

SENATE BILL NO. 708

BY SENATORS BROOME, APPEL, CORTEZ, CROWE, DONAHUE, ERDEY, JOHNS, LAFLEUR, LONG, MARTINY, NEVERS, PEACOCK, PERRY, RISER, JOHN SMITH, TARVER, THOMPSON, WALSWORTH, WARD AND WHITE AND REPRESENTATIVES ADAMS, ANDERS, ARMES, BARRAS, BARROW, BILLIOT, STUART BISHOP, BROWN, BURFORD, HENRY BURNS, CHAMPAGNE, CHANEY, CONNICK, COX, CROMER, DOVE, FRANKLIN, GISCLAIR, GREENE, GUILLORY, HARRIS, HAVARD, HAZEL, HENRY, HENSGENS, HILL, HODGES, HOFFMANN, HOLLIS, HONORE, HOWARD, KATRINA JACKSON, JAMES, KLECKLEY, NANCY LANDRY, LEBAS, LIGI, LOPINTO, LORUSSO, MONTOUCET, NORTON, PEARSON, PIERRE, POPE, PUGH, PYLANT, REYNOLDS, RICHARDSON, SCHEXNAYDER, SCHRODER, SEABAUGH, SIMON, TALBOT, WHITNEY, PATRICK WILLIAMS AND WILLMOTT

1 AN ACT

2 To amend and reenact R.S. 40:1299.35.2(D), 1299.35.6(B)(3)(h), 1299.35.10(A)(18) and  
3 (26), and 1299.35.11, and to enact R.S. 40:1299.35.2(E), relative to abortions; to  
4 provide with respect to ultrasound requirements; to provide for informed consent; to  
5 provide for penalties; to provide for forms, reports, and records relative to abortions;  
6 to provide for legislative intent; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 40:1299.35.2(D), 1299.35.6(B)(3)(h), 1299.35.10(A)(18) and (26),  
9 and 1299.35.11 are hereby amended and reenacted and R.S. 40:1299.35.2(E) is hereby  
10 enacted to read as follows:

11 §1299.35.2. Abortion by physician; determination of viability; ultrasound test  
12 required; exceptions; penalties

13 \* \* \*

14 D. Ultrasound Requirements. Except in the case of a medical emergency, and  
15 in addition to the provisions of R.S. 40:1299.35.6, consent to an abortion of an  
16 unborn child at any stage of gestational development is voluntary and informed only  
17 if an obstetric ultrasound is performed ~~under~~ **in accordance with** the provisions of  
18 this Section.

19 (1) Qualifications to perform ultrasound. The ultrasound shall be performed

1 by the physician who is to perform the abortion, ~~the referring physician,~~ or a  
 2 qualified person ~~working in conjunction with either physician~~ **who is the physician's**  
 3 **agent**. For purposes of this Section, "qualified person" means a person having  
 4 documented evidence that he or she has completed a course in the operation of  
 5 ultrasound equipment and is in compliance with any other requirements of law  
 6 regarding the operation of ultrasound equipment.

7 (2) Requirements. At least ~~two~~ **twenty-four** hours prior to the woman having  
 8 any part of an abortion performed or induced, and prior to the administration of any  
 9 anesthesia or medication in preparation for the abortion on the woman, the physician  
 10 who is to perform the abortion, ~~the referring physician, or a qualified person working~~  
 11 ~~in conjunction with either physician~~ **or a qualified person who is the physician's**  
 12 **agent** shall comply with all of the following requirements:

13 (a) Perform an obstetric ultrasound on the pregnant woman; ~~and offer to~~  
 14 simultaneously display the screen which depicts the active ultrasound images so that  
 15 the pregnant woman may view them; **and make audible the fetal heartbeat, if**  
 16 **present, in a quality consistent with current medical practice. Nothing in this**  
 17 **Section shall be construed to prevent the pregnant woman from not listening to**  
 18 **the sounds detected by the fetal heart monitor, or from not viewing the images**  
 19 **displayed on the ultrasound screen.**

20 (b) ~~Offer to provide~~ **Provide** a simultaneous **and objectively accurate oral**  
 21 explanation of what the ultrasound is depicting, **in a manner understandable to a**  
 22 **layperson**, which shall include the presence and location of the unborn child within  
 23 the uterus and the number of unborn children depicted, the dimensions of the unborn  
 24 child, and the presence of ~~external members and internal organs,~~ **cardiac activity** if  
 25 present and viewable, **along with the opportunity for the pregnant woman to ask**  
 26 **questions.**

