

2017 Regular Session

SENATE BILL NO. 111

BY SENATOR MIZELL

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

ABORTION. Requires proof of identification from parents for an unemancipated minor child to obtain an abortion based upon parental consent and requires court-ordered counseling if it is suspected that the minor is a victim of criminal sexual exploitation. (8/1/17)

AN ACT

To amend and reenact the introductory paragraph of R.S. 40:1061.14(A), R.S. 40:1061.14(A)(1) and (B)(3)(b)(ii) and (iii) and (4), 1061.19(A)(2), and 1061.21(A)(5) and to enact R.S. 40:1061.14(B)(3)(b)(iv) and 1061.14.1, relative to abortion for an unemancipated minor; to provide for parental consent; to provide for court orders; to require identification for parents or guardians; to provide for counseling for minor children who are victims of coerced abortions or commercial sexual exploitation; to provide for evaluation and counseling; to provide for recordkeeping; to provide for penalties; to provide for reporting; to provide for severability; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. The introductory paragraph of R.S. 40:1061.14(A), R.S. 40:1061.14(A)(1) and (B)(3)(b)(ii) and (iii) and (4), 1061.19(A)(2), and 1061.21(A)(5) are hereby amended and reenacted and R.S. 40:1061.14(B)(3)(b)(iv) and 1061.14.1 are hereby enacted to read as follows:

§1061.14. Minors

A. No physician shall perform or induce an abortion upon any pregnant

1 woman who is under the age of eighteen years and who is not emancipated judicially  
 2 or by marriage unless the physician **or a qualified person acting as agent of the**  
 3 **physician pursuant to R.S. 40:1061.17(B)(4)(c)** has received ~~one of the following~~  
 4 **those** documents **provided for in either Paragraph (1) or (2) of this Subsection:**

5 (1)**(a)** A notarized statement signed by the mother, father, legal guardian, or  
 6 tutor of the **unemancipated** minor declaring that the affiant has been informed that  
 7 the minor intends to seek an abortion and that the affiant consents to the abortion.  
 8 **The affiant shall provide sufficient evidence of identity that shall be expressly**  
 9 **specified in the affidavit to establish an articulable basis for a reasonably**  
 10 **prudent person to believe that the affiant is one of the following:**

11 **(i) The lawful mother.**

12 **(ii) The lawful father.**

13 **(iii) The legal guardian.**

14 **(iv) The lawful tutor of the minor.**

15 **(b) A copy of a valid and unexpired driver's license or a government**  
 16 **issued identification card of the individual giving consent on behalf of the**  
 17 **unemancipated minor as provided for in Subparagraph (1)(a) of this**  
 18 **Subsection.**

19 \* \* \*

20 B. The following provisions shall apply to all applications for court orders  
 21 by minors seeking abortions and appeals from denials of applications:

22 \* \* \*

23 (3) \* \* \*

24 (b) \* \* \*

25 (ii) Such evaluation and counseling session shall be for the purpose of  
 26 developing trustworthy and reliable expert opinion concerning the minor's  
 27 sufficiency of knowledge, insight, judgment, and maturity with regard to her abortion  
 28 decision in order to aid the court in its decision and to make the state's resources  
 29 available to the court for this purpose. Persons conducting such sessions ~~may~~ **shall**

1 employ the information and printed materials referred to in R.S. 40:1061.17 in  
2 examining how well the minor interviewed is informed about pregnancy, fetal  
3 development, abortion risks and consequences, the indicators of human  
4 trafficking, and abortion alternatives, and ~~should~~ shall also endeavor to verify that  
5 the minor is seeking an abortion of her own free will and is not acting under  
6 intimidation, threats, abuse, undue pressure, or extortion by any other persons and  
7 is not a victim of a coerced abortion as defined in Children's Code Art. 603.

8 (iii) For purposes of providing screening to protect the safety and well-  
9 being of the minor, such evaluation and counseling session shall also endeavor  
10 to ascertain whether the minor is pregnant as a result of sexual activity  
11 constituting a crime under the laws of this state, or as a result of commercial  
12 sexual exploitation of the minor, and shall inform the minor of resources  
13 available for her protection.

