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**SENATE BILL 5098**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senator Padden

Prefiled 12/27/22.

1 AN ACT Relating to prohibiting abortion on the basis of Down  
2 syndrome; amending RCW 9.02.110; reenacting and amending RCW  
3 9.02.170; adding new sections to chapter 9.02 RCW; and prescribing  
4 penalties.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.02 RCW  
7 to read as follows:

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

- 12 (a) A test result indicating Down syndrome in an unborn child;  
13 (b) A prenatal diagnosis of Down syndrome in an unborn child; or  
14 (c) Any other reason to believe that an unborn child has Down  
15 syndrome.

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

18 (3) The Washington medical commission or the board of any health  
19 profession licensed under Title 18 RCW, as applicable, must revoke  
20 the license of a physician, physician assistant, advanced registered

1 nurse practitioner, or other health care provider who has violated  
2 subsection (1) of this section.

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

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

19 NEW SECTION. **Sec. 2.** A new section is added to chapter 9.02 RCW  
20 to read as follows:

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

- 28 (a) A test result indicating Down syndrome in an unborn child;
- 29 (b) A prenatal diagnosis of Down syndrome in an unborn child; or
- 30 (c) Any other reason to believe that an unborn child has Down  
31 syndrome.

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

37 **Sec. 3.** RCW 9.02.110 and 2022 c 65 s 3 are each amended to read  
38 as follows:

1 The state may not deny or interfere with a (~~pregnant~~  
2 ~~individual's~~) woman's right to choose to have an abortion prior to  
3 viability of the fetus, except when prohibited by section 1 of this  
4 act, or to protect the (~~pregnant individual's~~) woman's life or  
5 health.

6 A physician, physician assistant, advanced registered nurse  
7 practitioner, or other health care provider acting within the  
8 provider's scope of practice may terminate and a health care provider  
9 may assist a physician, physician assistant, advanced registered  
10 nurse practitioner, or other health care provider acting within the  
11 provider's scope of practice in terminating a pregnancy as permitted  
12 by this section.

13 **Sec. 4.** RCW 9.02.170 and 2022 c 65 s 7 are each reenacted and  
14 amended to read as follows:

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

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

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

23 (3) "Health care provider" means a person regulated under Title  
24 18 RCW to practice health or health-related services or otherwise  
25 practicing health care services in this state consistent with state  
26 law.

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

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

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

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

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

38 (9) "Viability" means the point in the pregnancy when, in the  
39 judgment of the physician, physician assistant, advanced registered

1 nurse practitioner, or other health care provider acting within the  
2 provider's scope of practice on the particular facts of the case  
3 before such physician, physician assistant, advanced registered nurse  
4 practitioner, or other health care provider acting within the  
5 provider's scope of practice, there is a reasonable likelihood of the  
6 fetus's sustained survival outside the uterus without the application  
7 of extraordinary medical measures.

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

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

13 NEW SECTION. **Sec. 5.** If any provision of this act or its  
14 application to any person or circumstance is held invalid, the  
15 remainder of the act or the application of the provision to other  
16 persons or circumstances is not affected.

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