

SENATE BILL NO. 221

BY SENATORS MIZELL, ALARIO, ALLAIN, APPEL, BARROW, CHABERT, CLAITOR, CORTEZ, DONAHUE, ERDEY, FANNIN, GATTI, HEWITT, JOHNS, LONG, MARTINY, MILKOVICH, MILLS, MORRISH, PEACOCK, RISER, JOHN SMITH, TARVER, THOMPSON, WALSWORTH, WARD AND WHITE AND REPRESENTATIVES BAGLEY, CHANEY, COX, EDMONDS, HOFFMANN, LEBAS, MCMAHEN, MOORE, POPE AND TURNER

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

AN ACT

To amend and reenact R.S. 40:1061.17(B)(3), relative to regulation of abortion; to provide for a woman's informed consent in an abortion proceeding; to provide for certain written information to be given to a woman seeking an abortion; to require certain oral information to be given to a woman seeking an abortion; to provide for certain information necessary to assess the qualifications of the facility and the physician who will perform the abortion; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 40:1061.17(B)(3) is hereby amended and reenacted to read as follows:

§1061.17. Woman's right to know

* * *

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

* * *

(3)(a) ~~Oral~~ **Written** information from the physician. Except as provided in Subparagraph ~~(b)~~(c) of this Paragraph, at least seventy-two hours before the abortion, the physician who is to perform the abortion or the referring physician has informed the woman, **in writing and read** orally and in person of:

(i) The name of the physician who meets the requirements of R.S.

1 46:1061.10(A) and who will perform the abortion, **which shall be listed in the same**
2 **manner as the name appears on the membership roll of the Louisiana State**
3 **Board of Medical Examiners.**

4 **(ii) The location and specialty of the physician's residency and whether**
5 **the residency of the physician has been completed.**

6 **(iii) Whether the physician is currently board certified and, if so, the**
7 **medical specialty and the certifying organization.**

8 **(iv) Whether the physician has active admitting privileges at any hospital**
9 **that provides obstetrical or gynecological healthcare services and, if so, the**
10 **name of the hospital or hospitals. For purposes of this Subparagraph, "active**
11 **admitting privileges" means that the physician is a member in good standing of**
12 **the medical staff of a hospital that is currently licensed by the Department of**
13 **Health, with the ability to admit a patient and to provide diagnostic and surgical**
14 **services to such patient.**

15 **(v) Whether the physician has malpractice insurance that would cover**
16 **the abortion procedure.**

17 **(vi) Whether in the last ten years the physician has ever been placed on**
18 **probation, reprimanded, or had his license suspended or revoked by any**
19 **professional licensing organization and, if so, the jurisdiction in which the**
20 **professional discipline was ordered. For purposes of this Subsection, the**
21 **professional discipline action must be disclosed even if it was stayed or**
22 **suspended. Disclosure of disciplinary action shall include but not be limited to**
23 **action taken by the Louisiana State Board of Medical Examiners and the**
24 **Louisiana Board of Pharmacy.**

25 **(vii) The Internet address for disciplinary records of the Louisiana**
26 **Board of Medical Examiners.**

27 **(b) Oral information from the physician. Except as provided in**
28 **Subparagraph (c) of this Paragraph, and in the same period of time provided**
29 **for in the introductory paragraph of Subparagraph (a) of this Paragraph, the**
30 **physician who is to perform the abortion or the referring physician has**

1 **informed the woman, orally and in person of:**

2 ~~(ii)~~**(i)** A description of the proposed abortion method and of those risks
3 (including risks to the woman's reproductive health) and alternatives to the abortion
4 that a reasonable patient would consider material to the decision of whether or not
5 to undergo the abortion.

6 ~~(iii)~~**(ii)** The probable gestational age of the unborn child at the time the
7 abortion is to be performed; and, if the unborn child is viable or has reached the
8 gestational age of twenty-four weeks and the abortion may be otherwise lawfully
9 performed under existing law, that:

10 (aa) The unborn child may be able to survive outside the womb.

