

2018 Regular Session

HOUSE BILL NO. 891 (Substitute for House Bill No. 338 by Representative Hoffmann)

BY REPRESENTATIVES HOFFMANN, ABRAHAM, AMEDEE, BACALA, BAGLEY, BAGNERIS, BARRAS, BERTHELOT, BILLIOT, CHAD BROWN, TERRY BROWN, CARMODY, CARPENTER, STEVE CARTER, CHANEY, CONNICK, COUSSAN, COX, CREWS, CROMER, DANAHAY, DAVIS, DEVILLIER, DWIGHT, EDMONDS, EMERSON, FALCONER, GAROFALO, GISCLAIR, GUINN, HENSGENS, HILFERTY, HODGES, HORTON, HOWARD, IVEY, JACKSON, JOHNSON, NANCY LANDRY, LEBAS, MAGEE, MIGUEZ, PIERRE, POPE, PYLANT, REYNOLDS, RICHARD, SCHEXNAYDER, SIMON, STAGNI, STOKES, THOMAS, WHITE, WRIGHT, AND ZERINGUE AND SENATORS ERDEY, MILLS, AND THOMPSON

1 AN ACT

2 To amend and reenact R.S. 36:21(B) and R.S. 40:1061.6(A)(2) and 2175.4(B), relative to
3 a prohibition on public funding for entities that perform abortions; to provide for
4 applicability of and exceptions to the prohibition; to provide relative to the validity
5 of outpatient abortion facility licenses; to provide for legislative findings; to provide
6 for the redesignation of certain statutes; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 36:21(B) is hereby amended and reenacted to read as follows:

9 §21. Public funding for abortion providers; prohibition

10 * * *

11 B.(1) ~~No institution, board, commission, department, agency, official, or~~
12 ~~employee of the state, or of any local political subdivision thereof, shall contract~~
13 ~~with, award any grant to, or otherwise bestow any funding upon, an entity or~~
14 ~~organization that performs abortions, or that contracts with an entity or organization~~

1 ~~that performs abortions, in this state. The prohibition provided in this Section shall~~
2 ~~apply to state funds, federal funds, and any other funds that may be used for purposes~~
3 ~~of contracting for services, providing reimbursements, or grant issuance. The~~
4 Louisiana Department of Health shall not enter into any provider agreement for
5 medical assistance program funding, as defined in R.S. 46:437.3, with any healthcare
6 provider, entity, or organization that does any of the following:

7 (a) Performs abortions in this state.

8 (b) Provides its own facilities where reimbursable medical assistance
9 program services are performed for the use of another healthcare provider, entity, or
10 organization for the purpose of performing abortions in this state.

11 (c) Hires or retains another healthcare provider, entity, or organization for
12 the purpose of performing abortions in this state.

13 (d) Provides reimbursable medical assistance program services in the same
14 physical facility as a licensed outpatient abortion facility.

15 (2)(a) The prohibition provided in this Section shall apply to state funds,
16 federal funds, and any other public funds administered by the Louisiana Department
17 of Health through a medical assistance program provider agreement. In the instance
18 that a state or federal funding grant is denied to a healthcare provider, entity, or
19 organization under this Section, such grant shall be redirected to qualified providers
20 in the same geographical region as the healthcare provider, entity, or organization
21 that was disqualified from such grant.

22 (b) For purposes of this Paragraph, "medical assistance program" and
23 "provider agreement" shall have the meaning ascribed in R.S. 46:437.3.

24 (3) The prohibition provided in this Section shall not be construed to prohibit
25 provision of public protections, such as fire, police, or emergency medical services,
26 public utilities, or other such services to any entity or organization in the same
27 manner as provided to the general public.

28 (4) The prohibition in this Section shall not be construed to restrict funding
29 to an entity that may ~~perform~~ be engaged in performing the following types of

1 abortions, exclusively, provided such abortions are performed in accordance with
2 applicable state and federal laws:

3 (a) An abortion which is medically necessary to prevent the death of the
4 mother.

5 (b) An abortion in a case when the mother is a victim of rape or incest.

