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SENATE BILL 5156

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State of Washington

63rd Legislature

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By Senators Benton, Sheldon, Holmquist Newbry, Padden, Honeyford, Carrell, Hewitt, Delvin, Ericksen, Dammeier, Braun, Rivers, King, Smith, Bailey, Pearson, Shin, and Roach

Read first time 01/21/13. Referred to Committee on Law & Justice.

1 AN ACT Relating to abortion notification; amending RCW 9.02.170;  
2 adding new sections to chapter 9.02 RCW; creating new sections;  
3 repealing RCW 9.02.100 and 9.02.110; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** This act may be known and cited as the  
6 parental notification of abortion act.

7 NEW SECTION. **Sec. 2.** (1) The legislature of the state of  
8 Washington finds that:

9 (a) Immature minors often lack the ability to make fully informed  
10 choices that take into account both immediate and long-range  
11 consequences.

12 (b) The medical, emotional, and psychological consequences of  
13 abortion are sometimes serious and can be lasting, particularly when  
14 the patient is immature.

15 (c) The capacity to become pregnant and the capacity for mature  
16 judgment concerning the wisdom of an abortion are not necessarily  
17 related.

1 (d) Parents ordinarily possess information essential to a  
2 physician's exercise of his or her best medical judgment concerning  
3 their child.

4 (e) Parents who are aware that their minor daughter has had an  
5 abortion may better ensure that she receives adequate medical attention  
6 after her abortion.

7 (f) Parental consultation is usually desirable and in the best  
8 interests of the minor.

9 (2) The legislature's purpose in enacting this act is to further  
10 the important and compelling state interests of:

11 (a) Protecting minors against their own immaturity;

12 (b) Fostering family unity and preserving the family as a viable  
13 social unit;

14 (c) Protecting the constitutional rights of parents to rear  
15 children who are members of their household;

16 (d) Reducing teenage pregnancy and abortion; and

17 (e) Allowing for judicial bypasses of parental notification to be  
18 made only in exceptional or rare circumstances.

19 **Sec. 3.** RCW 9.02.170 and 1992 c 1 s 8 are each amended to read as  
20 follows:

21 For purposes of this chapter:

22 (1) "Viability" means the point in the pregnancy when, in the  
23 judgment of the physician on the particular facts of the case before  
24 such physician, there is a reasonable likelihood of the fetus's  
25 sustained survival outside the uterus without the application of  
26 extraordinary medical measures.

27 (2) "Abortion" means (~~(any medical treatment intended to induce the~~  
28 ~~termination of a pregnancy except for the purpose of producing a live~~  
29 ~~birth)) the act of using or prescribing any instrument, medicine, drug,  
30 or any other substance, device, or means with the intent to terminate  
31 the clinically diagnosable pregnancy of a woman with knowledge that the  
32 termination by those means will with reasonable likelihood cause the  
33 death of the unborn child. The use, prescription, or means is not an  
34 abortion if done with the intent to:~~

35 (a) Save the life or preserve the health of the unborn child;

36 (b) Remove a dead unborn child caused by spontaneous abortion; or

37 (c) Remove an ectopic pregnancy.

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

3 (4) "Attending physician," "physician," or "referring physician"  
4 means a ((~~physician~~)) person licensed to practice ((~~under chapter 18.57~~  
5 ~~or 18.71 RCW~~)) medicine in ((~~the~~)) this state ((~~of Washington~~)), and  
6 includes medical doctors and doctors of osteopathy.

7 (5) "Health care provider" means a physician or a person acting  
8 under the general direction of a physician.

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

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

14 (8) "Actual notice" means the giving of notice directly, in person,  
15 or by telephone.

16 (9) "Constructive notice" means notice by certified mail to the  
17 last known address of the parent or guardian with delivery deemed to  
18 have occurred forty-eight hours after the certified notice is mailed.

19 (10) "Coercion" means restraining or dominating the choice of a  
20 minor by force, threat of force, or deprivation of food and shelter.

21 (11) "Department" means the department of health.

22 (12) "Emancipated minor" means any person under eighteen years of  
23 age who is or has been married or who has been legally emancipated.

24 (13) "Incompetent" means any person who has been adjudged a person  
25 with a disability and has had a guardian appointed for her under Title  
26 11 RCW.

27 (14) "Medical emergency" means a condition that, on the basis of  
28 the physician's good-faith clinical judgment, complicates the medical  
29 condition of a pregnant woman as to necessitate the immediate abortion  
30 of her pregnancy to avert her death or for which a delay will create  
31 serious risk of substantial and irreversible impairment of a major  
32 bodily function.

