partial birth abortion bans, as well
7 as at extensive congressional hearings, demonstrates that a partial
8 birth abortion is never necessary to preserve the health of a woman,
9 poses significant health risks to a woman upon whom the procedure is
10 performed, and is outside of the standard of medical care.

11 (6) Despite the dearth of evidence in the Stenberg trial court
12 record supporting the district court's findings, the United States
13 court of appeals for the eighth circuit and the supreme court refused
14 to set aside the district court's factual findings because, under the
15 applicable standard of appellate review, they were not "clearly
16 erroneous." A finding of fact is clearly erroneous "when although
17 there is evidence to support it, the reviewing court on the entire
18 evidence is left with the definite and firm conviction that a mistake
19 has been committed." *Anderson v. City of Bessemer City, North*
20 *Carolina*, 470 U.S. 564, 573 (1985). Under this standard, "if the
21 district court's account of the evidence is plausible in light of the
22 record viewed in its entirety, the court of appeals may not reverse it
23 even though convinced that had it been sitting as the trier of fact, it
24 would have weighed the evidence differently." *Id.* at 574.

25 (7) Thus, in Stenberg, the United States supreme court was required
26 to accept the very questionable findings issued by the district court
27 judge; the effect of which was to render null and void the reasoned
28 factual findings and policy determinations of the United States
29 congress and at least twenty-seven state legislatures.

30 (8) However, under well-settled supreme court jurisprudence, the
31 United States congress is not bound to accept the same factual findings
32 that the supreme court was bound to accept in Stenberg under the
33 "clearly erroneous" standard. Rather, the United States congress is
34 entitled to reach its own factual findings, findings that the supreme
35 court accords great deference, and to enact legislation based upon
36 these findings so long as it seeks to pursue a legitimate interest that
37 is within the scope of the Constitution, and draws reasonable
38 inferences based upon substantial evidence.

1 (9) In *Katzenbach v. Morgan*, 384 U.S. 641 (1966), the supreme court
2 articulated its highly deferential review of congressional factual
3 findings when it addressed the constitutionality of section 4(e) of the
4 voting rights act of 1965. Regarding congress's factual determination
5 that section 4(e) would assist the Puerto Rican community in "gaining
6 nondiscriminatory treatment in public services," the court stated that
7 "[i]t was for congress, as the branch that made this judgment, to
8 assess and weigh the various conflicting considerations.... It is not
9 for us to review the congressional resolution of these factors. It is
10 enough that we be able to perceive a basis upon which the congress
11 might resolve the conflict as it did. There plainly was such a basis
12 to support section 4(e) in the application in question in this case."
13 *Id.* at 653.

14 (10) Katzenbach's highly deferential review of congress's factual
15 conclusions was relied upon by the United States district court for the
16 District of Columbia when it upheld the bail-out provisions of the
17 voting rights act of 1965, (42 U.S.C. 1973c), stating that
18 "congressional fact finding, to which we are inclined to pay great
19 deference, strengthens the inference that, in those jurisdictions
20 covered by the act, state actions discriminatory in effect are
21 discriminatory in purpose." *City of Rome, Georgia v. U.S.*, 472 F.
22 Supp. 221 (D.D. Col. 1979) *aff'd City of Rome, Georgia v. U.S.*, 446
23 U.S. 156 (1980).

24 (11) The court continued its practice of deferring to congressional
25 factual findings in reviewing the constitutionality of the must-carry
26 provisions of the cable television consumer protection and competition
27 act of 1992. See *Turner Broadcasting System, Inc. v. Federal*
28 *Communications Commission*, 512 U.S. 622 (1994) (Turner I) and *Turner*
29 *Broadcasting System, Inc. v. Federal Communications Commission*, 520
30 U.S. 180 (1997) (Turner II). At issue in the Turner cases was
31 congress's legislative finding that, absent mandatory carriage rules,
32 the continued viability of local broadcast television would be
33 "seriously jeopardized." The Turner I court recognized that as an
34 institution, "congress is far better equipped than the judiciary to
35 'amass and evaluate the vast amounts of data' bearing upon an issue as
36 complex and dynamic as that presented here." 512 U.S. at 665-66.
37 Although the court recognized that "the deference afforded to
38 legislative findings does not foreclose our independent judgment of the

1 facts bearing on an issue of constitutional law," its "obligation to
2 exercise independent judgment when first amendment rights are
3 implicated is not a license to reweigh the evidence de novo, or to
4 replace congress's factual predictions with our own. Rather, it is to
5 assure that, in formulating its judgments, congress has drawn
6 reasonable inferences based on substantial evidence." Id. at 666.

7 (12) Three years later in Turner II, the court upheld the "must-
8 carry" provisions based upon congress's findings, stating the court's
9 "sole obligation" is "to assure that, in formulating its judgments,
10 congress has drawn reasonable inferences based on substantial
11 evidence." 520 U.S. at 195. Citing its ruling in Turner I, the court
12 reiterated that "[w]e owe congress's findings deference in part because
13 the institution is far better equipped than the judiciary to amass and
14 evaluate the vast amounts of data bearing upon legislative questions,"
15 id. at 195, and added that it "owe[d] congress's findings an additional
16 measure of deference out of respect for its authority to exercise the
17 legislative power." Id. at 196.

18 (13) There exists substantial record evidence upon which congress
19 has reached its conclusion that a ban on partial birth abortion is not
20 required to contain a "health" exception, because the facts indicate
21 that a partial birth abortion is never necessary to preserve the health
22 of a woman, poses serious risks to a woman's health, and lies outside
23 the standard of medical care. Congress was informed by extensive
24 hearings held during the 104th and 105th congresses and passed a ban on
25 partial birth abortion in the 104th, 105th, and 106th congresses.
26 These findings reflect the very informed judgment of the congress that
27 a partial birth abortion is never necessary to preserve the health of
28 a woman, poses serious risks to a woman's health, and lies outside the
29 standard of medical care, and should, therefore, be banned.

30 (14) Pursuant to the testimony received during extensive
31 legislative hearings during the 104th and 105th congresses, the
32 congress found that:

33 (a) Partial birth abortion poses serious risks to the health of a
34 woman undergoing the procedure. Those risks include, among other
35 things: An increase in a woman's risk of suffering from cervical
36 incompetence, a result of cervical dilation making it difficult or
37 impossible for a woman to successfully carry a subsequent pregnancy to
38 term; an increased risk of uterine rupture, abruption, amniotic fluid

1 embolus, and trauma to the uterus as a result of converting the child
2 to a footling breech position, a procedure which, according to a
3 leading obstetrics textbook, "there are very few, if any, indications
4 for... other than for delivery of a second twin"; and a risk of
5 lacerations and secondary hemorrhaging due to the doctor blindly
6 forcing a sharp instrument into the base of the unborn child's skull
7 while he or she is lodged in the birth canal, an act which could result
8 in severe bleeding, brings with it the threat of shock, and could
9 ultimately result in maternal death.

10 (b) There is no credible medical evidence that partial birth
11 abortions are safe or are safer than other abortion procedures. No
12 controlled studies of partial birth abortions have been conducted nor
13 have any comparative studies been conducted to demonstrate its safety
14 and efficacy compared to other abortion methods. Furthermore, there
15 have been no articles published in peer-reviewed journals that
16 establish that partial birth abortions are superior in any way to
17 established abortion procedures. Indeed, unlike other more commonly
18 used abortion procedures, there are currently no medical schools that
19 provide instruction on abortions that include the instruction in
20 partial birth abortions in their curriculum.

21 (c) A prominent medical association has concluded that partial
22 birth abortion is "not an accepted medical practice," that it has
23 "never been subject to even a minimal amount of the normal medical
24 practice development," that "the relative advantages and disadvantages
25 of the procedure in specific circumstances remain unknown," and that
26 "there is no consensus among obstetricians about its use." The
27 association has further noted that partial birth abortion is broadly
28 disfavored by both medical experts and the public, is "ethically
29 wrong," and "is never the only appropriate procedure."

30 (d) Neither the plaintiff in *Stenberg v. Carhart*, nor the experts
31 who testified on his behalf, have identified a single circumstance
32 during which a partial birth abortion was necessary to preserve the
33 health of a woman.

34 (e) The physician credited with developing the partial birth
35 abortion procedure has testified that he has never encountered a
36 situation where a partial birth abortion was medically necessary to
37 achieve the desired outcome and, thus, is never medically necessary to
38 preserve the health of a woman.

1 (f) A ban on the partial birth abortion procedure will therefore
2 advance the health interests of pregnant women seeking to terminate a
3 pregnancy.

4 (g) In light of this overwhelming evidence, congress and the states
5 have a compelling interest in prohibiting partial birth abortions. In
6 addition to promoting maternal health, such a prohibition will draw a
7 bright line that clearly distinguishes abortion and infanticide, that
8 preserves the integrity of the medical profession, and promotes respect
9 for human life.

