

2019 Regular Session

SENATE BILL NO. 238 (Substitute of Senate Bill No. 205 by Senator Mizell)

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

LAW ENFORCEMENT. Provides for abortion clinic employees to be mandatory reporters of human trafficking and certain sexual based crimes to law enforcement and provides for the additional postings of the National Human Trafficking Resource Center hotline information. (8/1/19)

1 AN ACT

2 To amend and reenact Children's Code Art. 603(17)(a), and R.S. 15:541.1(A)(3), (B)(1)(a)

3 and (D), R.S. 40:2175.3 and R.S. 44:4.1(B)(26) and to enact R.S. 15:541(E) and R.S.

4 40:2175.7, relative to human trafficking; to require certain mandatory reporters to

5 report human trafficking and certain sexual-based crimes to law enforcement,

6 whether the victim is an adult or a minor; to provide for mandatory reporters related

7 to child abuse and neglect; to provide for training; to provide for forms; to provide

8 for rules and regulations; to provide for legislative intent; to provide for the posting

9 of the National Human Trafficking Resource Center hotline; to provide for the

10 texting of information to obtain help and services for human trafficking victims; to

11 provide for exceptions to the public records law; and to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. Children Code Art. 603(17)(a) is hereby amended and reenacted to read
14 as follows:

15 Art. 603. Definitions

16 As used in this Title:

17 * * *

1 (17) "Mandatory reporter" is any of the following individuals:

2 (a) "Health practitioner" is any individual who provides healthcare services,
3 including a physician, surgeon, physical therapist, dentist, resident, intern, hospital
4 staff member, an outpatient abortion facility staff member, podiatrist,
5 chiropractor, licensed nurse, nursing aide, dental hygienist, any emergency medical
6 technician, a paramedic, optometrist, medical examiner, or coroner, who diagnoses,
7 examines, or treats a child or his family.

8 * * *

9 Section 2. R.S. 15:541.1(A)(3), (B)(1)(a) and (D) and to enact R.S. 15:541(E) are
10 hereby enacted to read as follows:

11 §541.1. Posting of the National Human Trafficking Resource Center hotline;
12 content; languages; notice; civil penalty

13 A. All of the following establishments shall be required to post information
14 regarding the National Human Trafficking Resource Center hotline:

15 * * *

16 (3)(a) Every full-service fuel facility adjacent to an interstate highway.

17 (b) ~~or~~ Every highway rest stop.

18 * * *

19 B.(1)(a) Such posting shall be no smaller than eight and one-half inches by
20 eleven inches and shall contain the following wording in bold typed print of not less
21 than fourteen-point font:

22 "If you or someone you know is being forced to engage in any activity and
23 cannot leave, whether it is commercial sex, housework, farm work, or any other
24 activity, call the National Human Trafficking Resource Center hotline at 1-888-373-
25 7888 or text "Help" to 233733 (Be Free) in order to access help and services.

26 * * *

27 D.(1) In addition to the posting required in Subsection B of this Section,
28 beginning on January 1, 2020, each establishment listed in Subsection A of this
29 Section shall affix a flyer to the inside of the door to each bathroom stall at the

1 establishment.

2 (2) The flyer shall be designed by the Greater New Orleans Human
3 Trafficking Task Force, with the approval of the commissioner of the office of
4 alcohol and tobacco control, and shall be no larger than eight and one-half
5 inches by eleven inches.

6 (3) No later than December 1, 2019, the Greater New Orleans Human
7 Trafficking Task Force shall transfer the flyer in an electronic format to the
8 commissioner for posting on the website for the office of alcohol and tobacco.

9 E. A civil penalty in accordance with R.S. 26:96(A) may be assessed for
10 each violation of this Section. The departments listed in Subsection C of this Section
11 or any law enforcement agency with jurisdiction are charged with the enforcement
12 of this Section.

13 * * *

14 Section 3. R.S. 40:2175.3 is hereby amended and reenacted and R.S. 40:2175.7 is
15 hereby enacted to read as follows:

16 §2175.3. Definitions

17 For purposes of this Part, the following definitions apply:

18 (1) "Abortion" means any surgical procedure performed after pregnancy has
19 been medically verified with the intent to cause the termination of the pregnancy
20 other than for the purpose of producing a live birth, removing an ectopic pregnancy,
21 or removing a dead fetus caused by a spontaneous abortion.

22 (2) "Abortion facility staff member" or "outpatient abortion facility staff
23 member" means an individual who is not an abortion facility professional but
24 who is employed by or contracts with an outpatient abortion facility to provide
25 services and who has any contact with patients at the facility.

26 (3) "Abortion facility professional" or "outpatient abortion facility
27 professional" means an individual who is a physician, surgeon, resident, intern,
28 licensed nurse, nursing aide, emergency medical technician, or a paramedic who
29 diagnoses, examines, or treats a female patient at an outpatient abortion facility.