27 (c) Offer to ~~provide~~ the pregnant woman ~~with a sealed envelope clearly~~  
 28 marked "ultrasound print" that contains **the option of requesting** an ultrasound  
 29 photograph or print of her unborn child of a quality consistent with current standard  
 30 medical practice that accurately portrays, to the extent feasible, the body of the

1           unborn child including ~~external members~~ **limbs**, if present and viewable; ~~provided~~  
2           that the pregnant woman shall be informed that R.S. 40:1299.35.2 requires that she  
3           be provided with the envelope containing the ultrasound print, but that there is no  
4           requirement that she view the print image of her unborn child.

5                       **(d) Prior to the ultrasound, obtain from the pregnant woman a copy of**  
6                       **a completed, signed, and dated election form. The election form shall be**  
7                       **produced and made available by the department, and shall state as follows:**

8                               **"Ultrasound Before Abortion Notice and Election Form**  
9                       **Louisiana law requires an ultrasound examination prior to the performance of**  
10                       **an abortion. By signing below, I certify that I understand the following:**

11           **(1) I have the option to look at or look away from the ultrasound display at**  
12                       **any time.**

13           **(2) I have the option to listen to the heartbeat of the unborn child that is**  
14                       **required to be made audible unless I decline by initialing here:**  
15                               \_\_\_\_\_.

16           **(3) I am required by law to hear an oral explanation of the ultrasound**  
17                       **images, unless I certify below that I am pregnant due to an act of rape**  
18                       **or incest.**

19           **(4) I have the option to ask and receive answers to any questions about the**  
20                       **images of the unborn child.**

21           **(5) I have the option to ask for an ultrasound photographic print depicting**  
22                       **the unborn child.**

23           \_\_\_\_\_                               \_\_\_\_\_

24           **Signature**                               **Date**

25           **OPTION FOR WOMEN WHO HAVE FILED LAW ENFORCEMENT REPORTS:**

26           **I certify that I have reported an act of rape or incest to law enforcement**  
27           **officials, and that I decline to hear an oral explanation of the ultrasound images.**

28           \_\_\_\_\_                               \_\_\_\_\_

29           **Signature**                               **Date"**

30                       ~~(d)~~ **(e)** Orally read the following statement to the pregnant woman in the

1 ultrasound examination room prior to beginning the ultrasound examination, and  
 2 certify by signature on a form that shall be produced and made available by the  
 3 department that the following statement was delivered orally:

4 ~~"Louisiana law requires that you be informed of three options that you may~~  
 5 ~~request at any time during this ultrasound examination:~~

6 ~~(1) You have the option to view the ultrasound screen at any time during the~~  
 7 ~~examination.~~

8 ~~(2) You have the option to receive an oral explanation of the ultrasound~~  
 9 ~~images.~~

10 ~~(3) You have the option to receive an ultrasound photographic print. Please~~  
 11 ~~inform me now or at any time during the ultrasound examination if you want to view~~  
 12 ~~the screen, receive an oral explanation or receive an ultrasound print."~~

13 ~~(e) Obtain a written certification from the woman, after the ultrasound and~~  
 14 ~~prior to the abortion, that the requirements of this Subsection have been complied~~  
 15 ~~with.~~

16 "During this ultrasound examination, you have the right to an oral  
 17 explanation of the results. You have the option to view the images on the  
 18 ultrasound screen. The heartbeat of the unborn child, if present, will be made  
 19 audible, unless you declined on the election form. You have the right to receive  
 20 answers to any questions you ask about your ultrasound examination. You have  
 21 the right to receive an ultrasound photographic print, which will be provided  
 22 at your request."

23 (f) Retain a copy copies of the written election form and certification  
 24 prescribed by Subparagraph (e) Subparagraphs (d) and (e) of this Paragraph. The  
 25 certification shall be placed in the medical file of the woman and shall be kept by the  
 26 abortion provider for a period of not less than seven years. If the woman is a minor,  
 27 the certification shall be placed in the medical file of the minor and kept for at least  
 28 seven years or for five years after the minor reaches the age of majority, whichever  
 29 is greater. The woman's medical files shall be kept confidential as provided by law.

30 (3) Options to view or listen to required medical information.

