

SENATE SUMMARY OF HOUSE AMENDMENTS

SB 342

2022 Regular Session

Jackson

KEYWORD AND SUMMARY AS RETURNED TO THE SENATE

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

SUMMARY OF HOUSE AMENDMENTS TO THE SENATE BILL

1. Defines "abortion", adds a number of definitions related to abortion, and consolidates the list into a single definition section in Title 14 (Criminal Laws).
2. Repeals the multiple, varying, and sometimes conflicting definitions of "abortion" and definitions related to abortion in Title 14 (Criminal Laws) and Title 40 (Public Health and Safety).
3. Changes the manner in which abortion laws are to be construed.
4. Clarifies the intention of the legislature to restrict or prohibit abortion.
5. Clarifies that laws enacted to regulate outpatient abortion clinics are for the purpose of providing for the health, safety, and welfare of women seeking abortions until the state no longer regulates outpatient abortion clinics because they are closed.
6. Empowers the secretary of LDH to issue cease and desist order for violations of the outpatient abortion clinic regulations in present law.
7. Provides for a procedure for the secretary of LDH to close outpatient abortion clinics if abortion becomes illegal in the state.

DIGEST OF THE SENATE BILL AS RETURNED TO THE SENATE

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

SB 342 Reengrossed

2022 Regular Session

Jackson

Proposed law provides that it is the intention of the legislature to prohibit and restrict abortion in order to preserve the life of each unborn child to the fullest extent permitted by law.

Proposed law provides that laws prohibiting or restricting abortion are not to be negated or superseded by the laws regulating outpatient abortion facilities. Proposed law clarifies that present law that regulates outpatient abortion clinics are enacted for the purpose of ensuring the health, safety, and welfare of women seeking abortions until the state no longer regulates outpatient abortion clinics. Proposed law provides for procedures for closing outpatient abortion facilities if abortion is declared illegal because the U.S. Supreme Court has issued an opinion which restores to La. the ability to prohibit or restrict abortion.

Proposed law provides that laws prohibiting or restricting abortion at a certain gestational age of the unborn child are not to be considered to be in conflict with other laws that regulate or prohibit abortion at a different gestational age.

Proposed law provides that no governing authority of a political subdivision are permitted to enact any ordinance or regulation that authorizes or regulates abortion.

Proposed law provides that unless otherwise specifically provided, the provisions of each act of the legislature prohibiting or regulating abortion are severable, whether or not a provision to that effect is included in the act, and if any provision or item of an act prohibiting or regulating abortion, or the application thereof, is held invalid, such invalidity shall not affect other provisions, items, or applications of the act which can be given effect without the invalid provision, item, or application; further provides that proposed law shall apply to acts of the legislature affecting present law.

Proposed law provides that it shall be unlawful for a physician or other person to perform an abortion, with or without the consent of the pregnant female.

Proposed law provides definitions for "abortion", "abortion-inducing drug", "clinically diagnosable pregnancy", "conception", "contraceptive", "dismemberment", "emergency contraceptive", "fetal body part", "fetal heartbeat", "gestational age", "good faith medical judgment", "infant", "late term abortion", "live birth", "medical emergency", "medically futile, miscarriage", "partial birth abortion", "pregnant", "receive a fetal organ", "serious health risk to the uniform child's mother", "unborn child", "viable", and "woman" or "mother".

Proposed law provides exceptions to the definition of "abortion" as follows:

- (1) To save the life or preserve the health of an unborn child.
- (2) The removal of a dead unborn child or to empty the contents of the uterus after a miscarriage.
- (3) The removal of an ectopic pregnancy.
- (4) The use of methotrexate to treat an ectopic pregnancy.

- (5) A medical procedure necessary to prevent the death or substantial risk of death to the pregnant woman due to a physical condition or the loss of a life-sustaining organ of a pregnant woman.
- (6) The removal of an unborn child who is deemed to be medically futile.

Proposed law provides that whoever commits the crime of abortion shall be imprisoned at hard labor for not less than one year nor more than 10 years and shall be fined not less than \$10,000 nor more than \$100,000.

Proposed law provides that it shall be unlawful for a physician or other person to perform a late term abortion, with or without the consent of the pregnant female, and that whoever commits the crime of late term abortion shall be imprisoned at hard labor for not less than one year nor more than 15 years and shall be fined not less than \$20,000 nor more than \$200,000.

Proposed law does not apply to a pregnant female upon whom an abortion is committed or performed in violation of proposed law and the pregnant female cannot be held responsible for the criminal consequences of any violation of proposed law.

Proposed law does not apply to the sale, use, prescription, or administration of a contraceptive measure or an emergency contraceptive measure if sold, prescribed, or administered in accordance with manufacturer instructions.

Proposed law takes effect and becomes operative immediately upon, and to the extent permitted by, the occurrence of any of the following circumstances:

- (1) Any decision of the U.S. Supreme Court which overrules, in whole or in part, Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed. 2d 147 (1973), thereby restoring to the state of La. the authority to prohibit or limit abortion.
- (2) Adoption of an amendment to the U.S. Constitution which, in whole or in part, restores to the state of La. the authority to prohibit or limit abortion.
- (3) A decision of the U.S. Supreme Court in the case of Dobbs v. Jackson Women's Health Organization, Docket No. 19-1392, (Dobbs' decision) which overrules, in whole or in part, Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed. 2d 147 (1973), thereby restoring to the state of La. the authority to prohibit or limit abortion.

Proposed law provides that the La. Dept. of Health (LDH) is to promulgate administrative rules establishing an exclusive list of anomalies, diseases, disorders, and other conditions which are to be considered "medically futile" for purposes of proposed law.