14 (iv) The results of such evaluation and counseling shall be reported to the  
15 court by the most expeditious means, commensurate with security and  
16 confidentiality, to assure receipt by the court prior to or at the ex parte hearing.

17 (4)(a) If the minor has not been interviewed in such evaluation and  
18 counseling session prior to the ex parte hearing, such that the court does not  
19 have the benefit of the required report, then the court may appoint a certified  
20 child advocate attorney to be present with the minor at the ex parte hearing for  
21 the purpose of assisting the minor in communicating to the court whether her  
22 abortion decision is made with sufficient maturity and free and informed  
23 consent, commensurate with the duty of confidentiality. A certified child  
24 advocate attorney shall be given sufficient time on the same day as the ex parte  
25 hearing to review with the minor the information and printed materials  
26 referred to in R.S. 40:1061.17, in evaluating how well the minor is informed  
27 about pregnancy, fetal development, abortion risks and consequences, the  
28 indicators of human trafficking, and abortion alternatives. The certified child  
29 advocate attorney shall also endeavor to assist in the court's determination of

1 whether the minor is seeking the abortion of her own free will and is not acting  
 2 under intimidation, threats, undue pressure, or extortion by other persons, is  
 3 not a victim of coerced abortion as defined in Children's Code Art. 603(9), and  
 4 is not in need of assistance or protective orders if the minor is a victim of  
 5 commercial sexual exploitation as defined in Children's Code Art. 603(9.1), or  
 6 any crime against the child as defined in Children's Code Art. 603(12).

7 (b) If the court, using reasoned judgment and evidentiary evaluation, finds,  
 8 by clear and convincing evidence, that the minor is sufficiently mature and well  
 9 enough informed to make the decision concerning the abortion on her own, **and**  
 10 **further finds that the minor is not a victim of coerced abortion, and is seeking**  
 11 **the abortion of her own free will,** the court shall issue an order authorizing the  
 12 minor to act on the matter without parental consultation or consent.

13 (c) **Whether or not the court authorizes the abortion, if the court finds**  
 14 **by a preponderance of the evidence that the minor is a victim of commercial**  
 15 **sexual exploitation as defined in Children's Code Art. 603(9.1), or any crime**  
 16 **against the child as defined in Children's Code Art. 603(12), the court may issue**  
 17 **any appropriate protective orders or afford the minor the continued services of**  
 18 **a court-appointed special advocate, or both.**

19 \* \* \*

20 **§1061.14.1. Fraudulent interference with parental consent**

21 **A. Any person giving parental consent pursuant to R.S. 40:1061.14(A)(1)**  
 22 **on behalf of a minor on whom an abortion was completed shall be subject to**  
 23 **R.S. 14:70.7 providing penalties for the unlawful production, manufacturing,**  
 24 **distribution or possession of fraudulent documents for identification purposes.**

25 **B. Any employee of a licensed outpatient abortion facility who knowingly**  
 26 **aids and abets a person who is not the mother, father, legal guardian or tutor**  
 27 **of a minor on whom an abortion was performed in the execution or acceptance**  
 28 **of the parental consent requirements as required by R.S. 40:1061.14(A)(1), shall**  
 29 **be subject to the penalties in R.S. 40:1061.29.**

\* \* \*

§1061.19. Records

A. Each physician shall retain and make part of the medical record of each pregnant woman upon whom an abortion is performed or induced, copies of the following:

\* \* \*

(2) ~~The consent form or court order required by R.S. 40:1061.14, if applicable.~~ **If the pregnant woman is an unemancipated minor, one of the following:**

**(a) A notarized consent form and copies of identification as provided for in R.S. 40:1061.14(A)(1).**

**(b) A court order required by R.S. 40:1061.14(B), if applicable.**

\* \* \*

§1061.21. Reports

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

\* \* \*

(5)**(a)** Age of pregnant woman.