1            (a) A pregnant woman may choose not to exercise her option to request  
 2            an ultrasound photograph print as provided for under this Section.

3            (b) A pregnant woman may choose not to view the ultrasound images  
 4            required to be provided to and reviewed with the pregnant woman as provided  
 5            for under this Section.

6            (c) A pregnant woman may choose not to listen to the sounds detected by  
 7            the fetal heart monitor required to be provided to the pregnant woman as  
 8            provided for under this Section.

9            (d) The physician, the agent of the physician, and the pregnant woman  
 10           are not subject to a penalty under this Chapter solely because the pregnant  
 11           woman chooses not to request an ultrasound print, view the ultrasound images,  
 12           or hear the heart auscultation.

13           ~~(3)~~(4) Medical Emergencies.

14           (a) "Medical emergency" as used in this Section, means the existence of any  
 15           physical condition, not including any emotional, psychological, or mental condition,  
 16           which a reasonably prudent physician, with knowledge of the case and treatment  
 17           possibilities with respect to the medical conditions involved, would determine  
 18           necessitates the immediate abortion of the pregnancy to avert the pregnant woman's  
 19           death or to avert substantial and irreversible impairment of a major bodily function  
 20           arising from continued pregnancy.

21           (b) Upon a determination by a physician that a medical emergency exists with  
 22           respect to a pregnant woman, the provider shall certify in writing the specific  
 23           medical conditions that constitute the emergency. The certification shall be placed  
 24           in the medical file of the woman and shall be kept by the abortion provider for a  
 25           period of not less than seven years. If the woman is a minor, then the certification  
 26           shall be placed in the medical file of the minor and kept for at least seven years or  
 27           for five years after the minor reaches the age of majority, whichever is greater. The  
 28           woman's medical files shall be kept confidential as provided by law.

29           ~~(4) Civil penalties. In addition to whatever remedies are otherwise available~~  
 30           ~~under the laws of this state, failure to comply with the requirements of this Section~~

1 shall provide a basis for professional disciplinary action provided for under law.

2 **(5) Penalties. Any person who intentionally or knowingly fails to comply**  
3 **with any requirement of this Section shall be subject to the penalties as**  
4 **provided for in R.S. 40:1299.35.19.**

5 ~~(5)~~**(6)** Protection of privacy in court proceedings. In every civil or criminal  
6 proceeding or action brought under this Section, the court shall rule whether the  
7 anonymity of any female upon whom an abortion has been performed or attempted  
8 shall be preserved from public disclosure if she does not give her consent to such  
9 disclosure. The court may close any proceedings in the case and enter other  
10 protective orders to preserve the privacy of the woman upon whom the abortion has  
11 been performed or attempted. This Section may not be construed to conceal the  
12 identity of the plaintiff or of witnesses from the defendant.

13 **E. Pregnant rape survivors or victims of incest who have reported the**  
14 **act to law enforcement officials shall have the opportunity to opt out of the oral**  
15 **explanation provisions of Subparagraph D(2)(b) of this Section, in addition to**  
16 **having the same options to view or listen to the required medical information**  
17 **as provided in Paragraph D(3) of this Section.**

18 \* \* \*

19 §1299.35.6. Woman's Right To Know

20 \* \* \*

21 B. Informed consent; requirements. After a woman is determined to be  
22 pregnant, no abortion shall be performed or induced without the voluntary and  
23 informed consent of the woman upon whom the abortion is to be performed or  
24 induced. Except in the case of a medical emergency, consent to an abortion is  
25 voluntary and informed if and only if:

26 \* \* \*

27 (3) Oral information from the physician. At least twenty-four hours before  
28 the abortion, the physician who is to perform the abortion or the referring physician  
29 has informed the woman, orally and in person, of:

30 \* \* \*

1           (h) The requirement that at least ~~two~~ **twenty-four** hours prior to the woman  
 2           having any part of an abortion performed or induced, the physician, referring  
 3           physician, or qualified person working in conjunction with either physician must  
 4           perform an obstetric ultrasound under the provisions of R.S. 40:1299.35.2 ~~for the~~  
 5           ~~purpose of preserving the woman's health and determining the viability of the unborn~~  
 6           ~~child, and that neither the physician nor the woman shall be penalized should the~~  
 7           ~~woman choose not to view the obstetric ultrasound images or not to accept the~~  
 8           ~~photographic print that shall be offered to her in a sealed envelope.~~