33 (15) "Neglect" means the failure of a parent or legal guardian to  
34 supply a minor with necessary food, clothing, shelter, or medical care  
35 when reasonably able to do so or the failure to protect a minor from  
36 conditions or actions that imminently and seriously endanger the  
37 minor's physical or mental health when reasonably able to do so.

1       (16) "Physical abuse" means any physical injury intentionally  
2 inflicted by a parent or legal guardian on a minor.

3       (17) "Pregnant woman" means a woman who is pregnant, less than  
4 eighteen years of age, and not emancipated, or who has been adjudged an  
5 incompetent person under Title 70 or 71 RCW.

6       (18) "Sexual abuse" means any sexual conduct or sexual intercourse  
7 as defined in RCW 9A.44.010 committed against a pregnant woman by a  
8 parent or legal guardian.

9       NEW SECTION. Sec. 4. A person must not perform an abortion upon  
10 a pregnant woman unless that person has given at least forty-eight  
11 hours actual notice to one parent or the legal guardian of the pregnant  
12 woman of his or her intention to perform the abortion. The notice may  
13 be given by a referring physician. The person who performs the  
14 abortion must receive the written statement of the referring physician  
15 certifying that the referring physician has given notice to the parent  
16 or legal guardian of the pregnant woman who is to receive the abortion.  
17 If actual notice is not possible after a reasonable effort, the person  
18 or his or her agent must give forty-eight hours constructive notice.

19       NEW SECTION. Sec. 5. Notice is not required under section 4 of  
20 this act if:

21       (1) The attending physician certifies in the pregnant woman's  
22 medical record that a medical emergency exists and there is  
23 insufficient time to provide the required notice; or

24       (2) Notice is waived in writing by the person who is entitled to  
25 notice; or

26       (3) Notice is waived under section 8 of this act.

27       NEW SECTION. Sec. 6. A parent, legal guardian, or any other  
28 person must not coerce a pregnant woman to have an abortion performed.  
29 If a pregnant woman is denied financial support by the pregnant woman's  
30 parents or legal guardian due to the pregnant woman's refusal to have  
31 an abortion, the pregnant woman is deemed emancipated for the purposes  
32 of eligibility for public assistance benefits, except that the  
33 benefits may not be used to obtain an abortion.

1        NEW SECTION.    **Sec. 7.**    A monthly report indicating the number of  
2 notices issued under this act, the number of times in which exceptions  
3 were made to the notice requirement under this act, the type of  
4 exception, the pregnant woman's age, and the number of prior  
5 pregnancies and prior abortions of the pregnant woman must be filed  
6 with the department on forms prescribed by the department.    Patient  
7 names must not be used on the forms.    A compilation of the data  
8 reported must be made by the department on an annual basis and be  
9 available to the public.

10        NEW SECTION.    **Sec. 8.**    (1) The requirements and procedures under  
11 this section are available to a pregnant woman whether or not she is a  
12 resident of this state.

13        (2) A pregnant woman may petition any superior court for a waiver  
14 of the notice requirement and may participate in proceedings on her own  
15 behalf.    The petition must include a statement that the pregnant woman  
16 is pregnant and is unemancipated.    The petition must also include a  
17 statement that notice has not been waived and that the pregnant woman  
18 wishes to abort without giving notice under this act.    The court must  
19 appoint a guardian ad litem for her.    Any guardian ad litem appointed  
20 under this act must maintain the confidentiality of the proceedings.  
21 The superior court must advise her that she has a right to court-  
22 appointed counsel and provide her with counsel upon her request.

23        (3) Court proceedings under this section must be confidential and  
24 ensure the anonymity of the pregnant woman.    All court proceedings  
25 under this section must be sealed.    A pregnant woman has the right to  
26 file her petition in the superior court using a pseudonym or using  
27 solely her initials.    All documents related to the petition must be  
28 confidential and not be made available to the public.    These  
29 proceedings must be given precedence over other pending matters to the  
30 extent necessary to ensure that the court reaches a decision promptly.  
31 The court must rule, and issue written findings of fact and conclusions  
32 of law, within forty-eight hours of the time that the petition was  
33 filed, except that the forty-eight hour limitation may be extended at  
34 the request of the pregnant woman.    If the court fails to rule within  
35 the forty-eight hour period and an extension was not requested, then  
36 the petition is deemed to have been granted, and the notice requirement  
37 must be waived.