**(b) If the pregnant woman is a minor, a notation of whether the abortion was performed pursuant to either notarized parental consent or a judicial bypass order as provided for in R.S. 40:1061.14.**

\* \* \*

Section 2. If any one or more provisions, sections, subsections, sentences, clauses, phrases, or words of this Act or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable in accordance with R.S. 24:175 and the balance of this Act shall remain effective notwithstanding such unconstitutionality. The legislature hereby declares that it would have passed this Act, and each provision, section, subsection, sentence, clause, phrase, or word thereof, irrespective

1 of the fact that any one or more provisions, sections, subsections, sentences, clauses, phrases,  
2 or words be declared unconstitutional.

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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.

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## DIGEST

SB 111 Engrossed

2017 Regular Session

Mizell

Present law requires that, in order for a physician to perform an abortion on a minor who has not been emancipated, either by court order or marriage, the physician or abortion clinic must first receive one of the following:

- (1) A notarized statement from the mother, father, legal guardian, or tutor of the unemancipated minor child declaring that the parent or guardian has been informed that the minor intends to seek an abortion and that the parent or guardian consents to the abortion.
- (2) A court order signed by a judge.

Proposed law retains present law but requires that the notarized statement signed by the mother, father, legal guardian, or tutor of the unemancipated minor shall state whether the parent is the lawful mother, the lawful father, the legal guardian, or the lawful tutor of the minor.

Proposed law retains present law but requires the affiant to provide sufficient evidence of identity that is expressly specified in an affidavit to establish an articulable basis for a reasonably prudent person to believe that the affiant is the lawful mother, lawful father, legal guardian, or lawful tutor giving consent for the minor to obtain an abortion. Proposed law also requires a copy of a valid and unexpired driver's license or a government issued identification card of the individual giving consent on behalf of the minor.

Present law provides that, prior to a court order, an ex parte hearing shall be conducted and the court may require the minor to participate in an evaluation and counseling session with a mental health professional from the Louisiana Department of Health, office of behavioral health, or a staff member from the Department of Children and Family Services, office of children and family services, or both. Present law provides that the court may refer the petitioner, if necessary, to the appropriate Louisiana Department of Health, office of behavioral health regional office to arrange the evaluation and counseling session within the four-day period prior to the ex parte hearing. Present law provides that the referral may be made by the clerk upon the minor's filing the application when the court has issued a standing order authorizing same and the circumstances fit the criteria of the standing order.

Present law provides for an evaluation and counseling session for the purpose of developing trustworthy and reliable expert opinion concerning the minor's sufficiency of knowledge, insight, judgment, and maturity with regard to her abortion decision in order to aid the court in its decision and to make the state's resources available to the court for this purpose. Present law provides that the persons conducting such sessions may employ the information and printed materials referred to in the "Woman's Right To Know" booklet and will examine how well the minor interviewed is informed about pregnancy, fetal development, abortion risks and consequences, and abortion alternatives, and should also endeavor to verify that the minor is seeking an abortion of her own free will and is not acting under intimidation, threats, abuse, undue pressure, or extortion by any other persons.

Proposed law retains present law but changes the permissive provisions to mandatory and

requires that the evaluation and counseling session endeavor to ascertain whether the minor is the subject of a coerced abortion or the pregnancy is the result of sexual activity constituting a crime under the laws of this state or the result of commercial sexual exploitation of the minor child. Proposed law requires the person conducting the counseling session to examine how well the minor is informed on the indicators of human trafficking and to inform the minor of resources available for her protection.

Proposed law provides that if the minor has not been interviewed prior to the court hearing, the court may appoint a certified child advocate attorney to be with the minor at the hearing and assist the minor in communicating to the court whether her abortion decision was made with sufficient maturity and free and informed consent. Proposed law provides that the certified child advocate attorney shall endeavor to assist the court in determining whether the minor is seeking the abortion of her own free will and is not acting under intimidation, threat, pressure, or extortion by other persons.

Proposed law provides that whether or not the court authorizes the abortion, if the court finds by a preponderance of the evidence that the minor is a victim of commercial sexual exploitation or any crime against the child, the court may issue any appropriate protective orders or afford the minor the continued services of a court-appointed special advocate, or both.