10 (h) Based upon *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned*
11 *Parenthood v. Casey*, 505 U.S. 833 (1992), a governmental interest in
12 protecting the life of a child during the delivery process arises by
13 virtue of the fact that during a partial birth abortion, labor is
14 induced and the birth process has begun. This distinction was
15 recognized in *Roe* when the court noted, without comment, that the Texas
16 parturition statute, which prohibited one from killing a child "in a
17 state of being born and before actual birth," was not under attack.
18 This interest becomes compelling as the child emerges from the maternal
19 body. A child that is completely born is a full, legal person entitled
20 to constitutional protections afforded a "person" under the United
21 States constitution. Partial birth abortions involve the killing of a
22 child that is in the process, in fact mere inches away from, becoming
23 a "person." Thus, the government has a heightened interest in
24 protecting the life of the partially born child.

25 (i) This, too, has not gone unnoticed in the medical community,
26 where a prominent medical association has recognized that partial birth
27 abortions are "ethically different from other destructive abortion
28 techniques because the fetus, normally twenty weeks or longer in
29 gestation, is killed outside of the womb." According to this medical
30 association, the "partial birth" gives the fetus an autonomy which
31 separates it from the right of the woman to choose treatments for her
32 own body.

33 (j) Partial birth abortion also confuses the medical, legal, and
34 ethical duties of physicians to preserve and promote life, as the
35 physician acts directly against the physical life of a child, whom he
36 or she had just delivered, all but the head, out of the womb, in order
37 to end that life. Partial birth abortion thus appropriates the
38 terminology and techniques used by obstetricians in the delivery of

1 living children, obstetricians who preserve and protect the life of the
2 mother and the child, and instead uses those techniques to end the life
3 of the partially born child.

4 (k) Thus, by aborting a child in the manner that purposefully seeks
5 to kill the child after he or she has begun the process of birth,
6 partial birth abortion undermines the public's perception of the
7 appropriate role of a physician during the delivery process, and
8 perverts a process during which life is brought into the world, in
9 order to destroy a partially born child.

10 (l) The gruesome and inhumane nature of the partial birth abortion
11 procedure and its disturbing similarity to the killing of a newborn
12 infant promotes a complete disregard for infant human life that can
13 only be countered by a prohibition of the procedure.

14 (m) The vast majority of babies killed during partial birth
15 abortions are alive until the end of the procedure. It is a medical
16 fact, however, that unborn infants at this stage can feel pain when
17 subjected to painful stimuli and that their perception of this pain is
18 even more intense than that of newborn infants and older children when
19 subjected to the same stimuli. Thus, during a partial birth abortion
20 procedure, the child will fully experience the pain associated with
21 piercing his or her skull and sucking out his or her brain.

22 (n) Implicitly approving such a brutal and inhumane procedure by
23 choosing not to prohibit it will further coarsen society to the
24 humanity of not only newborns, but all vulnerable and innocent human
25 life, making it increasingly difficult to protect such life. Thus,
26 congress has a compelling interest in acting, indeed it must act, to
27 prohibit this inhumane procedure.

28 (o) For these reasons, the congress found that partial birth
29 abortion is never medically indicated to preserve the health of the
30 mother; is in fact unrecognized as a valid abortion procedure by the
31 mainstream medical community; poses additional health risks to the
32 mother; blurs the line between abortion and infanticide in the killing
33 of a partially born child just inches from birth; and confuses the role
34 of the physician in childbirth and should, therefore, be banned.

35 NEW SECTION. **Sec. 102.** (1) Any physician who, in or affecting
36 interstate or foreign commerce, knowingly performs a partial birth
37 abortion and thereby kills a human fetus shall be fined under this act

1 or imprisoned not more than two years, or both. This subsection does
2 not apply to a partial birth abortion that is necessary to save the
3 life of a mother whose life is endangered by a physical disorder,
4 physical illness, or physical injury, including a life-endangering
5 physical condition caused by or arising from the pregnancy itself.

6 (2) The definitions in this subsection apply throughout this
7 section unless the context clearly requires otherwise.

8 (a) "Partial birth abortion" means an abortion in which:

9 (i) The person performing the abortion deliberately and
10 intentionally vaginally delivers a living fetus until, in the case of
11 a head-first presentation, the entire fetal head is outside the body of
12 the mother, or, in the case of breech presentation, any part of the
13 fetal trunk past the navel is outside the body of the mother for the
14 purpose of performing an overt act that the person knows will kill the
15 partially delivered living fetus; and

16 (ii) Performs the overt act, other than completion of delivery,
17 that kills the partially delivered living fetus.

18 (b) "Physician" means a doctor of medicine or osteopathy legally
19 authorized to practice medicine and surgery by the state in which the
20 doctor performs such activity, or any other individual legally
21 authorized by the state to perform abortions. However, any individual
22 who is not a physician or not otherwise legally authorized by the state
23 to perform abortions, but who nevertheless directly performs a partial
24 birth abortion, is subject to the provisions of this section.

25 (3)(a) The father, if married to the mother at the time she
26 receives a partial birth abortion procedure, and if the mother has not
27 attained the age of eighteen years at the time of the abortion, the
28 maternal grandparents of the fetus, may in a civil action obtain
29 appropriate relief, unless the pregnancy resulted from the plaintiff's
30 criminal conduct or the plaintiff consented to the abortion.

31 (b) Such relief shall include:

32 (i) Money damages for all injuries, psychological and physical,
33 occasioned by the violation of this section; and

34 (ii) Statutory damages equal to three times the cost of the partial
35 birth abortion.

36 (4)(a) A defendant accused of an offense under this section may
37 seek a hearing before the board of health on whether the physician's
38 conduct was necessary to save the life of the mother whose life was

1 endangered by a physical disorder, physical illness, or physical
2 injury, including a life-endangering physical condition caused by or
3 arising from the pregnancy itself.

4 (b) The findings on that issue are admissible on that issue at the
5 trial of the defendant. Upon a motion of the defendant, the court
6 shall delay the beginning of the trial for not more than thirty days to
7 permit such a hearing to take place.

8 (5) A woman upon whom a partial birth abortion is performed may not
9 be prosecuted under this section, for a conspiracy to violate this
10 section.

11 PART 2

12 PROHIBITING THE CLONING OF HUMAN EMBRYOS

13 NEW SECTION. **Sec. 201.** (1) The legislature of the state of
14 Washington finds that:

15 (a) At least one company has announced that it has successfully
16 cloned a human being at the early embryonic stage of life, and others
17 have announced that they will attempt to clone a human being using the
18 technique known as somatic cell nuclear transfer;

19 (b) Efforts to create human beings by cloning mark a new and
20 decisive step toward turning human reproduction into a manufacturing
21 process in which human beings are made in laboratories to preordained
22 specifications and, potentially, in multiple copies;

23 (c) Creating cloned live-born human children begins by creating
24 cloned human beings at the embryonic stage of life, a process which
25 some also propose as a way of creating human embryos for destructive
26 research as sources of stem cells and tissues for possible treatment of
27 other humans;

28 (d) Many scientists agree that attempts at cloning to produce
29 children pose a massive risk of either producing children who are
30 stillborn, unhealthy, or severely disabled, and that attempts of
31 cloning for biomedical research always result in the destruction of
32 human beings at the embryonic stage of life when stem cells are
33 harvested;

34 (e) The prospect of creating new human life solely to be exploited
35 or destroyed in these ways have been condemned on moral grounds by
36 many, as displaying a profound disrespect for life;

1 (f) The distinction between therapeutic and reproductive cloning is
2 a false distinction scientifically because both begin with the
3 reproduction of a human being at the embryonic stage of life, one
4 destined for implantation in a womb, and one destined for destructive
5 farming of its stem cells. Regardless of its ultimate destiny, all
6 human embryos are simultaneously human beings;

7 (g) It will be nearly impossible to ban only attempts at cloning to
8 produce children if cloning for biomedical research is allowed because:

9 (i) Cloning would take place within the privacy of a doctor-patient
10 relationship;

11 (ii) The implantation of embryos to begin a pregnancy is a simple
12 procedure; and

13 (iii) Any government effort to prevent the implantation of an
14 existing cloned embryo, or to prevent birth once implantation has
15 occurred would raise substantial moral, legal, and practical issues.

16 (2) Based on the legislature's findings, it is the purpose of this
17 chapter to prohibit the use of cloning technology to initiate the
18 development of new human beings at the embryonic stage of life for any
19 purpose.

20 NEW SECTION. **Sec. 202.** The definitions in this section apply
21 throughout this chapter unless the context clearly requires otherwise.

22 (1) "Human cloning" means human asexual reproduction, accomplished
23 by introducing the genetic material of a human somatic cell into an
24 oocyte whose nucleus has been removed or inactivated, to produce a
25 living organism with a human or predominantly human genetic
26 constitution.

27 (2) "Somatic cell" means a cell having a complete set of
28 chromosomes obtained from a living or deceased human body at any stage
29 of development.

30 (3) "Oocyte" means the human female germ cell.

