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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Alden A. Clement Jr.

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SB 184 Engrossed

DIGEST  
2019 Regular Session

Milkovich

Proposed law provides that it is unlawful for any person to knowingly perform an abortion with the specific intent of causing or abetting the termination of the life of an unborn human being when a fetal heartbeat has been detected.

Proposed law provides that a person is not in violation of proposed law under either of the following circumstances, but must note in the pregnant woman's medical records which of the exceptions the person performing the abortion has invoked:

- (1) The person performs a medical procedure designed to or intended, in that person's reasonable medical judgment, to prevent the death of a pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman. The person must declare in writing, under penalty of perjury, that the medical procedure was necessary, to the best of that person's reasonable medical judgment, to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman. The person must also provide in that written statement the specific medical condition of the pregnant woman that the medical procedure was performed to address, and the medical rationale for the conclusion that the medical procedure was necessary to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman. The written documentation required by proposed law must be placed in the pregnant woman's medical records, and a copy maintained for at least seven years.
- (2) The person has performed an examination for the presence of a fetal heartbeat in the unborn human individual using standard medical practice and that examination does not reveal a fetal heartbeat, or the person has been informed by a physician who has performed the examination for a fetal heartbeat that the examination did not reveal a fetal heartbeat.

Proposed law provides that for purposes of proposed law, "abortion" does not include an abortion performed when the pregnancy is diagnosed as "medically futile."

Proposed law provides the following definitions:

- (1) "Fetal heartbeat" means cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.
- (2) "Physician" means an individual licensed by the Louisiana State Board of Medical Examiners.

- (3) "Unborn human being" means an individual living member of the species Homo sapiens throughout the entire embryonic and fetal stages, from fertilization through full gestation and birth.
- (4) "Medically futile" means that, in reasonable medical judgment, the unborn child has a profound and irremediable congenital or chromosomal anomaly that is incompatible with sustaining life after birth. This diagnosis is to be a medical judgment certified in the pregnant woman's medical record by a reasonably prudent physician who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved."

Proposed law provides that whoever violates the provisions of proposed law is to be prosecuted pursuant to the effective provisions of present law relative to criminal abortion and is to be fined up to \$1,000 per incidence or occurrence, or imprisoned for up to two years, or both, in accordance with the penalties contained in present law relative to unlawful abortion.

Proposed law provides that, in addition to any other grounds provided by law, it will be grounds for the nonissuance, suspension, revocation, or restriction of a license, or the denial of reinstatement or renewal of a license, issued by the Louisiana State Board of Medical Examiners, that the applicant or licensee has performed an abortion in violation of proposed law.

Proposed law provides that proposed law cannot be construed to repeal any other provision of present law that restricts or regulates the performance of an abortion by a particular method or during a particular stage of a pregnancy.

Proposed law provides that the provisions of proposed law are repealed in favor of the provisions of present law banning all elective abortions immediately upon and to the extent that either:

- (1) A decision of the U.S. Supreme Court upholds the authority of each of the several states of the United States or Louisiana to prohibit elective abortions.
- (2) An amendment to the U.S. Constitution is adopted that restores to each of the several states of the United States or to Louisiana the authority to prohibit elective abortions.

Effective upon a final decision of the U.S. Court of Appeals for the 5<sup>th</sup> Circuit upholding the Act that originated as Senate Bill 2116 of the 2019 Regular Session of the Mississippi Legislature, which decision would provide the authority for a state within the jurisdiction of that court to restrict abortion as provided in proposed law.

(Adds R.S. 40:1061.1.3)

#### Summary of Amendments Adopted by Senate

#### Committee Amendments Proposed by Senate Committee on Judiciary C to the original bill

1. Adds exception to proposed law for "medically futile" pregnancies and define "medically futile."
2. Changes effectiveness of proposed law from governor's signature to final decision of 5<sup>th</sup> Circuit Court of Appeals upholding Mississippi "heartbeat" law.