11 (bb) The woman has the right to request the physician to use the method of
12 abortion that is most likely to preserve the life of the unborn child.

13 (cc) If the unborn child is born alive, that attending physicians have the legal
14 obligation to take all reasonable steps necessary to maintain the life and health of the
15 child.

16 ~~(iv)~~**(iii)** The probable anatomical and physiological characteristics of the
17 unborn child at the time the abortion is to be performed.

18 ~~(v)~~**(iv)** The medical risks associated with carrying her child to term.

19 ~~(vi)~~**(v)** Any need for anti-Rh immune globulin therapy, if she is Rh negative,
20 the likely consequences of refusing such therapy, and a good faith estimate of the
21 cost of the therapy.

22 ~~(vii)~~**(vi)** The availability of anesthesia or analgesics to alleviate or eliminate
23 organic pain to the unborn child that could be caused by the method of abortion to
24 be employed.

25 ~~(viii)~~**(vii)** The requirement that at least seventy-two hours prior to the
26 woman's having any part of an abortion performed or induced, the physician,
27 referring physician, or qualified person working in conjunction with either physician
28 must perform an obstetric ultrasound under the provisions of R.S. 40:1061.10.

29 ~~(ix)~~**(viii)** The inclusion in her printed materials of a comprehensive list,
30 compiled by the department, of facilities that offer obstetric ultrasounds free of

1 charge.

2 ~~(b)~~**(c)** If the woman certifies in writing that she currently lives one hundred
3 fifty miles or more from the nearest licensed outpatient abortion facility to her
4 residence, then the physician who is to perform the abortion or the referring
5 physician shall comply with all of the requirements of Subparagraph (a) **and (b)** of
6 this Paragraph at least twenty-four hours prior to the abortion.

7 * * *

8 **Section 2. In addition to the legislative finding provided for in R.S.**
9 **40:1061.1(A), the legislature further finds and declares all of the following:**

10 **(1) Louisiana patients considering a medical procedure customarily rely upon**
11 **the qualifications and background information of the physician who would potentially**
12 **perform the patient's procedure. Such information is relevant and necessary to**
13 **determine all of the following: (a) whether the patient should undergo the procedure**
14 **and whether the benefits outweigh the risk of complications, (b) the risks to which the**
15 **patient is exposed, and (c) the patient's choice of physician. Many patients research**
16 **particular physicians before deciding whether to undergo a procedure, or in the course**
17 **of choosing the physician who will perform it and the facility where it will be**
18 **performed.**

19 **(2) Louisiana physicians commonly make information about their background**
20 **and qualifications available to current and potential patients and by also posting such**
21 **information on the physicians' internet websites for their medical practices. The**
22 **widespread availability of physician information improves the market for medical**
23 **services in Louisiana by enabling informed decisions to be made by patients and by**
24 **encouraging physicians and medical facilities to maintain high professional standards.**
25 **Such disclosures regarding physician qualifications are in the public's best interest.**

26 **(3) Abortion carries the known risk of serious complications for the mother**
27 **including infection, injury, hemorrhaging, sepsis, permanent loss of childbearing**
28 **capacity, and death. Such risks are documented as occurring in Louisiana as a result**
29 **of procedures at Louisiana abortion clinics.**

30 **(4) Louisiana outpatient abortion facilities do not publicly disclose the identities**

1 and professional qualifications of physicians who perform abortions there. Unlike other
2 Louisiana medical practices, outpatient abortion facilities do not customarily post the
3 identities or qualifications of their physicians on their internet websites; therefore,
4 women considering an abortion may have difficulty obtaining information about an
5 abortion facility's doctors before the woman's first appointment before the abortion
6 procedure.

7 (5) Louisiana has a long history of outpatient abortion facilities operated by
8 out-of-state businessmen, and those clinics appear to perform little or no review of the
9 credentials or disciplinary history of the physicians who perform abortions at the
10 facility. See, e.g., *June Medical Servs., LLC v. Gee*, 905 F.3d 787, 799 (5th Cir. 2018).