31 (4) "Embryo" means an organism of the species homo sapiens from the
32 single cell stage to eight weeks development.

33 (5) "Fetus" means an organism of the species homo sapiens from
34 eight weeks development until complete expulsion or extraction from a
35 woman's body, or removal from an artificial womb or other similar
36 environment designed to nurture the development of such organism.

1 **PROHIBITING THE SALE, DONATION, OR USE OF ABORTED FETAL BODY PARTS**

2 **Sec. 301.** RCW 70.58.150 and 1961 ex.s. c 5 s 11 are each amended
3 to read as follows:

4 A fetal death means any product of conception that shows no
5 evidence of life after complete expulsion or extraction from ~~((its))~~
6 his or her mother by or as the result of any means, including the
7 application of any abortion procedure or technique. The words
8 "evidence of life" include breathing, beating of the heart, pulsation
9 of the umbilical cord, or definite movement of voluntary muscles.

10 NEW SECTION. **Sec. 302.** The body, including the body parts, body
11 organs, body tissue, and body fluids, of a fetus whose death is the
12 result of the application of any abortion procedure or technique may
13 not be sold, donated, or otherwise transferred, with or without
14 valuable consideration, for any use, but shall be disposed of as human
15 remains by burial or cremation in accordance with the requirements of
16 this chapter and chapter 70.58 RCW.

17 **Sec. 303.** RCW 68.50.610 and 1993 c 228 s 10 are each amended to
18 read as follows:

19 (1) A person may not knowingly, for valuable consideration,
20 purchase or sell a part for transplantation or therapy, if removal of
21 the part is intended to occur after the death of the decedent.

22 (2) Valuable consideration does not include reasonable payment for
23 the removal, processing, disposal, preservation, quality control,
24 storage, transportation, or implantation of a part.

25 (3) The donation of any part of the body, including the body parts,
26 body organs, body tissue, and body fluids, of a fetus whose death is
27 the result of the application of any abortion procedure or technique is
28 prohibited under any circumstance, with or without valuable
29 consideration, for purposes of making an anatomical gift.

30 (4) A person who violates this section is guilty of a felony and
31 upon conviction is subject to a fine not exceeding fifty thousand
32 dollars or imprisonment not exceeding five years, or both.

33 **Sec. 304.** RCW 68.04.020 and 1977 c 47 s 1 are each amended to read
34 as follows:

35 "Human remains" or "remains" means the body of ~~((a))~~ any deceased

1 person, and includes the body in any stage of decomposition except
2 cremated remains. "Human remains" or "remains" includes the body of a
3 dead fetus.

4 **Sec. 305.** RCW 68.50.110 and 1987 c 331 s 60 are each amended to
5 read as follows:

6 Except for pathological waste as defined in RCW 70.95K.010, in
7 cases of dissection provided for in RCW 68.50.070 and 68.50.100, and
8 where (~~a dead body~~) human remains shall rightfully be carried through
9 or removed from the state for the purpose of lawful burial or cremation
10 elsewhere, (~~every dead body of a human being lying~~) all human remains
11 within this state, (~~and~~) including the remains of any dissected body,
12 after dissection, shall be decently buried, or cremated within a
13 reasonable time after death.

14 NEW SECTION. **Sec. 306.** For purposes of RCW 70.58.150, 68.50.610,
15 and sections 302 and 307 of this act, "application of any abortion
16 technique or procedure" means the exercise or use of any force,
17 instrument, or drug, or other means, device, or substance, intended to
18 cause the termination of a pregnancy resulting in the death of a fetus.

19 NEW SECTION. **Sec. 307.** (1) Section 302 of this act is not
20 intended, and may not be construed, to prevent a coroner, medical
21 examiner, physician of the mother of the fetus, or prosecuting attorney
22 from using that part of the body of a fetus whose death is the result
23 of the application of any abortion procedure or technique that is
24 necessary for the sole and exclusive purpose of diagnosing or
25 determining: (a) A disease or condition or cause of death of the
26 mother of the fetus if the abortion was performed because of such
27 disease or condition of the mother of the fetus, or (b) cause of death
28 of the fetus, if in either case no other reasonable means of making the
29 diagnosis or determination is available without such use, and after the
30 diagnosis or determination all that part of the body of the fetus used
31 to make the diagnosis or determination that remains is disposed of as
32 required in section 302 of this act.

33 (2) Section 302 of this act and RCW 68.50.610(3) are not intended,
34 and may not be construed, to apply to the donation for medical research
35 or use of any part of the body of a fetus whose death is the result of

1 a miscarriage, stillbirth, ectopic pregnancy, sickness, disease,
2 accident, or crime caused to the fetus or the mother by a third party
3 without the knowledge and consent of the mother. However, the donation
4 may only be made if a parent or guardian knows of and approves the
5 donation for such medical research or use.

6 **PART 4**

7 **PROHIBITING ABORTION NOT BASED ON FACTORS DELINEATED**
8 **IN ROE AND ITS PROGENY**

9 NEW SECTION. **Sec. 401.** A pregnancy may not be terminated solely
10 because of the race, color, national origin, sex, or age of a fetus, or
11 because of the race, color, national origin, creed, marital status,
12 age, employment status, or financial condition of a parent of the
13 fetus.

14 **PART 5**

15 **REQUIRING STANDARDS OF CARE FOR ABORTION CLINICS**

16 NEW SECTION. **Sec. 501.** The legislature finds that:

17 (1) Many abortions are performed in clinics devoted solely to
18 providing abortions and family planning services. Most women who seek
19 abortions at these facilities do not have any relationship with the
20 physician who performs the abortion, before or after the procedure.
21 They do not return to the facility for postsurgical care. In most
22 instances, the woman's only actual contact with the physician occurs
23 simultaneously with the abortion procedure, with little opportunity to
24 ask questions about the procedure, potential complications, and proper
25 follow-up care.

26 (2) The supreme court in *H.L. v. Matheson*, 450 U.S. 398, 411 (1981)
27 stated that "The medical, emotional, and psychological consequences of
28 an abortion are serious and can be lasting...."

29 (3) The supreme court in *Planned Parenthood of Southeastern*
30 *Pennsylvania v. Casey*, 505 U.S. 833, 852 (1992) stated that "[T]he
31 abortion decision... is more than a philosophic exercise. Abortion is
32 a unique act. It is an act fraught with consequences for others: for
33 the woman who must live with the implications of her decision; for the
34 spouse, family, and society which must confront the knowledge that

1 these procedures exist, procedures some deem nothing short of an act of
2 violence against innocent human life; and, depending on one's beliefs,
3 for the life or potential life that is aborted."

4 (4) Abortion is an invasive, surgical procedure that can lead to
5 numerous and serious medical complications. Potential complications
6 for first trimester abortions include, among others, bleeding,
7 hemorrhage, infection, uterine perforation, blood clots, cervical
8 tears, incomplete abortion (retained tissue), failure to actually
9 terminate the pregnancy, free fluid in the abdomen, acute abdomen,
10 missed ectopic pregnancies, cardiac arrest, sepsis, respiratory arrest,
11 reactions to anesthesia, fertility problems, emotional problems, and
12 even death.

13 (5) The risks for second trimester abortions are greater than for
14 first trimester abortions. The risk of hemorrhage, in particular, is
15 greater, and the resultant complications may require a hysterectomy,
16 other reparative surgery, or a blood transfusion.

17 (6) The state of Washington has a legitimate concern for the
18 public's health and safety.

19 (7) The state of Washington "has legitimate interests from the
20 outset of pregnancy in protecting the health of women." *Planned*
21 *Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 847
22 (1992).

23 (8) More specifically, the state of Washington "has a legitimate
24 concern with the health of women who undergo abortions." *Akron v.*
25 *Akron Ctr. for Reproductive Health, Inc.*, 462 U.S. 416, 428-29 (1983).

26 (9) The state of Washington has "a legitimate interest in seeing to
27 it that abortion, like any other medical procedure, is performed under
28 circumstances that ensure maximum safety for the patient." *Roe v.*
29 *Wade*, 410 U.S. 113, 150 (1973).

30 (10) Since the supreme court's decision in *Roe v. Wade*, courts have
31 recognized that for the purposes of regulation, abortion services are
32 rationally distinct from other routine medical services, because of the
33 "particular gravitas of the moral, psychological, and familial aspects
34 of the abortion decision." *Greenville Women's Clinic v. Bryant*, 222
35 F.3d 157, 173 (4th Cir. 2000), cert. denied, 531 U.S. 1191 (2001).

36 (11) In adopting an array of regulations that treat the often
37 relatively simple medical procedures of abortion more seriously than
38 other medical procedures, the state of Washington recognizes the

1 importance of the abortion practice while yet permitting it to
2 continue, as protected by the supreme court's cases on the subject.
3 *Greenville Women's Clinic v. Bryant*, 222 F.3d 157, 175 (4th Cir. 2000),
4 cert. denied, 531 U.S. 1191 (2001).