1 (4) If the court finds, by clear and convincing evidence, that the  
2 pregnant woman is both sufficiently mature and well-informed to decide  
3 whether to have an abortion, the court must issue an order authorizing  
4 the pregnant woman to consent to the performance or inducement of an  
5 abortion without the notification of a parent or guardian and the court  
6 must execute the required forms. If the court does not make the  
7 finding specified in this subsection or subsection (5) of this section,  
8 it must dismiss the petition.

9 (5) If the court finds, by clear and convincing evidence, that the  
10 pregnant woman is the victim of physical or sexual abuse by one or both  
11 of her parents or her legal guardian, or that the notification of a  
12 parent or guardian is not in the best interest of the pregnant woman,  
13 the court must issue an order authorizing the pregnant woman to consent  
14 to the performance or inducement of an abortion without the  
15 notification of a parent or guardian. If the court does not make the  
16 finding specified in this subsection or subsection (4) of this section,  
17 it must dismiss the petition.

18 (6) A court that conducts proceedings under this section must issue  
19 written and specific factual findings and legal conclusions supporting  
20 its decision and order that a confidential record of the evidence and  
21 the judge's findings and conclusions be maintained. At the hearing,  
22 the court must hear evidence relating to the emotional development,  
23 maturity, intellect, and understanding of the pregnant woman.

24 (7) An expedited confidential appeal must be available, as the  
25 supreme court provides by rule, to any pregnant woman to whom the  
26 superior court denies a waiver of notice. An order authorizing an  
27 abortion without notice must not be subject to appeal.

28 (8) No filing fees are required of any pregnant woman who petitions  
29 a court for a waiver of parental notification under this section at  
30 either the trial or the appellate level.

31 NEW SECTION. **Sec. 9.** The supreme court must establish rules to  
32 ensure that proceedings under this act are handled in an expeditious  
33 and confidential manner and to satisfy the requirements of federal  
34 courts.

35 NEW SECTION. **Sec. 10.** (1) Any person who intentionally performs  
36 an abortion with knowledge that or with reckless disregard as to

1 whether the person upon whom the abortion is to be performed is an  
2 unemancipated minor or an incompetent female without providing the  
3 required notice is guilty of a gross misdemeanor. It is a defense to  
4 prosecution under this section that the minor falsely represented her  
5 age or identity to the physician to be at least eighteen years of age  
6 by displaying an apparently valid governmental record of identification  
7 such that a careful and prudent person under similar circumstances  
8 would have relied on the representation. The defense does not apply if  
9 the physician is shown to have had independent knowledge of the minor's  
10 actual age or identity or failed to use due diligence in determining  
11 the minor's age or identity.

12 (2) Failure to provide a person with the notice required under this  
13 act is prima facie evidence of failure to provide notice and of  
14 interference with family relations in appropriate civil actions. The  
15 prima facie evidence does not apply to any issue other than failure to  
16 inform the parents or legal guardian and interference with family  
17 relations in appropriate civil actions. The civil action may be based  
18 on a claim that the act was a result of simple negligence, gross  
19 negligence, wantonness, willfulness, intention, or other legal standard  
20 of care. The laws of this state must not be construed to preclude the  
21 award of exemplary damages in any appropriate civil action relevant to  
22 violations of this act. Nothing in this act is construed to limit the  
23 common law rights of parents or legal guardians.

24 (3) Any person not authorized to receive notice under this act who  
25 signs a waiver of notice under section 5(2) of this act is guilty of a  
26 gross misdemeanor.

27 (4) Any person who coerces a pregnant woman to have an abortion is  
28 guilty of a gross misdemeanor.

29 NEW SECTION. **Sec. 11.** (1) Nothing in this act is construed as  
30 creating or recognizing a right to abortion.

31 (2) It is not the intent of this act to make lawful an abortion  
32 that is currently unlawful.

33 NEW SECTION. **Sec. 12.** If any provision of this act or its  
34 application to any person or circumstance is held invalid, the  
35 remainder of the act or the application of the provision to other  
36 persons or circumstances is not affected.

1        NEW SECTION.    **Sec. 13.**    The legislature, by joint resolution, may  
2    appoint one or more of its members who is a sponsor or cosponsor of  
3    this act, as a matter of right and in his or her official capacity, to  
4    intervene to defend this act in any case in which its constitutionality  
5    is challenged.

6        NEW SECTION.    **Sec. 14.**    The following acts or parts of acts are  
7    each repealed:

8        (1) RCW 9.02.100 (Reproductive privacy--Public policy) and 1992 c  
9    1 s 1; and

10       (2) RCW 9.02.110 (Right to have and provide) and 1992 c 1 s 2.

11       NEW SECTION.    **Sec. 15.**    Sections 2 and 4 through 11 of this act are  
12    each added to chapter 9.02 RCW.

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