11 (6) Louisiana outpatient abortion facilities actively work to conceal the identities
12 and misconduct of abortion providers. For example, in a pending court case, plaintiff
13 abortion providers repeatedly insisted that publicly available information regarding
14 misconduct by abortion doctors be filed under seal. Compare Emergency Motion to
15 Strike (ECF 202), *June Medical Servs. LLC v. Gee*, No. 3:16-cv-444 (M.D. La.) with
16 Mem. (ECF 207-1) at 4, 7-8, *June Medical Servs. LLC v. Gee*, No. 3:16-cv-444 (M.D. La.)
17 (noting that the documents sealed at plaintiffs' request include a grand jury report that
18 is for sale as a book and publicly available in the Louisiana State Board of Medical
19 Examiners disciplinary records); see also, e.g., Reply (ECF 135-2) at 5, *June Medical*
20 *Servs. LLC v. Gee*, No. 3:16-cv-444 (M.D. La.) (noting that plaintiffs had redacted the
21 name of a deceased Louisiana abortion provider from a public record). In another case,
22 a state court was induced to seal the *existence* of a malpractice case against two
23 abortion providers, although the providers repeatedly used the patient's name in
24 federal litigation.

25 (7) Current law requires that a woman, in order to give informed consent to an
26 abortion, must receive the name of the physician who will perform the abortion.
27 Louisiana abortion facilities, however, are not currently required to provide
28 information about the physician's background and qualifications or to direct the
29 woman to a website where she may find information relevant to her decision about her
30 physician.

1 (8) The lack of transparency surrounding the medical operations of outpatient
2 abortion facilities makes it difficult for women to fully evaluate whether to obtain an
3 abortion or whether to obtain it from a particular physician at a given abortion facility.
4 Such lack of transparency makes it difficult for women to make important decisions
5 about their health and safety; creates an obstacle to women exercising their informed
6 consent; and is therefore contrary to the public interest.

7 (9) A significant number of physicians who have performed abortions at
8 Louisiana outpatient abortion facilities in recent years have been subject to
9 professional discipline and malpractice claims. The abortion facilities at which these
10 physicians perform abortions have received a significant number of noncompliance
11 actions related to violations of health and safety regulations which have been
12 documented by deficiency reports filed with the Louisiana Department of Health.

13 (10) If a woman who is considering an abortion is to be treated by a physician
14 who has been subject to professional discipline, it is in the best interest of that woman
15 that she be given the opportunity to consider that professional discipline in advance of
16 undergoing the abortion procedure.

17 (11) There is empirical evidence correlating nonboard certified physicians with
18 an increased likelihood of professional discipline. Susan H. Allen, et al., *Training*
19 *Matters: A Retrospective Study of Physician Disciplinary Matters by the Louisiana State*
20 *Board of Medical Examiners, 1990-2010, 102(4) J. MED. REG. 7 (2016).*

21 (12) The information to be disclosed under the requirements of this Act is
22 truthful information that is nonmisleading and relevant to the decision to obtain an
23 abortion. It is therefore within the scope of information that Louisiana may require to
24 be disclosed as part of a woman's informed consent before an abortion.

25 Section 3. The legislature finds and declares that the purpose of this Act is to
26 improve the ability of Louisiana women to determine whether to obtain an abortion,
27 to choose the appropriate facility and physician, and to make an informed consent for
28 such an abortion if the woman chooses to have the procedure. Such informed consent
29 is needed so that the state of Louisiana may adequately provide reasonable protections
30 for public health.

1 **Section 4. The provisions of Section 1 of this Act, which amends R.S.**
 2 **40:1061.17(B)(3), shall not be construed to have any effect on the Joint Stipulation for**
 3 **Non-Enforcement in *June Medical Services LLC v. Gee*, No. 3:16-cv-444 (M.D. La.).**

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

8 Section 6. This Act shall become effective upon signature by the governor or, if not
 9 signed by the governor, upon expiration of the time for bills to become law without signature
 10 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 11 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 12 effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____