5 (12) Therefore, the purpose of sections 502 through 510 of this act
6 is to:

7 (a) Regulate abortion consistent with and to the extent permitted
8 by the decisions of the supreme court of the United States; and

9 (b) Provide for the protection of public health through the
10 development, establishment, and enforcement of standards of care of
11 individuals in abortion clinics.

12 NEW SECTION. **Sec. 502.** The definitions in this section apply
13 throughout this section and sections 503 through 510 of this act unless
14 the context clearly requires otherwise.

15 (1) "Abortion" means the act of using or prescribing any
16 instrument, machine, or device with the intent to terminate a woman's
17 pregnancy for reasons other than to increase the probability of a live
18 birth, to preserve the life or health of the child after live birth, to
19 terminate an ectopic pregnancy, or to remove a dead fetus. "Abortion"
20 does not include birth control devices or oral contraceptives.

21 (2) "Abortion clinic" means a facility, other than an accredited
22 hospital, in which five or more first trimester abortions in any month
23 or any second or third trimester abortions are performed.

24 (3) "Conception" and "fertilization" each mean the fusion of the
25 human spermatozoon with a human ovum.

26 (4) "Department" means the department of health.

27 (5) "Gestation" means the time that has elapsed since the first day
28 of the woman's last menstrual period.

29 (6) "Licensee" means an individual, a partnership, an association,
30 a limited liability company, or a corporation authorized by the
31 department to operate an abortion clinic.

32 (7) "Physician" means a person licensed to practice medicine in the
33 state of Washington. This term includes medical doctors and doctors of
34 osteopathy.

35 (8) "Secretary" means the secretary of the department.

1 NEW SECTION. **Sec. 503.** (1) Beginning on the effective date of
2 this act, all abortion clinics shall be licensed by the department.
3 Any existing abortion clinic shall make application for license within
4 ninety days.

5 (2) An application for a license shall be made to the department on
6 forms provided by it and shall contain such information as the
7 department reasonably requires, which may include affirmative evidence
8 of ability to comply with department rules. Additional information
9 required by the department shall be supplied on supplemental forms as
10 needed.

11 (3) Following receipt of an application for license, the department
12 shall issue a license if the applicant and the facility meet the
13 requirements established by this section and sections 504 through 507
14 of this act and the rules adopted under this section and sections 504
15 through 507 of this act, for one year.

16 (4) A temporary or provisional license may be issued to an abortion
17 clinic for six months if sufficient compliance with rules require an
18 extension of time and a disapproval has not been received from any
19 other state or local agency otherwise authorized to inspect such
20 facilities. The failure to comply must not be detrimental to the
21 health and safety of the public.

22 (5) A license shall apply only to the location and licensee stated
23 on the application, and such license, once issued, shall not be
24 transferable from one place to another or from one person to another.
25 If the location of the facility is changed, the license shall be
26 automatically revoked. A new application form shall be completed prior
27 to all license renewals.

28 (6) An application for a license or renewal to operate an abortion
29 clinic shall be accompanied by a fee. The fees shall be paid into the
30 general fund.

31 (7) Each license shall be for a period of one year from the date of
32 issuance unless sooner revoked, shall be on a form prescribed by the
33 department, and may be renewed from year to year upon application and
34 payment of the license fee as in the case of procurement of the
35 original license.

36 (8) The department may deny, suspend, revoke, or refuse to renew a
37 license in any case in which it finds that there has been a substantial
38 failure of the applicant or licensee to comply with the requirements of

1 this section and sections 504 through 507 of this act or the minimum
2 standards, or administrative rules adopted by the department pursuant
3 to this section and sections 504 through 507 of this act. In such
4 case, the department shall furnish the person, applicant, or licensee
5 thirty days' notice specifying reasons for the action.

6 (9) Any person, applicant, or licensee who feels aggrieved by the
7 action of the department in denying, suspending, revoking, or refusing
8 to renew a license may appeal the department's action in accordance
9 with chapter 34.05 RCW.

10 (10) Any person, applicant, or licensee aggrieved by the action of
11 the appellate board may, within thirty days after notification of such
12 action, appeal suspensively to the superior court. A record of all
13 proceedings before the appellate board shall be made and kept on file
14 with the board. The board shall transmit a certified copy of the
15 record to the superior court. The superior court shall try the appeal
16 de novo.

17 NEW SECTION. **Sec. 504.** (1) The department shall establish
18 policies and procedures for conducting prelicensure and relicensure
19 inspections of abortion clinics. Before issuing or reissuing a
20 license, the department shall conduct an on-site inspection to ensure
21 compliance with the rules adopted by the department under sections 503
22 through 507 of this act.

23 (2) The department shall also establish policies and procedures for
24 conducting inspections and investigations pursuant to complaints
25 received by the department and made against any abortion clinic. The
26 department shall receive, record, and dispose of complaints in
27 accordance with the established policies and procedures.

28 NEW SECTION. **Sec. 505.** The department shall adopt rules for the
29 licensing and operation of abortion clinics.

30 NEW SECTION. **Sec. 506.** (1) The department shall adopt rules for
31 an abortion clinic's physical facilities. At a minimum these rules
32 shall prescribe standards for:

33 (a) Adequate private space that is specifically designated for
34 interviewing, counseling, and medical evaluations;

35 (b) Dressing rooms for staff and patients;

- 1 (c) Appropriate lavatory areas;
- 2 (d) Areas for preprocedure hand washing;
- 3 (e) Private procedure rooms;
- 4 (f) Adequate lighting and ventilation for abortion procedures;
- 5 (g) Surgical or gynecologic examination tables and other fixed
- 6 equipment;
- 7 (h) Postprocedure recovery rooms that are supervised, staffed, and
- 8 equipped to meet the patients' needs;
- 9 (i) Emergency exits to accommodate a stretcher or gurney;
- 10 (j) Areas for cleaning and sterilizing instruments;
- 11 (k) Adequate areas for the secure storage of medical records and
- 12 necessary equipment and supplies; and
- 13 (l) The display in the abortion clinic, in a place that is
- 14 conspicuous to all patients, of the clinic's current license issued by
- 15 the department.
- 16 (2) The department shall adopt rules to prescribe abortion clinic
- 17 supplies and equipment standards, including supplies and equipment that
- 18 are required to be immediately available for use or in an emergency.
- 19 At a minimum these rules shall:
- 20 (a) Prescribe required equipment and supplies, including
- 21 medications, required for the conduct, in an appropriate fashion, of
- 22 any abortion procedure that the medical staff of the clinic anticipates
- 23 performing and for monitoring the progress of each patient throughout
- 24 the procedure and recovery period;
- 25 (b) Require that the number or amount of equipment and supplies at
- 26 the clinic is adequate at all times to assure sufficient quantities of
- 27 clean and sterilized durable equipment and supplies to meet the needs
- 28 of each patient;
- 29 (c) Prescribe required equipment, supplies, and medications that
- 30 shall be available and ready for immediate use in an emergency and
- 31 requirements for written protocols and procedures to be followed by
- 32 staff in an emergency, such as the loss of electrical power;
- 33 (d) Prescribe required equipment and supplies for required
- 34 laboratory tests and requirements for protocols to calibrate and
- 35 maintain laboratory equipment at the abortion clinic or as operated by
- 36 clinic staff;
- 37 (e) Require ultrasound equipment in those facilities that provide
- 38 abortions after twelve weeks' gestation; and

1 (f) Require that all equipment is safe for the patient and the
2 staff, meets applicable federal standards, and is checked annually to
3 ensure safety and appropriate calibration.

4 (3) The department shall adopt rules relating to abortion clinic
5 personnel. At a minimum these rules shall require that:

6 (a) The abortion clinic designate a medical director of the
7 abortion clinic who is licensed to practice medicine and surgery in the
8 state of Washington;

9 (b) Physicians performing surgery who are licensed to practice
10 medicine and surgery in the state of Washington, demonstrate competence
11 in the procedure involved, and are acceptable to the medical director
12 of the abortion clinic;

13 (c) A physician with admitting privileges at an accredited hospital
14 in this state is available;

15 (d) If a physician is not present, a registered nurse, nurse
16 practitioner, licensed practical nurse, or physician's assistant is
17 present and remains at the clinic when abortions are performed to
18 provide postoperative monitoring and care until each patient who had an
19 abortion that day is discharged;

20 (e) Surgical assistants receive training in counseling, patient
21 advocacy, and the specific responsibilities of the services the
22 surgical assistants provide; and

23 (f) Volunteers receive training in the specific responsibilities of
24 the services the volunteers provide, including counseling and patient
25 advocacy as provided in the rules adopted by the department for
26 different types of volunteers based on their responsibilities.

