

2019 Regular Session

SENATE BILL NO. 221

BY SENATORS MIZELL, ALARIO, ALLAIN, APPEL, BARROW, CHABERT, CLAITOR, CORTEZ, DONAHUE, ERDEY, FANNIN, GATTI, HEWITT, JOHNS, LONG, MARTINY, MILKOVICH, MILLS, MORRISH, PEACOCK, RISER, JOHN SMITH, TARVER, THOMPSON, WALSWORTH, WARD AND WHITE

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

ABORTION. Provides relative to abortion and the Woman's Right to Know law. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 40:1061.17(B)(3), relative to regulation of abortion; to provide

3 for a woman's informed consent in an abortion proceeding; to provide for certain

4 written information to be given to a woman seeking an abortion; to require certain

5 oral information to be given to a woman seeking an abortion; to provide for certain

6 information necessary to assess the qualifications of the facility and the physician

7 who will perform the abortion; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 40:1061.17(B)(3) is hereby amended and reenacted to read as

10 follows:

11 §1061.17. Woman's right to know

12 * * *

13 B. Informed consent; requirements. After a woman is determined to be

14 pregnant, no abortion shall be performed or induced without the voluntary and

15 informed consent of the woman upon whom the abortion is to be performed or

16 induced. Except in the case of a medical emergency, consent to an abortion is

17 voluntary and informed if and only if:

* * *

1
2 (3)(a) ~~Oral~~ **Written** information from the physician. Except as provided in
3 Subparagraph ~~(b)~~**(c)** of this Paragraph, at least seventy-two hours before the abortion,
4 the physician who is to perform the abortion or the referring physician has informed
5 the woman, **in writing and read** orally and in person of:

6 (i) The name of the physician who meets the requirements of R.S.
7 46:1061.10(A) and who will perform the abortion, **which shall be listed in the same**
8 **manner as the name appears on the membership roll of the Louisiana State**
9 **Board of Medical Examiners.**

10 (ii) **The location and specialty of the physician's residency and whether**
11 **the residency of the physician has been completed.**

12 (iii) **Whether the physician is currently board certified and, if so, the**
13 **medical specialty and the certifying organization.**

14 (iv) **Whether the physician has active admitting privileges at any hospital**
15 **that provides obstetrical or gynecological healthcare services and, if so, the**
16 **name of the hospital or hospitals. For purposes of this Subparagraph, "active**
17 **admitting privileges" means that the physician is a member in good standing of**
18 **the medical staff of a hospital that is currently licensed by the Department of**
19 **Health, with the ability to admit a patient and to provide diagnostic and surgical**
20 **services to such patient.**

21 (v) **Whether the physician has malpractice insurance that would cover**
22 **the abortion procedure.**

23 (vi) **Whether in the last ten years the physician has ever been placed on**
24 **probation, reprimanded, or had his license suspended or revoked by any**
25 **professional licensing organization and, if so, the jurisdiction in which the**
26 **professional discipline was ordered. For purposes of this Subsection, the**
27 **professional discipline action must be disclosed even if it was stayed or**
28 **suspended. Disclosure of disciplinary action shall include but not be limited to**
29 **action taken by the Louisiana State Board of Medical Examiners and the**

1 **Louisiana Board of Pharmacy.**

2 **(vii) The Internet address for disciplinary records of the Louisiana**
3 **Board of Medical Examiners.**

4 **(b) Oral information from the physician. Except as provided in**
5 **Subparagraph (c) of this Paragraph, and in the same period of time provided**
6 **for in the introductory paragraph of Subparagraph (a) of this Paragraph, the**
7 **physician who is to perform the abortion or the referring physician has**
8 **informed the woman, orally and in person of:**

9 ~~(ii)~~**(i)** A description of the proposed abortion method and of those risks
10 (including risks to the woman's reproductive health) and alternatives to the abortion
11 that a reasonable patient would consider material to the decision of whether or not
12 to undergo the abortion.