Proposed law provides that any person giving parental consent on behalf of a minor on whom an abortion was completed shall be subject to penalties for the unlawful production, manufacturing, distribution or possession of fraudulent documents for identification purposes. Proposed law provides that any employee of a licensed outpatient abortion facility who knowingly aids and abets a person who is not the mother, father, legal guardian or tutor of a minor on whom an abortion was performed in the execution or acceptance of the parental consent requirements shall be subject to the penalties.

Present law provides that each physician shall retain and make part of the medical record of each pregnant woman upon whom an abortion is performed or induced certain documents, including a notarized consent form for the abortion or a copy of the court order.

Proposed law retains present law but provides that the physician also maintain a copy of the valid and unexpired driver's license or government issued identification card of the individual giving parental consent on behalf of the minor for the abortion.

Present law requires the physician performing an abortion to complete an individual abortion report. Proposed law requires a notation of whether the abortion was performed pursuant to either notarized parental consent or a judicial bypass order if the pregnant woman is a minor.

Proposed law provides that in accordance with present law relative to severability (R.S. 24:175), if any provision or item of proposed law or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of proposed law shall remain effective notwithstanding such unconstitutionality. Provides a declaration indicating that the legislature would have passed proposed law, and each provision, section, subsection, sentence, clause, phrase, or word thereof, irrespective of the fact that any provision or item be declared unconstitutional.

Effective August 1, 2017.

(Amends R.S. 40:1061.14(A)(intro para) and (A)(1) and (B)(3)(b)(ii) and (iii) and (4), 1061.19(A)(2), and 1061.21(A)(5); adds R.S. 40:1061.14(B)(3)(b)(iv) and 1061.14.1)

Summary of Amendments Adopted by SenateCommittee Amendments Proposed by Senate Committee on Health and Welfare to the original bill

1. Clarifies that the person alleging to be the lawful mother, lawful father, legal guardian, or lawful tutor giving consent for the minor to obtain an abortion shall provide sufficient evidence of identity that is expressly specified in an affidavit to establish an articulable basis for a reasonably prudent person to believe that the affiant is the person they purport to be in the affidavit.
2. Restores present law which grants courts permissive authority to require a minor to participate in an evaluation and counseling session.
3. Adds a requirement that during an interview, the person conducting the interview must examine how well the minor is informed about the indicators of human trafficking.
4. Clarifies that the evaluation of the minor is to provide a screening to protect the safety and well-being of the minor and that part of the evaluation is to inform the minor of resources available for her protection.
5. Adds provisions that in the event that the minor has not been interviewed prior to the court hearing, the court may appoint a certified child advocate attorney to be with the minor at the hearing and assist the minor in communicating to the court whether her abortion decision was made with sufficient maturity and free and informed consent.
6. Adds provisions that the certified child advocate attorney shall endeavor to assist the court in determining whether the minor is seeking the abortion of her own free will and is not acting under intimidation, threat, pressure, or extortion by other persons.
7. Adds provisions that whether or not the court authorizes the abortion, if the court finds by a preponderance of the evidence that the minor is a victim of commercial sexual exploitation or any crime against the child, the court may issue any appropriate protective orders or afford the minor the continued services of a court-appointed special advocate, or both.
8. Establishes penalties for any person giving parental consent on behalf of a minor on whom an abortion was completed for the unlawful production, manufacturing, distribution or possession of fraudulent documents for identification purposes and penalties for any employee of a licensed outpatient abortion facility who knowingly aids and abets a person who is not the mother, father, legal guardian or tutor of a minor on whom an abortion was performed in the execution or acceptance of the parental consent requirements.
9. Requires the physician performing the abortion to include a notarized consent form and copies of required identification or a court order in the patient's medical record.
10. Requires the physician performing the abortion to include a notation of whether the abortion was performed pursuant to either notarized parental consent or a judicial bypass order if the pregnant woman is a minor in the individual abortion report.



11. Adds a severability clause.
12. Makes technical corrections.