27 (4) The department shall adopt rules relating to the medical
28 screening and evaluation of each abortion clinic patient. At a minimum
29 these rules shall require:

30 (a) A medical history including the following:

31 (i) Reported allergies to medications, antiseptic solutions, or
32 latex;

33 (ii) Obstetric and gynecologic history; and

34 (iii) Past surgeries;

35 (b) A physical examination including a bimanual examination
36 estimating uterine size and palpation of the adnexa;

37 (c) The appropriate laboratory tests including:

1 (i) For an abortion in which an ultrasound examination is not
2 performed before the abortion procedure, urine or blood tests for
3 pregnancy performed before the abortion procedure;

4 (ii) A test for anemia;

5 (iii) Rh typing, unless reliable written documentation of blood
6 type is available; and

7 (iv) Other tests as indicated from the physical examination;

8 (d) An ultrasound evaluation for all patients who elect to have an
9 abortion after twelve weeks' gestation. The rules shall require that
10 if a person who is not a physician performs an ultrasound examination,
11 that person shall have documented evidence that the person completed a
12 course in the operation of ultrasound equipment as prescribed in rule.
13 The physician or other health care professional shall review, at the
14 request of the patient, the ultrasound evaluation results with the
15 patient before the abortion procedure is performed, including the
16 probable gestational age of the fetus; and

17 (e) That the physician is responsible for estimating the
18 gestational age of the fetus based on the ultrasound examination and
19 obstetric standards in keeping with established standards of care
20 regarding the estimation of fetal age as defined in rule and shall
21 write the estimate in the patient's medical history. The physician
22 shall keep original prints of each ultrasound examination of a patient
23 in the patient's medical history file.

24 (5) The department shall adopt rules relating to the abortion
25 procedure. At a minimum these rules shall require:

26 (a) That medical personnel is available to all patients throughout
27 the abortion procedure;

28 (b) Standards for the safe conduct of abortion procedures that
29 conform to obstetric standards in keeping with established standards of
30 care regarding the estimation of fetal age as defined in rule;

31 (c) Appropriate use of local anesthesia, analgesia, and sedation if
32 ordered by the physician;

33 (d) The use of appropriate precautions, such as the establishment
34 of intravenous access at least for patients undergoing second or third
35 trimester abortions; and

36 (e) The use of appropriate monitoring of the vital signs and other
37 defined signs and markers of the patient's status throughout the

1 abortion procedure and during the recovery period until the patient's
2 condition is deemed to be stable in the recovery room.

3 (6) The department shall adopt rules that prescribe minimum
4 recovery room standards. At a minimum these rules shall require that:

5 (a) Immediate postprocedure care consists of observation in a
6 supervised recovery room for as long as the patient's condition
7 warrants;

8 (b) The clinic arrange hospitalization if any complication beyond
9 the management capability of the staff occurs or is suspected;

10 (c) A licensed health professional who is trained in the management
11 of the recovery area and is capable of providing basic cardiopulmonary
12 resuscitation and related emergency procedures remains on the premises
13 of the abortion clinic until all patients are discharged;

14 (d) A physician with admitting privileges at an accredited hospital
15 in this state remains on the premises of the abortion clinic until all
16 patients are stable and are ready to leave the recovery room and to
17 facilitate the transfer of emergency cases if hospitalization of the
18 patient or viable fetus is necessary. A physician shall sign the
19 discharge order and be readily accessible and available until the last
20 patient is discharged;

21 (e) A physician discusses RhO(d) immune globulin with each patient
22 for whom it is indicated and assures it is offered to the patient in
23 the immediate postoperative period or that it will be available to her
24 within seventy-two hours after completion of the abortion procedure.
25 If the patient refuses, a refusal form approved by the department shall
26 be signed by the patient and a witness and included in the medical
27 record;

28 (f) Written instructions with regard to postabortion coitus, signs
29 of possible problems, and general aftercare are given to each patient.
30 Each patient shall have specific instructions regarding access to
31 medical care for complications, including a telephone number to call
32 for medical emergencies;

33 (g) There is a specified minimum length of time that a patient
34 remains in the recovery room by type of abortion procedure and duration
35 of gestation;

36 (h) The physician assures that a licensed health professional from
37 the abortion clinic makes a good faith effort to contact the patient by

1 telephone, with the patient's consent, within twenty-four hours after
2 surgery to assess the patient's recovery; and

3 (i) Equipment and services are located in the recovery room to
4 provide appropriate emergency resuscitative and life support procedures
5 pending the transfer of the patient or viable fetus to the hospital.

6 (7) The department shall adopt rules that prescribe standards for
7 follow-up care. At a minimum these rules shall require that:

8 (a) A postabortion medical visit is offered and, if requested,
9 scheduled for two to three weeks after the abortion, including a
10 medical examination and a review of the results of all laboratory
11 tests; and

12 (b) A urine pregnancy test is obtained at the time of the follow-up
13 visit to rule out continuing pregnancy. If a continuing pregnancy is
14 suspected, the patient shall be evaluated and a physician who performs
15 abortions shall be consulted.

16 (8) The department shall adopt rules to prescribe minimum abortion
17 clinic incident reporting. At a minimum these rules shall require
18 that:

19 (a) The abortion clinic records each incident resulting in a
20 patient's or viable fetus' serious injury occurring at an abortion
21 clinic and shall report them in writing to the department within ten
22 days after the incident. For the purposes of this subsection, "serious
23 injury" means an injury that occurs at an abortion clinic and that
24 creates a serious risk of substantial impairment of a major body organ;

25 (b) If a patient's death occurs, other than a fetal death properly
26 reported pursuant to law, the abortion clinic reports it to the
27 department by the next department work day; and

28 (c) Incident reports are filed with the department and appropriate
29 professional regulatory boards.

30 (9) The department shall not release personally identifiable
31 patient or physician information.

32 (10) The rules adopted by the department under this section do not
33 limit the ability of a physician or other health professional to advise
34 a patient on any health issue.

35 (11) Sections 503 through 507 of this act and the rules adopted
36 under sections 503 through 507 of this act are in addition to any other
37 laws and rules that are applicable to facilities defined as abortion
38 clinics under this section.

1 NEW SECTION. **Sec. 507.** (1) Whoever operates an abortion clinic
2 without a valid license issued by the department is guilty of a
3 misdemeanor.

4 (2) Any person who intentionally, knowingly, or recklessly violates
5 sections 503 through 507 of this act or any rules adopted under
6 sections 503 through 507 of this act is guilty of a gross misdemeanor.

7 NEW SECTION. **Sec. 508.** (1) Any violation of sections 503 through
8 507 of this act or any rules adopted under sections 503 through 507 of
9 this act may be subject to a civil penalty or fine up to five hundred
10 dollars imposed by the department.

11 (2) Each day of violation constitutes a separate violation for
12 purposes of assessing civil penalties or fines.

13 (3) In deciding whether and to what extent to impose fines, the
14 department shall consider the following factors:

15 (a) Gravity of the violation including the probability that death
16 or serious physical harm to a patient or individual will result or has
17 resulted;

18 (b) Size of the population at risk as a consequence of the
19 violation;

20 (c) Severity and scope of the actual or potential harm;

21 (d) Extent to which the applicable statutes or rules were violated;

22 (e) Any indications of good faith exercised by the licensee;

23 (f) The duration, frequency, and relevance of any previous
24 violations committed by the licensee; and

25 (g) Financial benefit to the licensee of committing or continuing
26 the violation.

27 (4) Both the attorney general and the office of the prosecuting
28 attorney for the county in which the violation occurred may institute
29 a legal action to enforce collection of civil penalties or fines.

30 NEW SECTION. **Sec. 509.** In addition to any other penalty provided
31 by law, whenever in the judgment of the secretary, any person has
32 engaged, or is about to engage, in any acts or practices that
33 constitute, or will constitute, a violation of sections 503 through 507
34 of this act, or any rule adopted under sections 503 through 507 of this
35 act, the secretary shall make application to any court of competent
36 jurisdiction for an order enjoining such acts and practices, and upon

1 a showing by the secretary that such person has engaged, or is about to
2 engage, in any such acts or practices, an injunction, restraining
3 order, or such other order as may be appropriate shall be granted by
4 such court without bond.

5 NEW SECTION. **Sec. 510.** (1) Nothing in sections 503 through 507 of
6 this act shall be construed as creating or recognizing a right to
7 abortion.

8 (2) It is not the intent of sections 503 through 507 of this act to
9 make lawful an abortion that is currently unlawful.

10 **PART 6**

11 **ENSURING HEALTH CARE PROVIDER AND INSURER RIGHT OF CONSCIENCE**

12 NEW SECTION. **Sec. 601.** The legislature finds and declares that
13 people and organizations hold different beliefs about whether certain
14 health care services are morally acceptable. It is the public policy
15 of the state to respect and protect the right of conscience of all
16 persons who refuse to obtain, receive, or accept, or who are engaged
17 in, the delivery of, arrangement for, or payment of health care
18 services and medical care whether acting individually, corporately, or
19 in association with other persons; and to prohibit all forms of
20 discrimination, disqualification, coercion, disability, or imposition
21 of liability upon such persons or entities by reason of their refusing
22 to act contrary to their conscience or conscientious convictions in
23 refusing to obtain, receive, accept, deliver, pay for, or arrange for
24 the payment of health care services and medical care.