13 ~~(iii)~~**(ii)** The probable gestational age of the unborn child at the time the
14 abortion is to be performed; and, if the unborn child is viable or has reached the
15 gestational age of twenty-four weeks and the abortion may be otherwise lawfully
16 performed under existing law, that:

17 (aa) The unborn child may be able to survive outside the womb.

18 (bb) The woman has the right to request the physician to use the method of
19 abortion that is most likely to preserve the life of the unborn child.

20 (cc) If the unborn child is born alive, that attending physicians have the legal
21 obligation to take all reasonable steps necessary to maintain the life and health of the
22 child.

23 ~~(iv)~~**(iii)** The probable anatomical and physiological characteristics of the
24 unborn child at the time the abortion is to be performed.

25 ~~(v)~~**(iv)** The medical risks associated with carrying her child to term.

26 ~~(vi)~~**(v)** Any need for anti-Rh immune globulin therapy, if she is Rh negative,
27 the likely consequences of refusing such therapy, and a good faith estimate of the
28 cost of the therapy.

29 ~~(vii)~~**(vi)** The availability of anesthesia or analgesics to alleviate or eliminate

1 organic pain to the unborn child that could be caused by the method of abortion to
2 be employed.

3 ~~(viii)~~(vii) The requirement that at least seventy-two hours prior to the
4 woman's having any part of an abortion performed or induced, the physician,
5 referring physician, or qualified person working in conjunction with either physician
6 must perform an obstetric ultrasound under the provisions of R.S. 40:1061.10.

7 ~~(ix)~~(viii) The inclusion in her printed materials of a comprehensive list,
8 compiled by the department, of facilities that offer obstetric ultrasounds free of
9 charge.

10 ~~(b)~~(c) If the woman certifies in writing that she currently lives one hundred
11 fifty miles or more from the nearest licensed outpatient abortion facility to her
12 residence, then the physician who is to perform the abortion or the referring
13 physician shall comply with all of the requirements of Subparagraph (a) **and (b)** of
14 this Paragraph at least twenty-four hours prior to the abortion.

15 * * *

16 **Section 2. In addition to the legislative finding provided for in R.S.**

17 **40:1061.1(A), the legislature further finds and declares all of the following:**

18 **(1) Louisiana patients considering a medical procedure customarily rely upon**
19 **the qualifications and background information of the physician who would potentially**
20 **perform the patient's procedure. Such information is relevant and necessary to**
21 **determine all of the following: (a) Whether the patient should undergo the procedure**
22 **and whether the benefits outweigh the risk of complications, (b) The risks to which the**
23 **patient is exposed, and (c) the patient's choice of physician. Many patients research**
24 **particular physicians before deciding whether to undergo a procedure, or in the course**
25 **of choosing the physician who will perform it and facility where it will be performed.**

26 **(2) Louisiana physicians commonly make information about their background**
27 **and qualifications available to current and potential patients and by also posting such**
28 **information on the physicians' internet websites for their medical practices. The**
29 **widespread availability of physician information improves the market for medical**

1 services in Louisiana by enabling informed decisions to be made by patients and by
2 encouraging physicians and medical facilities to maintain high professional standards.
3 Such disclosures regarding physician qualifications are in the public's best interest.

4 (3) Abortion carries the known risk of serious complications for the mother
5 including infection, injury, hemorrhaging, sepsis, permanent loss of childbearing
6 capacity, and death. Such risks are documented as occurring in Louisiana as a result
7 of procedures at Louisiana abortion clinics.

8 (4) Louisiana outpatient abortion facilities do not publicly disclose the identities
9 and professional qualifications of physicians who perform abortions there. Unlike other
10 Louisiana medical practices, outpatient abortion facilities do not customarily post the
11 identities or qualifications of their physicians on their internet websites; therefore,
12 women considering an abortion may have difficulty obtaining information about an
13 abortion facility's doctors before the woman's first appointment before the abortion
14 procedure.