1 ~~(4)~~ "First trimester" means the time period up to fourteen weeks after the first
2 day of the last menstrual period.

3 ~~(3)~~~~(5)~~ "Licensee" means the person, partnership, corporation, association,
4 organization, or professional entity on whom rests the ultimate responsibility and
5 authority for the conduct of the outpatient abortion facility.

6 ~~(4)~~~~(6)~~ "Licensing agency" means the Louisiana Department of Health.

7 **(7) "Mandatory reporter to law enforcement" means any abortion**
8 **facility staff member or any abortion facility professional.**

9 ~~(5)~~~~(8)~~ "Outpatient abortion facility" means any outpatient facility, other than
10 a hospital as defined in R.S. 40:2102 or an ambulatory surgical center as defined in
11 R.S. 40:2133, in which any second trimester or five or more first trimester abortions
12 per calendar year are performed.

13 ~~(6)~~~~(9)~~ "Second trimester" means the time period from fourteen to twenty-
14 three weeks after the first day of the last menstrual period.

15 ~~(7)~~~~(10)~~ "Secretary" means the secretary of the Louisiana Department of
16 Health.

17 * * *

18 **§2175.7. Mandatory reports to law enforcement; human trafficking awareness**
19 **and prevention training**

20 **A.(1) Notwithstanding any claim of privileged communication, any**
21 **mandatory reporter to law enforcement who has cause to believe that a minor**
22 **or adult female who presents at an outpatient abortion facility is a victim of**
23 **human trafficking, trafficking of children for sexual purposes, rape, incest, or**
24 **coerced abortion shall report such crime immediately, or no later than the end**
25 **of the business day, to the sheriff's department in the parish or local police**
26 **department where the outpatient abortion facility is located. If the victim does**
27 **not reside in the parish where the outpatient abortion facility is located, the**
28 **mandatory reporter to law enforcement shall also report the crime to the law**
29 **enforcement agency in the parish or county in which the victim resides, if**

1 reasonably ascertainable.

2 (2) The Department of Health shall promulgate a form which may be
3 used by a mandatory reporter to law enforcement to report a crime, pursuant
4 to Paragraph (1) of this Subsection, to the parish or local law enforcement
5 agency.

6 B.(1) Beginning August 1, 2019, every mandatory reporter to law
7 enforcement shall certify to the Department of Health that they have
8 participated in a training on human trafficking awareness and prevention on
9 an annual basis.

10 (2) The Department of Health shall promulgate rules to provide for
11 compliance of this Subsection utilizing the online educational videos on human
12 trafficking awareness and prevention provided by the United States Department
13 of Health and Human Services, Administration for Children and Families,
14 office on trafficking in persons or such training tools as may be adopted by the
15 department.

16 Section 4. R.S. 44:4.1(B)(26) is hereby amended and reenacted to read as follows:

17 §4.1. Exceptions

18 * * *

19 B. The legislature further recognizes that there exist exceptions, exemptions,
20 and limitations to the laws pertaining to public records throughout the revised
21 statutes and codes of this state. Therefore, the following exceptions, exemptions, and
22 limitations are hereby continued in effect by incorporation into this Chapter by
23 citation:

24 * * *

25 (26) R.S. 40:3.1, 31.14, 31.27, 39.1, 41, 73, 95, 96, 526, 528, 1007, 1061.21,
26 1079.18, 1081.10, 1105.6, 1105.8, 1133.8, 1171.4, 1203.4, 1231.4, 1379.1.1(D),
27 1379.3, 2009.8, 2009.14, 2010.5, 2017.9, 2018, 2018.5, 2019, 2020, 2106, 2138,
28 **2175.7(B)(1)**, 2532, 2845.1

29 * * *

1 Section 5. The legislature finds and declares all of the following:

2 (1) Human trafficking is a major public health problem.

3 (2) Outpatient abortion facilities are uniquely likely to have contact with victims
4 who are the subject of human trafficking for sexual purposes.

5 Section 6. If any provision or item of this Act, or the application thereof, is held
6 invalid, such invalidity shall not affect other provisions, items, or applications of the Act
7 which can be given effect without the invalid provision, item, or application and to this end
8 the provisions of this Act are hereby declared severable.

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 Ann S. Brown.

DIGEST

SB 238 Reengrossed

2019 Regular Session

Mizell

Present law (Children's Code 610) provides that, notwithstanding any claim of privileged communication, any mandatory reporter who has cause to believe that a child's physical or mental health or welfare is endangered as a result of abuse or neglect or that abuse or neglect was a contributing factor in a child's death shall report the matter to the Dept. of Children and Family Services or law enforcement.