25 NEW SECTION. **Sec. 602.** The definitions in this section apply
26 throughout this section and sections 603 through 618 of this act unless
27 the context clearly requires otherwise.

28 (1) "Health care" means any phase of patient care, including but
29 not limited to: Testing; diagnosis; prognosis; ancillary research;
30 instructions; family planning, counseling, referrals, or any other
31 advice in connection with the use or procurement of contraceptives and
32 sterilization or abortion procedures; medication; or surgery or other
33 care or treatment rendered by a physician or physicians, nurses,

1 paraprofessionals, or health care facility, intended for the physical,
2 emotional, and mental well-being of persons.

3 (2) "Physician" means any person who is licensed by the state of
4 Washington under chapter 18.71 RCW.

5 (3) "Health care personnel" means any nurse, nurses' aide, medical
6 school student, professional, paraprofessional, or any other person who
7 furnishes, or assists in the furnishing of, health care services.

8 (4) "Health care facility" means any public or private hospital,
9 clinic, center, medical school, medical training institution,
10 laboratory or diagnostic facility, physician's office, infirmary,
11 dispensary, ambulatory surgical treatment center, or other institution
12 or location wherein health care services are provided to any person,
13 including physician organizations and associations, networks, joint
14 ventures, and all other combinations of those organizations.

15 (5) "Conscience" means a sincerely held set of moral convictions
16 arising from belief in and relation to God, or which, though not so
17 derived, arises from a place in the life of its possessor parallel to
18 that filled by God among adherents to religious faiths.

19 (6) "Health care payer" means a health maintenance organization,
20 insurance company, management services organization, or any other
21 entity that pays for or arranges for the payment of any health care or
22 medical care service, procedure, or product.

23 NEW SECTION. **Sec. 603.** No physician or health care personnel
24 shall be civilly or criminally liable to any person, estate, public or
25 private entity, or public official by reason of his or her refusal to
26 perform, assist, counsel, suggest, recommend, refer, or participate in
27 any way in any particular form of health care service that is contrary
28 to the conscience of such physician or health care personnel.

29 NEW SECTION. **Sec. 604.** It is unlawful for any person, public or
30 private institution, or public official to discriminate against any
31 person in any manner, including but not limited to, licensing, hiring,
32 promotion, transfer, staff appointment, hospital, managed care entity,
33 or any other privileges, because of such person's conscientious refusal
34 to receive, obtain, accept, perform, assist, counsel, suggest,
35 recommend, refer, or participate in any way in any particular form of
36 health care services contrary to his or her conscience.

1 NEW SECTION. **Sec. 605.** (1) Nothing in sections 601 through 618 of
2 this act relieves a physician from any duty, that may exist under any
3 laws concerning current standards, normal medical practices, and
4 procedures to inform his or her patient of the patient's condition,
5 prognosis, and risks. However, such physician is under no duty to
6 perform, assist, counsel, suggest, recommend, refer, or participate in
7 any way in any form of medical practice or health care service that is
8 contrary to his or her conscience.

9 (2) Nothing in sections 601 through 618 of this act shall be
10 construed so as to relieve a physician or other health care personnel
11 from obligations under the law of providing emergency medical care.

12 NEW SECTION. **Sec. 606.** It is unlawful for any public or private
13 employer, entity, agency, institution, official, or person, including
14 but not limited to, a medical, nursing, or other medical training
15 institution, to deny admission because of, to place any reference in
16 its application form concerning, to orally question about, to impose
17 any burdens in terms or conditions of employment on, or to otherwise
18 discriminate against, any applicant, in terms of employment, admission
19 to, or participation in any programs for which the applicant is
20 eligible, or to discriminate in relation thereto, in any other manner,
21 on account of the applicant's refusal to receive, obtain, accept,
22 perform, counsel, suggest, recommend, refer, assist, or participate in
23 any way in any forms of health care services contrary to his or her
24 conscience.

25 NEW SECTION. **Sec. 607.** It is unlawful for any public official,
26 guardian, agency, institution, or entity to deny any form of aid,
27 assistance, or benefits, or to condition the reception in any way of
28 any form of aid, assistance, or benefits, or in any other manner to
29 coerce, disqualify, or discriminate against any person otherwise
30 entitled to such aid, assistance, or benefits, because that person
31 refuses to obtain, receive, accept, perform, assist, counsel, suggest,
32 recommend, refer, or participate in any way in any form of health care
33 services contrary to his or her conscience.

34 NEW SECTION. **Sec. 608.** (1) No person, association, or corporation
35 that owns, operates, supervises, or manages a health care facility

1 shall be civilly or criminally liable to any person, estate, or public
2 or private entity by reason of refusal of the health care facility to
3 permit or provide any particular form of health care service that
4 violates the facility's conscience as documented in its ethical
5 guidelines, mission statement, constitution, bylaws, articles of
6 incorporation, regulations, or other governing documents.

7 (2) Nothing in sections 601 through 618 of this act shall be
8 construed so as to relieve a physician or other health care personnel
9 from obligations under the law of providing emergency medical care.

10 NEW SECTION. **Sec. 609.** It is unlawful for any person, public or
11 private institution, or public official to discriminate against any
12 person, association, or corporation attempting to establish a new
13 health care facility or operating an existing health care facility, in
14 any manner, including but not limited to, denial, deprivation or
15 disqualification in licensing, granting of authorizations, aids,
16 assistance, benefits, medical staff, or any other privileges, and
17 granting authorization to expand, improve, or create any health care
18 facility, by reason of the refusal of such person, association, or
19 corporation planning, proposing, or operating a health care facility,
20 to permit or perform any particular form of health care service that
21 violates the health care facility's conscience as documented in its
22 existing or proposed ethical guidelines, mission statement,
23 constitution, bylaws, articles of incorporation, regulations, or other
24 governing documents.

25 NEW SECTION. **Sec. 610.** It is unlawful for any public official,
26 agency, institution, or entity to deny any form of aid, assistance,
27 grants, or benefits; or in any other manner to coerce, disqualify, or
28 discriminate against any person, association, or corporation attempting
29 to establish a new health care facility or operating an existing health
30 care facility that otherwise would be entitled to the aid, assistance,
31 grant, or benefit because the existing or proposed health care facility
32 refuses to perform, assist, counsel, suggest, recommend, refer, or
33 participate in any way in any form of health care services contrary to
34 the health care facility's conscience as documented in its existing or
35 proposed ethical guidelines, mission statement, constitution, bylaws,
36 articles of incorporation, regulations, or other governing documents.

1 NEW SECTION. **Sec. 611.** No health care payer and no person,
2 association, or corporation that owns, operates, supervises, or manages
3 a health care payer shall be civilly or criminally liable to any
4 person, estate, or public or private entity by reason of refusal of the
5 health care payer to pay for or arrange for the payment of any
6 particular form of health care services that violate the health care
7 payer's conscience as documented in its ethical guidelines, mission
8 statement, constitution, bylaws, articles of incorporation,
9 regulations, or other governing documents.

10 NEW SECTION. **Sec. 612.** It is unlawful for any person, public or
11 private institution, or public official to discriminate against any
12 person, association, or corporation: (1) Attempting to establish a new
13 health care payer; or (2) operating an existing health care payer, in
14 any manner, including but not limited to: Denial, deprivation, or
15 disqualification in licensing; granting of authorizations, aids,
16 assistance, benefits, or any other privileges; and granting
17 authorization to expand, improve, or create any health care payer,
18 because the person, association, or corporation planning, proposing, or
19 operating a health care payer refuses to pay for or arrange for the
20 payment of any particular form of health care services that violates
21 the health care payer's conscience as documented in the existing or
22 proposed ethical guidelines, mission statement, constitution, bylaws,
23 articles of incorporation, regulations, or other governing documents.

24 NEW SECTION. **Sec. 613.** It is unlawful for any public official,
25 agency, institution, or entity to deny any form of aid, assistance,
26 grants, or benefits; or in any other manner to coerce, disqualify, or
27 discriminate against any person, association, or corporation attempting
28 to establish a new health care payer or operating an existing health
29 care payer that otherwise would be entitled to the aid, assistance,
30 grant, or benefit because the existing or proposed health care payer
31 refuses to pay for, arrange for the payment of, or participate in any
32 way in any form of health care services contrary to the health care
33 payer's conscience as documented in its existing or proposed ethical
34 guidelines, mission statement, constitution, bylaws, articles of
35 incorporation, regulations, or other governing documents.

1 NEW SECTION. **Sec. 614.** Any person, association, corporation,
2 entity, or health care facility injured by any public or private
3 person, association, agency, entity, or corporation by reason of any
4 action prohibited by sections 601 through 618 of this act may commence
5 a suit therefor, and shall recover treble damages, including pain and
6 suffering, sustained by such person, association, corporation, entity,
7 or health care facility, the costs of the suit, and reasonable
8 attorneys' fees; but in no case shall recovery be less than two
9 thousand five hundred dollars for each violation in addition to costs
10 of the suit and reasonable attorneys' fees. These damage remedies
11 shall be cumulative, and not exclusive of other remedies afforded under
12 any other state or federal law.