15 (5) Louisiana has a long history of outpatient abortion facilities operated by
16 out-of-state businessmen, and those clinics appear to perform little or no review of the
17 credentials or disciplinary history of the physicians who perform abortions at the
18 facility. See, e.g., *June Medical Servs., LLC v. Gee*, 905 F.3d 787, 799 (5th Cir. 2018).

19 (6) Louisiana outpatient abortion facilities actively work to conceal the identities
20 and misconduct of abortion providers. For example, in a pending court case, plaintiff
21 abortion providers repeatedly insisted that publicly available information regarding
22 misconduct by abortion doctors be filed under seal. Compare Emergency Motion to
23 Strike (ECF 202), *June Medical Servs. LLC v. Gee*, No. 3:16-cv-444 (M.D. La.) with
24 Mem. (ECF 207-1) at 4, 7-8, *June Medical Servs. LLC v. Gee*, No. 3:16-cv-444 (M.D. La.)
25 (noting that the documents sealed at plaintiffs' request include a grand jury report that
26 is for sale as a book and publicly available in the Louisiana State Board of Medical
27 Examiners disciplinary records); see also, e.g., Reply (ECF 135-2) at 5, *June Medical*
28 *Servs. LLC v. Gee*, No. 3:16-cv-444 (M.D. La.) (noting that plaintiffs had redacted the
29 name of a deceased Louisiana abortion provider from a public record). In another case,

1 a state court was induced to seal the *existence* of a malpractice case against two
2 abortion providers, although the providers repeatedly used the patient's name in
3 federal litigation.

4 (7) Current law requires that a woman, in order to give informed consent to an
5 abortion, must receive the name of the physician who will perform the abortion.
6 Louisiana abortion facilities, however, are not currently required to provide
7 information about the physician's background and qualifications or to direct the
8 woman to a website where she may find information relevant to her decision about her
9 physician.

10 (8) The lack of transparency surrounding the medical operations of outpatient
11 abortion facilities makes it difficult for women to fully evaluate whether to obtain an
12 abortion or whether to obtain it from a particular physician at a given abortion facility.
13 Such lack of transparency makes it difficult for women to make important decisions
14 about their health and safety; creates an obstacle to women exercising their informed
15 consent; and is therefore contrary to the public interest.

16 (9) A significant number of physicians who have performed abortions at
17 Louisiana outpatient abortion facilities in recent years have been subject to
18 professional discipline and malpractice claims. The abortion facilities at which these
19 physicians perform abortions have received a significant number of noncompliance
20 actions related to violations of health and safety regulations which have been
21 documented by deficiency reports filed with the Louisiana Department of Health.

22 (10) If a woman who is considering an abortion is to be treated by a physician
23 who has been subject to professional discipline, it is in the best interest of that woman
24 that she be given the opportunity to consider that professional discipline in advance of
25 undergoing the abortion procedure.

26 (11) There is empirical evidence correlating nonboard certified physicians with
27 an increased likelihood of professional discipline. Susan H. Allen, et al., *Training*
28 *Matters: A Retrospective Study of Physician Disciplinary Matters by the Louisiana State*
29 *Board of Medical Examiners, 1990-2010, 102(4) J. MED. REG. 7 (2016).*

1 **(12) The information to be disclosed under the requirements of this Act is**
 2 **truthful information that is nonmisleading and relevant to the decision to obtain an**
 3 **abortion. It is therefore within the scope of information that Louisiana may require to**
 4 **be disclosed as part of a woman's informed consent before an abortion.**

5 **Section 3. The legislature finds and declares that the purpose of this Act is to**
 6 **improve the ability of Louisiana women to determine whether to obtain an abortion,**
 7 **to choose the appropriate facility and physician, and to make an informed consent for**
 8 **such an abortion if the woman chooses to have the procedure. Such informed consent**
 9 **is needed so that the state of Louisiana may adequately provide reasonable protections**
 10 **for public health.**

11 **Section 4. The provisions of Section 1 of this Act, which amends R.S.**
 12 **40:1061.17(B)(3), shall not be construed to have any effect on the Joint Stipulation for**
 13 **Non-Enforcement in *June Medical Services LLC v. Gee*, No. 3:16-cv-444 (M.D. La.).**

14 Section 5. If any provision or item of this Act, or the application thereof, is held
 15 invalid, such invalidity shall not affect other provisions, items, or applications of the Act
 16 which can be given effect without the invalid provision, item, or application and to this end
 17 the provisions of this Act are hereby declared severable.

