

2022 Regular Session

SENATE BILL NO. 342

BY SENATORS JACKSON, CLOUD, ROBERT MILLS, PEACOCK AND STINE

ABORTION. Provides relative to the application of abortion statutes. (gov sig)

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AN ACT

To amend and reenact R.S. 14:87 and to enact R.S. 1:15.1, relative to abortion; to provide for the interpretation of multiple abortion statutes; to provide for the independent construction of each separate enactment of law related to abortion; to provide for the severability; to restrict certain ordinances enacted by local governing authorities; to provide with respect to the crime of abortion; to provide for penalties; to provide for definitions; to provide for effective dates; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 1:15.1 is hereby enacted to read as follows:

§15.1. Construction of Revised Statutes relative to abortion statutes

A. Unless a Revised Statute contains a provision that explicitly repeals another statute, a Revised Statute that regulates or prohibits abortion may not be construed to repeal any other statute that regulates or prohibits abortion, either wholly or partly.

B. A Revised Statute that regulates or prohibits abortion may not be construed to restrict a local governing authority from regulating or prohibiting abortion to the extent that the local ordinance is at least as stringent as the laws

1 of this state unless the statute explicitly provides that local governing authorities
2 are prohibited from regulating or prohibiting abortion in the manner described
3 by the statute.

4 C. Every Revised Statute that regulates or prohibits abortion is
5 severable in each of its applications to every person and circumstance. If any
6 Revised Statute that regulates or prohibits abortion is found by any court to be
7 unconstitutional, either on its face or as applied, then all sections, subsections,
8 paragraphs, subparagraphs, items, or sentences or the application thereof that
9 does not violate the Constitution of Louisiana or the Constitution of the United
10 States of America shall be severed from the unconstitutional provisions or
11 applications and shall remain enforceable, notwithstanding any other law, and
12 the statute shall be interpreted as if containing language limiting the statute's
13 application to the persons, group of persons, or circumstances for which the
14 statute's application does not violate the Constitution of Louisiana or the
15 Constitution of the United States of America.

16 D. When used in this Section, "Revised Statutes" means any of the
17 following:

18 (1) The Revised Statutes.

19 (2) A code of law including the Civil Code, the Criminal Code, the Code
20 of Civil Procedure, the Code of Criminal Procedure, the Code of Evidence, or
21 the Children's Code.

22 (3) Any legislative instrument passed favorably by the legislature which
23 has the force or effect of law, whether codified or uncodified.

24 Section 2. R.S. 14:87 is hereby amended and reenacted to read as follows:

25 §87. Abortion; late term abortion

26 A. Abortion.

27 (1) Abortion is the performance by any person of any of the following acts,
28 with the specific intent of terminating a clinically diagnosable pregnancy of a
29 woman, with the knowledge that terminating the pregnancy in such a manner

1 **will, with reasonable likelihood, cause the death of the unborn child:**

2 (a) Administering or prescribing any drug, potion, medicine or any other
3 substance to a **pregnant woman** ~~female~~; or

4 (b) Using any instrument or external force whatsoever on a ~~female~~ **woman**.

5 (2) This Section shall not apply to the ~~female who has an abortion~~ **woman**.

6 B. It shall not be unlawful for a physician to perform any of the acts
7 described in Subsection A of this Section if performed under the following
8 circumstances:

9 (1) The physician terminates the pregnancy in order to preserve the life or
10 health of the unborn child or to remove a stillborn child.

11 (2) The physician terminates a pregnancy for the express purpose of saving
12 the life, preventing the permanent impairment of a life sustaining organ or organs,
13 or to prevent a substantial risk of death of the mother.

14 (3) The physician terminates a pregnancy by performing a medical procedure
15 necessary in reasonable medical judgment to prevent the death or substantial risk of
16 death due to a physical condition, or to prevent the serious, permanent impairment
17 of a life-sustaining organ of a pregnant woman.

18 C. As used in this Section, the following words and phrases are defined as
19 follows:

20 (1) "Physician" means any person licensed to practice medicine in this state.

21 (2) "Unborn child" means the unborn offspring of human beings from the
22 moment of fertilization until birth.

23 D. **Late-term abortion.** (1) As used in this Subsection:

24 (a) **"Late-term abortion** ~~Abortion~~ means the specific intent to kill an
25 unborn child **whose gestational age is fifteen weeks or more, and such intent is**
26 consistent with the provisions and exceptions of ~~R.S. 40:106+~~ **Subsection A.**

27 (b) "Gestational age" means the age of an unborn child as calculated from the
28 first day of the last menstrual period of the pregnant woman, as determined by the
29 use of standard medical practices and techniques.

1 (2) It shall be unlawful for a physician to perform ~~any of the acts described~~
2 ~~in Subsection A of this Section after fifteen weeks gestational age~~ a late-term
3 abortion.

4 E. Exceptions to late-term abortion.

5 (1) In accordance with R.S. 40:1061(E), nothing in this Section may be
6 construed to prohibit the sale, use, prescription, or administration of a
7 contraceptive measure, drug, or chemical, if it is administered in accordance
8 with manufacturer instructions.

9 (2) Nothing in this Section may be construed to subject a licensed
10 physician who provides treatment to a pregnant woman which results in the
11 accidental or unintentional injury or death of the unborn child, to any criminal
12 conviction or penalty.