Present law (Children's Code 603) provides that the mandatory reporters of child abuse and neglect are the following individuals: healthcare practitioners, mental health/social service practitioners, members of the clergy including any priest, rabbi, duly ordained clerical deacon or minister, Christian Science practitioner, teachers or child care providers including teacher's aides, instructional aides, school principal, school staff members, bus drivers, coaches, professors, vocational instructors, technical or vocational school staff members, or college or university administrators and staff members, social workers, probation officers, foster home parents, group home or other child care institutional staff members, personnel of residential home facilities, licensed or unlicensed day care providers, or any individual who provides such services to a child in a voluntary or professional capacity, police officers, commercial film and photographic print processors, court authorized mediators, CASA volunteers, youth activity workers or day camp, summer camp, youth center, or youth recreation program staffers, and school coaches.

Present law (Children's Code 603) defines "health practitioner" to include hospital staff member.

Proposed law retains present law and adds "abortion facility staff member" to the list of healthcare staff members who are mandatory reporters of child abuse or neglect.

Present law (Children's Code 603 and 610) provides that the Dept. of Children and Family Services may conduct an investigation if the alleged perpetrator is a caretaker. Present law (Children's Code 603) defines "caretaker" as any person legally obligated to provide or secure adequate care for a child, including a parent, tutor, guardian, legal custodian, foster home parent, an employee of a public or private day care center, an operator or employee of a registered family child day care home, or other person providing a residence for the child. Present law (Children's Code 610) provides that "caretaker" does not include dating partners, spouse of the parent, or anyone not living at the residence of the child and,

therefore the Dept. of Children and Family Services does not have jurisdiction to open an investigation into a child in need of care case where the alleged perpetrator is not a caretaker.

Proposed law retains present law and requires abortion facility professionals and abortion facility staff members to report crimes of human trafficking, trafficking of children for sexual purposes, rape, incest, or coerced abortion to law enforcement, whether the victim is a minor child or an adult. Requires that the report be made immediately not later than the end of the business day. Proposed law defines "abortion facility professional" or "outpatient abortion facility professional" as an individual who is a physician, surgeon, resident, intern, licensed nurse, nursing aide, emergency medical technician, or a paramedic who diagnoses, examines, or treats a female patient at an outpatient abortion facility. Proposed law defines "abortion facility staff member" or "outpatient abortion facility staff member" as an individual who is not an abortion facility professional but who is employed by or contracts with an outpatient abortion facility to provide services and who has any contact with patients at the facility.

Proposed law provides that the Dept. of Health shall promulgate a form which may be used by a mandatory reporter to law enforcement to report a crime of human trafficking, trafficking of children for sexual purposes, rape, incest, or coerced abortion to the sheriff's department in the parish or to the local police department where the outpatient abortion facility is located.

Proposed law provides that beginning Aug. 1, 2019, every mandatory reporter to law enforcement shall certify to the Dept. of Health that they have participated in training on human trafficking awareness and prevention on an annual basis. Proposed law provides that the Dept. of Health shall promulgate rules to provide for compliance with the training requirement in proposed law utilizing the online educational videos on human trafficking awareness and prevention provided by the U.S. Dept. of Health and Human Services, Administration for Children and Families, Office on Trafficking in Persons.

Present law requires information regarding the National Human Trafficking Resource Center Hotline to be posted in certain establishments.

Present law requires the notice to meet certain size, font, and language requirements to be set by the commissioner of the Alcohol Tobacco Control (ATC) and the applicable phone number to be included in the notice.

Proposed law retains present law and requires that the notice also include the ability to text "Help" to 233733 (Be Free) in order to access help and services.

Proposed law provides that, in addition to the posting required in present law, beginning on Jan. 1, 2020, each establishment required to post information shall affix a flyer to the inside of the door to each bathroom stall at the establishment. Proposed law provides that the flyer will be designed by the Greater New Orleans Human Trafficking Task Force, with the approval of the ATC commissioner, and shall be no larger than 8 ½ by 11. Proposed law provides that no later than Dec. 1, 2019, the Greater New Orleans Human Trafficking Task Force shall transfer the flyer in an electronic format to the ATC commissioner for posting on the ATC's website.

Effective August 1, 2019.

(Amends Ch. C. Art. 603(17)(a), RS. 15:541.1(A)(3), (B)(1)(a) and (D) and R.S. 40:2175.3, R.S. 44:4.1(B)(26); adds R.S. 15:541(E) and R.S. 40:2175.7)

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Provides an exceptions to the public records law for mandatory reporter to law enforcement.
2. Adds provision that a mandatory reporter report a crime immediately or no later than the end of the business day to law enforcement.
3. Clarifies certain definitions.
4. Changes the text instructions for the National Human Trafficking Resource Center hotline.
5. Sets a start date of 8/1/2019 for mandatory reporter to certify training participation to law enforcement.
6. Technical corrections.