18 Section 6. This Act shall become effective upon signature by the governor or, if not
 19 signed by the governor, upon expiration of the time for bills to become law without signature
 20 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 21 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 22 effective on the day following such approval.

The original instrument was prepared by Carla S. Roberts. The following
 digest, which does not constitute a part of the legislative instrument, was
 prepared by Christine Arbo Peck.

SB 221 Reengrossed

DIGEST
 2019 Regular Session

Mizell

Present law provides for the Woman's Right to Know law which requires that providers of abortions in Louisiana ensure that their patients have the necessary information, including specific legal rights and options, to make an informed decision before they undergo an abortion procedure.

Present law also provides that no abortion shall be performed or induced without the

voluntary and informed consent of the woman upon whom the abortion is to be performed or induced. Present law provides that, except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if, the physician who is to perform the abortion or the referring physician has informed the woman, orally and in person, the name of the physician who meets the requirements of R.S. 46:1061.10(a) and is licensed to practice medicine in the state of La. and who will perform the abortion.

Proposed law changes present law from oral to written, as it relates to the requirement that the woman must be informed of the name of the physician who is to perform the abortion.

Proposed law provides that, in addition to the name of the physician who is to perform the abortion, the physician shall inform the woman, in writing, all of the following:

- (1) The name of the physician who will perform the abortion shall be listed in the written document in the same manner as the name appears on the membership roll of the Louisiana State Board of Medical Examiners.
- (2) The location and specialty of the physician's residency and whether the residency has been completed.
- (3) Whether the physician is currently board certified and, if so, the name of the certifying organization.
- (4) Whether the physician has active admitting privileges at any hospital that provides obstetrical or gynecological healthcare services, and if so, the name of the hospital or hospitals. "Active admitting privileges" means that the physician is a member in good standing of the medical staff of a hospital that is currently licensed by the Department of Health, with the ability to admit a patient, and to provide diagnostic and surgical services to such patient.
- (5) Whether the physician has malpractice insurance that would cover the abortion procedure.
- (6) Whether in the last 10 years the physician has ever been placed on probation, reprimanded, or had his license suspended or revoked by any professional licensing organization, and if so, the jurisdiction in which the professional discipline was ordered. For purposes of this subsection, the disciplinary action must be disclosed even if it was stayed or suspended. Disclosure of disciplinary action shall include but not be limited to action taken by the Louisiana State Board of Medical Examiners and the Louisiana Board of Pharmacy.
- (7) The internet address for disciplinary records of the Louisiana Board of Medical Examiners.

Proposed law provides the following legislative intent:

- (1) Louisiana patients considering a medical procedure customarily do research and rely upon the qualifications and background information of the physician who would potentially perform the patient's procedure. Such information is relevant and necessary to determine if the patient should undergo the procedure, the risk of complications, and to the patient's choice of physician.
- (2) Louisiana physicians commonly make information about their background and qualifications available to current and potential patients and by posting such information on the physicians' websites. More information about physicians improves the market for medical services in La. by enabling informed decisions by patients and by encouraging physicians and medical facilities to maintain high professional standards.