Present law defines "criminal abortion" as an abortion performed by an unlicensed physician and provides for criminal penalties. Proposed law retains present law but changes the terminology to "abortion by an unlicensed physician".

Present law defines "human experimentation in the use of any live born human being" as a crime and provides for criminal penalties. Proposed law retains present law but changes the terminology to "human experimentation on an infant born alive".

Proposed law revises the "Human Life Protection Act" in present law (R.S. 40:1061) to provide that any person in violation of present law shall be prosecuted pursuant to the effective provisions of proposed law (R.S. 14:87.7) and shall be subject to the penalties provided in present law (R.S. 40:1061.29).

Proposed law provides that the secretary of LDH is empowered to issue a written cease and desist order to prevent or terminate an unsafe condition or an illegal practice in an outpatient abortion facility. Proposed law further provides for due process rights for an aggrieved party to appeal the order of the secretary. Proposed law provides that, if the violator subsequently engages in activities that violate a final cease and desist order, the secretary may seek the enforcement of such order by civil action filed in the 19th Jud. Dist. Court for

East Baton Rouge Parish. Proposed law provides that the court may issue a fine of not less than \$500 nor more than \$5,000 for each subsequent violation of a cease and desist order.

Proposed law provides for a procedure for closing outpatient abortion clinics in the event abortion is declared illegal in the state. Proposed law further provides the secretary shall apply the legislative intent to prohibit abortion with the final opinion of the U.S. Supreme Court in the Dobbs' decision and is to issue whichever one of the applicable cease and desist orders apply, as follows:

- (1) The outpatient abortion facility is to be ordered closed and the facility shall immediately cease and desist performing abortions because the Human Life Protection Act (R.S. 40:1061) or proposed law has been enacted and the practice of abortion in Louisiana has been prohibited by law.
- (2) The outpatient abortion facility shall be ordered to cease and desist performing late term abortions because the S. Ct. of the U.S. has provided for the states to prohibit abortions when the gestational age of the unborn child is 15 weeks or more.

Proposed law provides that whoever violates an order of the secretary of close an outpatient abortion facility or limit abortions to no more than 15 weeks, shall be subject to a fine of not less than \$10,000 nor more than \$50,000 dollars per violation. Proposed law provides that each abortion performed in violation of the cease and desist order issued after the clinic has been closed or limited to abortions at 15 weeks shall constitute a separate violation.

Proposed law provides that proposed law related to an order to close outpatient abortion clinics will not apply if the Dobbs' decision does not restore to the states the authority to prohibit or limit abortion.

Proposed law repeals duplicative, varying, and contradictory definitions in Title 14 (Criminal Laws) and Title 40 (Public Health and Safety) related to abortion.

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

(Amends R.S.14:32.9 (heading), (A) and (D)(intro para), 32.9.1(heading), (A) and (D)(intro para), 87.1, 87.2, and 87.5, R.S. 40:1061(A), (D), and (I), 1061.1(D) and (E), 1061.1.3(C), 1061.8, 1061.11(A), 1061.12, 1061.22, 1061.23, 1061.24, 1061.26, 1061.28, 1061.30, 2175.1, 2175.2, and 2175.3; adds R.S. 1:18, R.S. 14:32.9(E), 87.1.1, 87.7, and 87.8, and R.S. 40:1061.1(H), 1061.1.1(I), 1061.10(F), 1061.11(G), 1061.11.1(G), 1061.13(D) and (E), 1061.14(E), 1061.14.1(C), 1061.15(E), 1061.16(F), 1061.17(J)(3), 1061.19(H), 1061.20(D), 1061.21(F), 1061.25(F), 2175.4(F), 2175.6(J), 2175.7(C), 2175.8, and 2175.9; repeals R.S. 14:32.9(B), 32.9.1(B), 32.10, 32.11(B), 87, 87.3(B) and R.S. 40:1061.1.1(B), 1061.1.2(A), 1061.1.3(B), 1061.9(1) through (11), 1061.12(A), 1061.27, and 1061.28(B))

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.

Senate Floor Amendments to engrossed bill

1. Provides for penalties relative to crimes associated with abortion.

2. Creates the construction of laws relative to abortion.
3. Creates the crime of abortion.
4. Creates the crime of late term abortion.
5. Present law elements, definitions and penalties of the crime of abortion.
6. Makes technical changes.

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Health and Welfare to the reengrossed bill:

1. Remove language regarding whether the provisions of proposed law may be construed to restrict a local governing authority from prohibiting or regulating abortion in certain instances and provide that no governing authority of a political subdivision shall enact any ordinance or regulation that authorizes or regulates abortion.
2. Revise effectiveness and operativeness provisions set forth in proposed law and provide that proposed law shall take effect and become operative immediately upon, and to the extent permitted, by the occurrence of any of the following circumstances:
 - a. Any decision of the U.S. Supreme Court which overrules, in whole or in part, *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed. 2d 147 (1973), thereby restoring to the state of Louisiana the authority to prohibit, limit, or regulate abortion.
 - b. Adoption of an amendment to the U.S. Constitution which, in whole or in part, restores to the state of Louisiana the authority to prohibit or limit abortion.
 - c. A decision of the U.S. Supreme Court in the case of *Dobbs v. Jackson Women's Health Organization*, Docket No. 19-1392, which overrules, in whole or in part, *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed. 2d 147 (1973), thereby restoring to the state of Louisiana the authority to prohibit, limit, or regulate abortion.
3. Add emergency contraceptives that contain a certain ingredient to the illustrative listing of contraceptive measures, drugs, and chemicals provided in proposed law.
4. Make technical changes.

Carla S. Roberts
Attorney