\* \* \*

§1299.35.10. Reports

11           A. An individual abortion report for each abortion performed or induced  
 12           shall be completed by the attending physician. The report shall be confidential and  
 13           shall not contain the name or address of the woman. The report shall include:

\* \* \*

15           (18) A photographic print or image produced as the result of the ultrasound  
 16           test required to ~~inform the woman of the probable gestational age of the unborn child~~  
 17           ~~in accordance with R.S. 40:1299.35.6(B)(1)(c) and R.S. 40:1299.35.1(3) to~~  
 18           ~~determine viability of the unborn child in accordance with R.S. 40:1299.35.2(C) by~~  
 19           **R.S. 40:1299.35.2(D).**

\* \* \*

21           (26) Copies, with the name and address obliterated, of the **election forms,**  
 22           certificates, and consent forms required ~~by R.S. 40:1299.35.8~~ **pursuant to the**  
 23           **provisions of this Part.**

\* \* \*

§1299.35.11. Forms

26           The Department of Health and Hospitals shall make available to physicians  
 27           performing abortions in this state the forms for preparing the records and reports  
 28           required by ~~R.S. 40:1299.35.8 and R.S. 40:1299.35.10~~ **pursuant to the provisions**  
 29           **of this Part.**

\* \* \*

1 Section 2.A. The purpose of this Act is to conform the present Louisiana ultrasound  
2 law to the purpose and intent of a Texas statute upheld by a unanimous panel of the U.S.  
3 Court of Appeals for the Fifth Circuit in *Texas Medical Providers Performing Abortion*  
4 *Services v. Lakey*, No. 11-50814 (5th Cir. 2012)(rehearing en banc denied 2-10-2012).

5 B. The three-judge panel, with Chief Judge Edith Jones writing, upheld the  
6 constitutionality of 2011 TX H.B. 15, which required the fetal heartbeat to be made audible,  
7 and the ultrasound images to be displayed for review by the pregnant woman prior to any  
8 abortion.

9 C. The unanimous U.S. Fifth Circuit decision stated: "[The Texas statute] establishes  
10 what the physician must do: have a sonogram performed, display the sonogram images,  
11 perform a heart auscultation, and provide verbal explanations of the sonogram images and  
12 heart auscultation. The district court's analysis of (a)(4) ignores that the physician's  
13 unconditional obligations are merely to display images so they may be viewed, to provide  
14 an understandable explanation, and to make audible the auscultation. Section 171.012(a)(4)  
15 specifically does not require the physician to ensure the woman views the images, that she  
16 understands the explanation, or that she listens to the auscultation."

17 D. The Fifth Circuit applied established Supreme Court case law affirming the state's  
18 interest in promoting childbirth over abortion to conclude as follows: "[T]he provision of  
19 sonograms and the fetal heartbeat are routine measures in pregnancy medicine today. They  
20 are viewed as 'medically necessary' for the mother and fetus. Only if one assumes the  
21 conclusion of Appellees' argument, that pregnancy is a condition to be terminated, can one  
22 assume that such information about the fetus is medically irrelevant. The point of informed  
23 consent laws is to allow the patient to evaluate her condition and render her best decision  
24 under difficult circumstances. Denying her up to date medical information is more of an  
25 abuse to her ability to decide than providing the information. In any event, the Appellees'  
26 argument ignores that Casey and Gonzales, as noted above, emphasize that the gravity of the  
27 decision may be the subject of informed consent through factual, medical detail, that the  
28 condition of the fetus is relevant, and that discouraging abortion is an acceptable effect of  
29 mandated disclosures."

30 Section 3. If any provision or item of this Act, or the application thereof, is held



1 invalid, such invalidity shall not affect other provisions, items, or applications of the Act  
2 which can be given effect without the invalid provision, item, or application and to this end  
3 the provisions of this Act are hereby declared severable.

4 Section 4. The provisions of this Act apply only to an abortion performed on or after  
5 the sixtieth day after the effective date of this Act. An abortion performed before the sixtieth  
6 day after the effective date of this Act is governed by the law in effect on the date the  
7 abortion was performed, and the former law is continued in effect for that purpose.

8 Section 5. The Department of Health and Hospitals shall publish the forms  
9 established pursuant to the provisions of this Act not later than the sixtieth day after the  
10 effective date of this Act.

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_