13 NEW SECTION. **Sec. 615.** If an insurer provides any insurance
14 coverage, services, or benefits to any employer or individual, the
15 insurer may elect but may not be required to provide the employer or
16 individual contraception or abortion related coverage, services, or
17 benefits.

18 NEW SECTION. **Sec. 616.** If an employer provides any insurance
19 coverage, services, or benefits for any employee or any dependent of
20 any employee by paying the costs or premiums in whole or in part for
21 such coverage, services, or benefits or by participating in negotiating
22 the terms of such coverage, services, or benefits, the employer may
23 elect but may not be required to provide the employee contraception or
24 abortion related coverage, services, or benefits.

25 NEW SECTION. **Sec. 617.** If an employer provides disability
26 coverage, services, or benefits, including sick leave plans or
27 temporary disability benefit plans, for any employee by paying the
28 costs or premiums in whole or in part for such coverage, services, or
29 benefits or by participating in negotiating the terms of such coverage,
30 services, or benefits, the employer may elect but may not be required
31 to provide the employee such coverage, services, or benefits for any
32 illness or disability caused or contributed to by any contraception or
33 abortion related services.

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

4 (3) "Pregnancy" means the reproductive process beginning with the
5 implantation of an embryo.

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

8 (5) "Health care provider" means a physician or ((a)) another
9 person ((acting under the general direction of a physician)) licensed
10 by this state under Title 18 RCW to provide health care services.

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

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

16 **PART 8**

17 **REQUIRING PARENTAL CONSENT, INFORMED CONSENT, AND A TWENTY-FOUR**
18 **HOUR WAITING PERIOD**

19 NEW SECTION. **Sec. 801.** (1) No abortion shall be performed or
20 induced except with the voluntary and informed consent of the woman
21 upon whom the abortion is to be performed or induced. Except in the
22 case of a medical emergency, consent to an abortion is voluntary and
23 informed if and only if:

24 (a) At least twenty-four hours before the abortion, the physician
25 who is to perform the abortion or the referring physician has orally
26 informed the woman of:

27 (i) The nature of the proposed procedure or treatment and of those
28 risks and alternatives to the procedure or treatment that a reasonable
29 patient would consider material to the decision of whether or not to
30 undergo the abortion;

31 (ii) The probable gestational age of the unborn child at the time
32 the abortion is to be performed; and

33 (iii) The medical risks associated with carrying her child to term;

34 (b) At least twenty-four hours before the abortion, the physician
35 who is to perform the abortion or the referring physician, or a

1 qualified physician assistant, health care practitioner, technician, or
2 social worker to whom the responsibility has been delegated by either
3 physician, has informed the pregnant woman that:

4 (i) The department publishes printed materials that describe the
5 unborn child and list agencies that offer alternatives to abortion and
6 she has a right to review the printed materials and a copy will be
7 provided to her free of charge if she chooses to review it;

8 (ii) Medical assistance benefits may be available for prenatal
9 care, childbirth, and neonatal care, and that more detailed information
10 on the availability of such assistance is contained in the printed
11 materials published by the department; and

12 (iii) The father of the unborn child is liable to assist in the
13 support of her child, even in instances where he has offered to pay for
14 the abortion. In the case of rape, this information may be omitted;

15 (c) A copy of the printed materials has been provided to the
16 pregnant woman if she chooses to view these materials; and

17 (d) The pregnant woman certifies in writing, before the abortion,
18 that the information required to be provided under this subsection has
19 been provided.

20 (2) If a medical emergency compels the performance of an abortion,
21 the physician shall inform the woman, before the abortion if possible,
22 of the medical indications supporting the judgment that an abortion is
23 necessary to avert her death or to avert substantial and irreversible
24 impairment of major bodily function.

25 (3) Any physician who violates the provisions of this section is
26 guilty of unprofessional conduct and his or her license for the
27 practice of medicine and surgery shall be subject to suspension or
28 revocation. Any physician who performs or induces an abortion without
29 first obtaining the certification required by subsection (1)(d) of this
30 section or with knowledge or reason to know that the informed consent
31 of the woman has not been obtained is for the first offense guilty of
32 a misdemeanor and for each subsequent offense is guilty of a gross
33 misdemeanor. No physician is guilty of violating this section for
34 failure to furnish the information required by subsection (1) of this
35 section if he or she can demonstrate, by a preponderance of the
36 evidence, that he or she reasonably believed that furnishing the
37 information would have resulted in a severely adverse effect on the
38 physical or mental health of the patient.

1 (4) Any physician who complies with the provisions of this section
2 may not be held civilly liable to his or her patient for failure to
3 obtain informed consent to the abortion.

4 NEW SECTION. **Sec. 802.** (1) Except in a medical emergency, or
5 except as provided in this section, if a pregnant woman is less than
6 eighteen years of age and not emancipated, or if she has been adjudged
7 an incapacitated person, a physician shall not perform an abortion upon
8 her unless, in the case of a woman who is less than eighteen years of
9 age, he or she first obtains the informed consent both of the pregnant
10 woman and of one of her parents; or, in the case of a woman who is an
11 incapacitated person, he or she first obtains the informed consent of
12 her guardian. In deciding whether to grant such consent, a pregnant
13 woman's parent or guardian shall consider only their child's or ward's
14 best interests. In the case of a pregnancy that is the result of
15 incest where the father is a party to the incestuous act, the pregnant
16 woman need only obtain the consent of her mother.

17 (2) If both parents have died or are otherwise unavailable to the
18 physician within a reasonable time and in a reasonable manner, consent
19 of the pregnant woman's guardian or guardians is sufficient. If the
20 pregnant woman's parents are divorced, consent of the parent having
21 custody is sufficient. If neither parent nor the legal guardian is
22 available to the physician within a reasonable time and in a reasonable
23 manner, consent of any adult person standing in loco parentis is
24 sufficient.

25 (3) If both of the parents or guardians of the pregnant woman
26 refuse to consent to the performance of an abortion or if she elects
27 not to seek the consent of either of her parents or of her guardian,
28 the superior court in which the applicant resides or in which the
29 abortion is sought shall, upon petition or motion, after an appropriate
30 hearing, authorize a physician to perform the abortion if the court
31 determines that the pregnant woman is mature and capable of giving
32 informed consent to the proposed abortion, and has, in fact, given such
33 consent.

34 (4) If the court determines that the pregnant woman is not mature
35 and capable of giving informed consent or if the pregnant woman does
36 not claim to be mature and capable of giving informed consent, the
37 court shall determine whether the performance of an abortion upon her

1 would be in her best interests. If the court determines that the
2 performance of an abortion would be in the best interests of the woman,
3 it shall authorize a physician to perform the abortion.

4 (5) The pregnant woman may participate in proceedings in the court
5 on her own behalf and the court may appoint a guardian ad litem to
6 assist her. The court shall, however, advise her that she has a right
7 to court-appointed counsel, and shall provide her with such counsel
8 unless she wishes to appear with private counsel or has knowingly and
9 intelligently waived representation by counsel.

10 (6)(a) Court proceedings under this section are confidential and
11 shall be given such precedence over other pending matters as will
12 ensure that the court may reach a decision promptly and without delay
13 in order to serve the best interests of the pregnant woman. In no case
14 shall the court fail to rule within three business days of the date of
15 application. A court that conducts proceedings under this section
16 shall make in writing specific factual findings and legal conclusions
17 supporting its decision and shall, upon the initial filing of the
18 minor's petition for judicial authorization of an abortion, order a
19 sealed record of the petition, pleadings, submissions, transcripts,
20 exhibits, orders, evidence, and any other written material to be
21 maintained which shall include its own findings and conclusions.

22 (b) The application to the court of common pleas shall be
23 accompanied by a nonnotarized verification stating that the information
24 therein is true and correct to the best of the applicant's knowledge,
25 and the application shall set forth the following facts:

26 (i) The initials of the pregnant woman;

27 (ii) The age of the pregnant woman;

28 (iii) The names and addresses of each parent, guardian or, if the
29 minor's parents are deceased and no guardian has been appointed, any
30 other person standing in loco parentis to the minor;

31 (iv) That the pregnant woman has been fully informed of the risks
32 and consequences of the abortion;

33 (v) Whether the pregnant woman is of sound mind and has sufficient
34 intellectual capacity to consent to the abortion;

35 (vi) A prayer for relief asking the court to either grant the
36 pregnant woman full capacity for the purpose of personal consent to the
37 abortion, or to give judicial consent to the abortion under subsection

1 (4) of this section based upon a finding that the abortion is in the
2 best interest of the pregnant woman;

3 (vii) That the pregnant woman is aware that any false statements
4 made in the application are punishable by law; and

5 (viii) The signature of the pregnant woman. If necessary to serve
6 the interest of justice, the family court shall refer the pregnant
7 woman to the appropriate personnel for assistance in preparing the
8 application.