6 (c) An abortion performed when the pregnancy is diagnosed as medically
7 futile. For purposes of this Subparagraph, "medically futile" means that, in
8 reasonable medical judgment, the unborn child has a profound and irremediable
9 congenital or chromosomal anomaly that is incompatible with sustaining life after
10 birth. This diagnosis shall be a medical judgment certified in the pregnant woman's
11 medical record by a reasonably prudent physician who is knowledgeable about the
12 case and the treatment possibilities with respect to the medical conditions involved.

13 Section 2. R.S. 40:1061.6(A)(2) and 2175.4(B) are hereby amended and reenacted
14 to read as follows:

15 §1061.6. Use of public funds

16 A.

17 * * *

18 (2)(a) As more specifically provided in R.S. 49:200.51, No institution, board,
19 commission, department, agency, official, or employee of the state, or of any local
20 political subdivision thereof, shall contract with, award any grant to, or otherwise
21 bestow any funding upon, an entity or organization that performs abortions, or that
22 contracts with an entity or organization that performs abortions, in this state, as more
23 specifically provided in Chapter 1-A of Title 36 of the Louisiana Revised Statutes
24 of 1950: the Louisiana Department of Health shall not enter into any provider
25 agreement for medical assistance program funding, as defined in R.S. 46:437.3, with
26 any healthcare provider, entity, or organization that does any of the following:

27 (i) Performs abortions in this state.

28 (ii) Provides its own facilities where reimbursable medical assistance
29 program services are performed for the use of another healthcare provider, entity, or
30 organization for the purpose of performing abortions in this state.

1 (iii) It is the longstanding policy of this state to "express a preference for childbirth
2 over abortion", *Planned Parenthood v. Casey*, 505 U.S. 833, 883 (1992); see also R.S.
3 40:1061.8., because, as the U.S. Supreme Court has made clear, abortion is a "unique act",
4 *Casey*, 505 U.S. at 852, that is "inherently different from other medical procedures", *Harris*
5 *v. McRae*, 448 U.S. 297, 325 (1980), because in abortion "the fetus will be killed". *Gonzales*
6 *v. Carhart*, 550 U.S. 124, 159 (2007). The procedure is also unique because of the impact
7 of the abortion on the woman herself. *Id.* at 159 ("Whether to have an abortion requires a
8 difficult and painful moral decision which some women come to regret").

9 (iv) It is a well-established principle recognized by the United States Supreme Court
10 that government need not be neutral between abortion providers and other medical providers
11 in the context of governmental decisions regarding the use of public funds. See *Harris v.*
12 *McRae*, 448 U.S. 297, 316 (1980) ("...it simply does not follow that a woman's freedom of
13 choice carries with it a constitutional entitlement to the financial resources to avail herself
14 of the full range of protected choices").

15 (B) Based on these findings, it is the purpose and intent of the legislature to set
16 reasonable standards for the fiscal integrity qualifications of medical assistance program
17 providers in accordance with federal and state laws, rules, and regulations concerning
18 appropriation and expenditure of public funding.

19 Section 4. Any provision of this Act held to be invalid or unenforceable by its terms,
20 or as applied to any person or circumstance, shall be construed so as to give it the maximum
21 effect permitted by law, unless such holding is one of utter invalidity or unenforceability,
22 in which event such provision shall be deemed severable in accordance with R.S. 24:175,
23 and shall not affect the remainder hereof or the application of such provision to other persons
24 not similarly situated or to other dissimilar circumstances.

25 Section 5. The Louisiana State Law Institute is hereby directed to redesignate
26 Chapter 1-A of Title 36 of the Louisiana Revised Statutes of 1950, comprised of R.S. 36:21,
27 as amended by Section 1 of this Act, as Chapter 1-A of Title 49 of the Louisiana Revised
28 Statutes of 1950, to be comprised of R.S. 49:200.51, and to retain the heading of the Chapter.

1 Section 6. This Act shall become effective thirty days after the date upon which an
2 Act of Congress or administrative action by the Centers for Medicare and Medicaid Services
3 or other federal regulation authorizes this state to condition funding provided through
4 medical assistance program provider agreements to a potential recipient based upon the
5 provider's status as an abortion provider as specified in this Act.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____