- (3) Abortion carries the known risk of serious complications for the mother including infection, injury, hemorrhaging, sepsis, permanent loss of childbearing capacity, and death. Such risks are documented as occurring in Louisiana as a result of procedures at Louisiana abortion clinics.
- (4) La. outpatient abortion facilities do not publicly disclose the identities and professional qualifications of physicians who perform abortions there. Unlike other La. medical practices, outpatient abortion facilities do not customarily post the identities or qualifications of their physicians on their websites; therefore, the women considering an abortion may have difficulty obtaining information about an abortion facility's doctors.
- (5) Louisiana has a long history of outpatient abortion facilities operated by out-of-state businessmen, and those clinics appear to perform little or no review of the credentials or disciplinary history of the physicians who perform abortions at the facility. *See, e.g., June Medical Servs., LLC v. Gee*, 905 F.3d 787, 799 (5th Cir. 2018).
- (6) Louisiana outpatient abortion facilities actively work to conceal the identities and misconduct of abortion providers. For example, in a pending litigation, plaintiff abortion providers repeatedly insisted that publicly available information regarding misconduct by abortion doctors be filed under seal. *Compare* Emergency Motion to Strike (ECF 202), *June Medical Servs. LLC v. Gee*, No. 3:16-cv-444 (M.D. La.) with Mem. (ECF 207-1) at 4, 7-8, *June Medical Servs. LLC v. Gee*, No. 3:16-cv-444 (M.D. La.) (noting that the documents sealed at plaintiffs' request include a grand jury report that is for sale as a book and publicly available Louisiana State Board of Medical Examiners disciplinary records); *see also, e.g.,* Reply (ECF 135-2) at 5, *June Medical Servs. LLC v. Gee*, No. 3:16-cv-444 (M.D. La.) (noting that plaintiffs had redacted the name of a deceased Louisiana abortion provider from a public record). In another case, a state court was induced to seal the *existence* of a malpractice case against two abortion providers, although the providers repeatedly used the patient's name in federal litigation.
- (7) Current law requires that a woman, in order to give informed consent to an abortion, must receive the name of the physician who will perform the abortion. La. abortion facilities are not currently required to provide information about the physician's background and qualifications or to direct the woman to a website where she may find information relevant to her decision about her physician.
- (8) The lack of transparency surrounding the medical operations of outpatient abortion facilities makes it difficult for women to fully evaluate whether to obtain an abortion or whether to obtain it from a particular physician at a given abortion facility. Such lack of transparency makes it difficult for women to make important decisions about their health and safety and creates obstacles to women exercising their informed consent and, therefore, such lack of transparency is contrary to the public interest.
- (9) A significant number of physicians who have performed abortions at La. outpatient abortion facilities in recent years have been subject to professional discipline and malpractice claims. The abortion facilities at which these physicians perform abortions have received a significant number of noncompliance actions related to violations of health and safety regulations which have been documented by deficiency reports filed with the La. Dept. of Health.
- (10) If a woman who is considering an abortion is to be treated by a physician who has been subject to professional discipline, it is in the best interest of that woman that she be afforded the opportunity to consider that professional discipline, in advance of undergoing the abortion procedure.

- (11) There is empirical evidence correlating nonboard certified physicians with an increased likelihood of professional discipline. Susan H. Allen, et al, *Training Matters: A Retrospective Study of Physician Disciplinary Matters by the Louisiana State Board of Medical Examiners, 1990-2010*, 102(4) J. MED. REG. 7 (2016).
- (12) The information to be disclosed under the requirements under proposed law is truthful information that is nonmisleading and relevant to the decision to obtain an abortion. It is therefore within the scope of information that Louisiana may require to be disclosed as part of a woman's informed consent before an abortion.

Proposed law provides the legislature finds and declares that the purpose of proposed law is to improve the ability of La. women to determine whether to obtain an abortion, to choose the appropriate facility and physician and thereby, make an informed consent for such an abortion if the woman chooses to have the procedure. Such informed consent is needed so that the state of La. may adequately provide reasonable protections for public health.

Proposed law clarifies that, even though amendments are being added to the section of present law which contains the number of hours for the waiting period required between the time of the pre-abortion counseling and the actual abortion, proposed law is not intended to be construed to affect the outcome of the court case which was filed in response to a change in the waiting period in 2016 from 24 hours (prior law) to 72 hours (present law).

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 40:1061.17(B)(3))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Health and Welfare to the original bill

1. Makes technical corrections.
2. Removes instruction to the Louisiana State Law Institute to re-designate the subsections of R.S. 40:1061.17 into individual sections.