13 (3) Nothing in this Section may be construed to subject the pregnant
14 woman upon whom an abortion is performed or attempted, to any criminal
15 conviction or penalty.

16 F. Penalties.

17 (1) Whoever commits the crime of abortion or late-term abortion shall be
18 imprisoned at hard labor for not less than one nor more than ten years and shall be
19 fined not less than ten thousand dollars nor more than one hundred thousand dollars.

20 (2) This penalty shall not apply to the woman who has an abortion.

21 F. ~~The provisions of Subsection D of this Section shall become effective~~
22 ~~upon final decision of the United States Court of Appeals for the Fifth Circuit~~
23 ~~upholding the Act that originated as House Bill 1510 of the 2018 Regular Session of~~
24 ~~the Mississippi Legislature, which decision would thereby provide the authority for~~
25 ~~a state within the jurisdiction of that court of appeals to restrict abortion past fifteen~~
26 ~~weeks gestational age.~~

27 G. Effective date. ~~The provisions of Subsection D of this Section are~~ shall
28 become effective ~~hereby repealed, in favor of the provisions of R.S. 40:1061,~~
29 immediately upon and to the extent that the United States Supreme Court upholds

1 the authority of the states to prohibit ~~elective~~ abortions ~~on demand~~ or by the adoption
 2 of an amendment to the Constitution of the United States of America that would
 3 restore to the state of Louisiana the authority to prohibit ~~elective~~ abortions.

4 Section 3. This Act shall become effective upon signature by the governor or, if not
 5 signed by the governor, upon expiration of the time for bills to become law without signature
 6 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 7 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 8 effective on the day following such approval.

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 Lebra Bias.

DIGEST

SB 342 Engrossed

2022 Regular Session

Jackson

Proposed law provides that a statute that regulates or prohibits abortion is not to be construed to repeal any other statute that regulates or prohibits abortion. Proposed law provides that if a subsequently enacted statute is to be interpreted to repeal a previously enacted statute, the subsequent statute must contain language that specifically repeals the previous statute.

Proposed law provides that any statute that regulates or prohibits abortion is not to be interpreted to limit local government ordinances that regulate or prohibit abortion, so long as the local ordinance is at least as stringent as the statute passed by the legislature.

Proposed law provides that each individual provision of a Revised Statute that regulates or prohibits abortion that is judged by a court to be unconstitutional is to be severed from any other provision of the Revised Statute that is constitutional, with the constitutional provisions continuing to have the force and effect of law.

Proposed law provides that, for purposes of proposed law the Revised Statutes include all, statutes, codes, and other laws passed by the legislature whether codified or uncoded.

Present law provides that abortion is the performance of any of the following acts, with the specific intent of terminating a pregnancy:

- (a) Administering or prescribing any drug, potion, medicine or any other substance to a female; or
- (b) Using any instrument or external force whatsoever on a female.

Proposed law retains present law and provides that abortion is the performance by any person of any of the following acts within present law, with the specific intent of terminating a clinically diagnosable pregnancy of a woman, with the knowledge that terminating the pregnancy in such a manner will, with reasonable likelihood, cause the death of the unborn child.

Present law provides definitions for "abortion", "physician", "unborn child", and "gestational age".

Proposed law retains present law and adds definition of "late-term abortion".

Present law provides that "abortion" means the specific intent to kill an unborn child consistent with the provisions and exceptions of present law.

Proposed law defines "late-term abortion", rather to mean the specific intent to kill an unborn child whose gestational age is 15 weeks or more, and such intent is consistent with the provisions and exceptions of present law.

Present law provides that it shall be unlawful for a physician to perform any of the acts described in present law after 15 weeks gestational age.

Proposed law changes present law by providing that it shall be unlawful for a physician to perform a late-term abortion.

Proposed law provides the following three exceptions to late-term abortion:

- (1) In accordance with present law, nothing in present law may be construed to prohibit the sale, use, prescription, or administration of a contraceptive measure, drug, or chemical, if it is administered in accordance with manufacturer instructions.
- (2) Nothing in present law may be construed to subject a licensed physician who provides treatment to a pregnant woman which results in the accidental or unintentional injury or death of the unborn child, to any criminal conviction or penalty.
- (3) Nothing in present law may be construed to subject the pregnant woman upon whom an abortion is performed or attempted, to any criminal conviction or penalty.

Present law provides that the provisions of present law shall become effective upon final decision of the United States Court of Appeals for the Fifth Circuit upholding the Act that originated as House Bill 1510 of the 2018 Regular Session of the Mississippi Legislature, which decision would thereby provide the authority for a state within the jurisdiction of that court of appeals to restrict abortion past fifteen weeks gestational age.

Proposed law repeals present law.

Proposed law provides that proposed law shall become effective immediately upon and to the extent that the U.S. Supreme Court upholds the authority of the states to prohibit abortions by the adoption of an amendment to the Constitution of the U.S. that would restore to the state the authority to prohibit elective abortions.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 1:15.1; amends R.S. 14:87)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill

1. Amends and reenacts the crime of abortion.
2. Adds definition of "late-term abortion" and provides exceptions.
3. Adds 3 exceptions to late-term abortions.

4. Adds an effective date contingent upon action by the U.S. Supreme Court.
5. Makes technical changes.