9 (c) The name of the pregnant woman shall not be entered on any
10 docket that is subject to public inspection. All persons shall be
11 excluded from hearings under this section except the applicant and such
12 other persons whose presence is specifically requested by the applicant
13 or her guardian.

14 (d) At the hearing, the court shall hear evidence relating to the
15 emotional development, maturity, intellect, and understanding of the
16 pregnant woman, the fact and duration of her pregnancy, the nature,
17 possible consequences, and alternatives to the abortion, and any other
18 evidence that the court may find useful in determining whether the
19 pregnant woman should be granted full capacity for the purpose of
20 consenting to the abortion or whether the abortion is in the best
21 interest of the pregnant woman. The court shall also notify the
22 pregnant woman at the hearing that it must rule on her application
23 within three business days of the date of its filing and that, should
24 the court fail to rule in favor of her application within the allotted
25 time, she has the right to appeal to the superior court.

26 (7) Except in a medical emergency, no parent, guardian, or other
27 person standing in loco parentis shall coerce a minor or incapacitated
28 woman to undergo an abortion. Any minor or incapacitated woman who is
29 threatened with such coercion may apply to the superior court for
30 relief. The court shall provide the minor or incapacitated woman with
31 counsel, give the matter expedited consideration, and grant such relief
32 as may be necessary to prevent such coercion. Should a minor be denied
33 the financial support of her parents by reason of her refusal to
34 undergo abortion, she shall be considered emancipated for purposes of
35 eligibility for assistance benefits.

36 (8) No filing fees shall be required of any woman availing herself
37 of the procedures provided by this section. An expedited confidential
38 appeal shall be available to any pregnant woman whom the court fails to

1 grant an order authorizing an abortion within the time specified in
2 this section. Any court to which an appeal is taken under this section
3 shall give prompt and confidential attention thereto and shall rule
4 thereon within five business days of the filing of the appeal. The
5 supreme court may issue such rules as may further assure that the
6 process provided in this section is conducted in such a manner as will
7 ensure confidentiality and sufficient precedence over other pending
8 matters to ensure promptness of disposition.

9 (9) Any person who performs an abortion upon a woman who is an
10 unemancipated minor or incapacitated person to whom this section
11 applies either with knowledge that she is a minor or incapacitated
12 person to whom this section applies, or with reckless disregard or
13 negligence as to whether she is a minor or incapacitated person to whom
14 this section applies, and who intentionally, knowingly, or recklessly
15 fails to conform to any requirement of this section is guilty of
16 unprofessional conduct and his or her license for the practice of
17 medicine and surgery shall be suspended for a period of at least three
18 months. Failure to comply with the requirements of this section is
19 prima facie evidence of failure to obtain informed consent and of
20 interference with family relations in appropriate civil actions. The
21 law shall not be construed to preclude the award of exemplary damages
22 or damages for emotional distress even if unaccompanied by physical
23 complications in any appropriate civil action relevant to violations of
24 this section. Nothing in this section shall be construed to limit the
25 common law rights of parents.

26 PART 9

27 REQUIRING NOTIFICATION OF BREAST CANCER RISKS RELATED TO ABORTION

28 NEW SECTION. **Sec. 901.** (1) The legislature finds that there is a
29 serious problem of increasing incidents of breast cancer in the United
30 States; and that virtually every known risk factor for breast cancer
31 involves elevated levels of estrogen.

32 (2) The legislature further finds that the first trimester of
33 pregnancy is a time of very high estrogen concentrations in a woman's
34 body, that abortion terminates pregnancy in an artificial manner, that
35 abortion before the first live birth has been linked to an increased

1 risk of breast cancer in over twenty published articles in reputable
2 journals, and that no cancer expert has denied that abortion may cause
3 breast cancer.

4 (3) This section expires January 1, 2011.

5 NEW SECTION. **Sec. 902.** (1) The secretary of health shall hold
6 hearings to compile and summarize research linking abortion to breast
7 cancer. This research shall be updated annually until 2010.

8 (2) This section expires January 1, 2011.

9 NEW SECTION. **Sec. 903.** It is unlawful to perform an abortion on
10 a woman without advising her of research linking abortion to breast
11 cancer. The department of health summary of research under section 902
12 of this act shall be presumed to be sufficient information about this
13 research.

14 NEW SECTION. **Sec. 904.** A minor cannot give informed consent to a
15 substantial cancer risk.

16 NEW SECTION. **Sec. 905.** It is unlawful for a person to perform an
17 abortion unless that person has sufficient malpractice insurance to
18 cover potential liability for reproductive cancers.

19 **PART 10**

20 **REQUIRING ABORTION RELATED DATA COLLECTION**

21 NEW SECTION. **Sec. 1001.** (1) To develop necessary and meaningful
22 statistical data relating to abortion, a report shall be certified and
23 filed with the department of health by the physician who performed the
24 abortion no later than ten days after the abortion was performed. The
25 department shall produce a form to be used for purposes of this
26 section.

27 (2) The report shall indicate the type of abortion performed, the
28 stated or medical reason for the abortion, the name of the person who
29 performed the abortion, the name and address of the facility where the
30 abortion occurred, the age, race, and general health condition of the
31 patient, the stage of development of the fetus, the reason for the

1 abortion, any medical complications which may have occurred, and
2 whether public funds were used, in whole or in part, to pay for the
3 abortion.

4 (3) The report forms shall not identify any patient by name but by
5 an individual identifier to be noted in the patient's permanent record
6 in the possession of the physician. The department shall establish an
7 individual identifier system to be used for purposes of this section.

8 (4) The department shall report to the legislature by December 31st
9 of each year all statistical data gathered under this section. The
10 report shall not include the name of any physician or the name or
11 address of any facility but shall include the county in which a
12 facility was located.

13 **PART 11**

14 **PROHIBITING PUBLIC FUNDING OF ABORTION**

15 NEW SECTION. **Sec. 1101.** Public funds shall not be used by state
16 or local governments, or any political subdivision or agency thereof,
17 to pay or otherwise reimburse, either directly or indirectly, any
18 person, agency, organization, or facility for the performance of any
19 induced abortion. Public funds may be used to pay for the performance
20 of an induced abortion necessary to prevent the death of either the
21 pregnant woman or her unborn child under circumstances where every
22 reasonable effort is made to preserve the life of each.

23 **PART 12**

24 **ELIMINATING PAIN FELT BY UNBORN CHILDREN RESULTING FROM ABORTION**

25 NEW SECTION. **Sec. 1201.** (1) If an abortion is to be performed and
26 the unborn child is viable, an anesthetic or analgesic shall be applied
27 to the unborn child to eliminate or alleviate the organic pain to the
28 unborn child caused by the abortion. The physician who is to perform
29 the abortion shall inform the woman upon whom the abortion is to be
30 performed that an anesthetic or analgesic is to be used to eliminate or
31 alleviate the organic pain caused to the unborn child by the abortion.

32 (2) The requirements of this section shall not apply when:

33 (a) In the medical judgment of the physician who is to perform the

1 abortion or the referring physician based upon the particular facts of
2 the case:

3 (i) There exists a medical emergency that so complicates the
4 pregnancy as to require an immediate abortion without opportunity to
5 provide an anesthetic or analgesic;

6 (ii) The anesthetic or analgesic would decrease a known possibility
7 of sustained survival of the unborn child apart from the body of the
8 mother, with or without artificial support; or

9 (iii) The use of any anesthetic or analgesic would so substantially
10 increase the medical risk to the pregnant woman as to be
11 contraindicated; or

12 (b) The physician who is to perform the abortion administers an
13 anesthetic or analgesic to the woman to eliminate or alleviate pain
14 caused to her by the particular method of abortion employed and the
15 physician knows there exists reasonable medical certainty that the
16 anesthetic or analgesic will eliminate organic pain caused to the fetus
17 during the course of the abortion.

18 (3) As used in this section, "viable" means that stage of fetal
19 development when, in the medical judgment of the attending physician
20 based on the particular facts of the case, there is a reasonable
21 likelihood of sustained survival of the fetus outside the womb, with or
22 without artificial support.

23 **PART 13**
24 **MISCELLANEOUS**

25 NEW SECTION. **Sec. 1301.** Table of contents and part headings used
26 in this act are not part of the law.

27 NEW SECTION. **Sec. 1302.** If any provision of this act or its
28 application to any person or circumstance is held invalid, the
29 remainder of the act or the application of the provision to other
30 persons or circumstances is not affected.

31 NEW SECTION. **Sec. 1303.** This act is necessary for the immediate
32 preservation of the public peace, health, morals, or safety, or support
33 of the state government and its existing public institutions, and takes
34 effect immediately.

1 NEW SECTION. **Sec. 1304.** Sections 101, 102, 201 through 208, 302,
2 306, 307, 401, 501 through 510, 601 through 618, 701, 801, 802, 901
3 through 905, 1001, 1101, and 1201 of this act are each added to chapter
4 9.02 RCW.

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