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**SENATE BILL 5289**

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**State of Washington                      64th Legislature                      2015 Regular Session**

**By** Senators Padden, Hargrove, O'Ban, Miloscia, Angel, Dammeier, Pearson, and Benton

Read first time 01/19/15. Referred to Committee on Law & Justice.

1            AN ACT Relating to abortion notification; adding a new chapter to  
2 Title 9 RCW; and prescribing penalties.

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

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

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

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

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

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

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

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

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

6 (2) The legislature's purpose in enacting this chapter is to  
7 further the important and compelling state interests of:

8 (a) Protecting minors against their own immaturity;

9 (b) Fostering family unity and preserving the family as a viable  
10 social unit;

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

13 (d) Reducing teenage pregnancy and abortion; and

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

16 NEW SECTION. **Sec. 3.** For purposes of this chapter:

17 (1) "Abortion" means abortion as defined in RCW 9.02.170.

18 (2) "Actual notice" means the giving of notice directly, in  
19 person, or by telephone.

20 (3) "Coercion" means restraining or dominating the choice of a  
21 pregnant minor by force, threat of force, or deprivation of food and  
22 shelter.

23 (4) "Constructive notice" means notice by certified mail to the  
24 last known address of the parent or guardian with delivery deemed to  
25 have occurred forty-eight hours after the certified notice is mailed.

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

27 (6) "Emancipated minor" means any person under eighteen years of  
28 age who is or has been married or who has been legally emancipated.

29 (7) "Incompetent person" means a person who has been adjudged a  
30 person with a disability and has had a guardian appointed for her  
31 under Title 11 RCW.

32 (8) "Medical emergency" means a condition that, on the basis of  
33 the physician's good-faith clinical judgment, complicates the medical  
34 condition of a pregnant minor so as to necessitate the immediate  
35 abortion of her pregnancy to avert her death or for which a delay  
36 will create serious risk of substantial and irreversible impairment  
37 of a major bodily function.

38 (9) "Neglect" means the failure of a parent or legal guardian to  
39 supply a minor with necessary food, clothing, shelter, or medical

1 care when reasonably able to do so or the failure to protect a minor  
2 from conditions or actions that imminently and seriously endanger the  
3 minor's physical or mental health when reasonably able to do so.

4 (10) "Physical abuse" means any physical injury intentionally  
5 inflicted by a parent or legal guardian on a minor.

6 (11) "Physician," "attending physician," or "referring physician"  
7 means a person licensed to practice medicine in this state, and  
8 includes medical doctors and doctors of osteopathy.

9 (12) "Pregnant minor" means a woman who is pregnant, less than  
10 eighteen years of age, and not emancipated, or who has been adjudged  
11 an incompetent person under Title 70 or 71 RCW.

12 (13) "Sexual abuse" means any sexual contact or sexual  
13 intercourse as defined in RCW 9A.44.010 committed against a pregnant  
14 minor by a parent or legal guardian.

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

26 NEW SECTION. **Sec. 5.** Notice is not required under section 4 of  
27 this act if:

28 (1) The attending physician certifies in the pregnant minor's  
29 medical record that a medical emergency exists and there is  
30 insufficient time to provide the required notice; or

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

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

34 NEW SECTION. **Sec. 6.** A parent, legal guardian, or any other  
35 person must not coerce a pregnant minor to have an abortion  
36 performed. If a pregnant minor is denied financial support by the  
37 pregnant minor's parents or legal guardian due to the pregnant

1 minor's refusal to have an abortion, the pregnant minor is deemed  
2 emancipated for the purposes of eligibility for public assistance  
3 benefits, except that the benefits may not be used to obtain an  
4 abortion.

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

14 NEW SECTION. **Sec. 8.** (1) The requirements and procedures under  
15 this section are available to a pregnant minor whether or not she is  
16 a resident of this state.

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

28 (3) Court proceedings under this section must be confidential and  
29 ensure the anonymity of the pregnant minor. All court proceedings  
30 under this section must be sealed. A pregnant minor has the right to  
31 file her petition in the superior court using a pseudonym or using  
32 solely her initials. All documents related to the petition must be  
33 confidential and not be made available to the public. These  
34 proceedings must be given precedence over other pending matters to  
35 the extent necessary to ensure that the court reaches a decision  
36 promptly. The court must rule, and issue written findings of fact and  
37 conclusions of law, within forty-eight hours of the time that the  
38 petition was filed, except that the forty-eight hour limitation may

1 be extended at the request of the pregnant minor. If the court fails  
2 to rule within the forty-eight hour period and an extension was not  
3 requested, then the petition is deemed to have been granted, and the  
4 notice requirement must be waived.

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

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

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

29 (7) An expedited confidential appeal must be available, as the  
30 supreme court provides by rule, to any pregnant minor to whom the  
31 superior court denies a waiver of notice. An order authorizing an  
32 abortion without notice must not be subject to appeal.

33 (8) No filing fees are required of any pregnant minor who  
34 petitions a court for a waiver of parental notification under this  
35 section at either the trial or the appellate level.

36 NEW SECTION. **Sec. 9.** The supreme court is respectfully  
37 requested to establish rules to ensure that proceedings under this  
38 chapter are handled in an expeditious and confidential manner and to  
39 satisfy the requirements of federal courts.

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

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

27        (3) Any person not authorized to receive notice under this  
28 chapter who signs a waiver of notice under section 5(2) of this act  
29 is guilty of a gross misdemeanor.

30        (4) Any person who coerces a pregnant minor to have an abortion  
31 is guilty of a gross misdemeanor.

32        NEW SECTION.    **Sec. 11.**    (1) Nothing in this chapter may be  
33 construed as creating or recognizing a right to abortion.

34        (2) It is not the intent of this chapter to make lawful an  
35 abortion that is currently unlawful.

36        NEW SECTION.    **Sec. 12.**    If any provision of this act or its  
37 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected.

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

8 NEW SECTION. **Sec. 14.** Sections 1 through 13 of this act  
9 constitute a new chapter in Title 9 RCW.

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