

SENATE BILL NO. 528

BY SENATOR BROOME AND REPRESENTATIVES BALDONE, BARRAS, BARROW, BURFORD, HENRY BURNS, BURRELL, CARMODY, CARTER, CHANEY, CONNICK, CORTEZ, CROMER, ELLINGTON, GEYMANN, GISCLAIR, GREENE, GUILLORY, HARDY, HENRY, HILL, HINES, HOFFMANN, HONORE, HOWARD, HUTTER, JOHNSON, KATZ, KLECKLEY, LABRUZZO, LANDRY, LIGI, LOPINTO, LORUSSO, MILLS, MONICA, NORTON, NOWLIN, PEARSON, PERRY, POPE, RICHARDSON, ROY, SCHRODER, GARY SMITH, JANE SMITH, ST. GERMAIN, TALBOT, TEMPLET, TUCKER, WHITE, WILLIAMS, WILLMOTT AND WOOTON

1 AN ACT

2 To amend and reenact R.S. 40:1299.35.2 and the introductory paragraph of 1299.35.6(B),
3 (B)(1)(h), and the introductory paragraph of (C)(1)(a), and to enact R.S.
4 40:1299.35.6(B)(1)(i), relative to abortions; to require an obstetric ultrasound to be
5 performed prior to an abortion; to provide for exceptions; to provide for penalties;
6 and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 40:1299.35.2 and the introductory paragraph of 1299.35.6(B),
9 (B)(1)(h), and the introductory paragraph of (C)(1)(a) are hereby amended and reenacted and
10 R.S. 40:1299.35.6(B)(1)(i) is hereby enacted to read as follows:

11 §1299.35.2. Abortion by physician; determination of viability; ultrasound test
12 required; exceptions; penalties

13 A. Physician requirement. No person shall perform or induce an abortion
14 unless that person is a physician licensed to practice medicine in the state of
15 Louisiana.

16 B. Viability. Except in the case of a medical emergency, Before before
17 a physician performs an abortion ~~on a woman he has reason to believe is carrying an~~
18 ~~unborn child of twenty or more weeks gestational age,~~ the physician, by use of his
19 good faith medical judgment, shall first determine if the unborn child is viable.

20 C. Determination of Viability. In order to preserve the health of the woman,

1 and in order to ~~make a~~ **assist in making an accurate** finding of **viability**
 2 **considering** the gestational age, weight, and lung maturity of the unborn child, the
 3 physician intending to terminate a pregnancy of ~~twenty or more weeks gestational~~
 4 ~~age~~ shall first perform or cause to be performed an ultrasound examination **pursuant**
 5 **to the provisions of Subsection D of this Section.** ~~of the unborn child of a quality~~
 6 ~~commonly used by the ordinary skillful, careful, and prudent physician engaged in~~
 7 ~~similar practice under the same or similar conditions. The physician shall provide the~~
 8 ~~option of viewing the ultrasound images to the pregnant woman as the test is being~~
 9 ~~performed. The physician shall enter such findings and determination of viability in~~
 10 ~~the medical record of the pregnant woman, along with photographs or prints of the~~
 11 ~~ultrasound evidencing the findings.~~

12 **D. Ultrasound Requirements. Except in the case of a medical**
 13 **emergency, and in addition to the provisions of R.S. 40:1299.35.6, consent to an**
 14 **abortion of an unborn child at any stage of gestational development is voluntary**
 15 **and informed only if an obstetric ultrasound is performed under the provisions**
 16 **of this Section.**

17 **(1) Qualifications to perform ultrasound. The ultrasound shall be**
 18 **performed by the physician who is to perform the abortion, the referring**
 19 **physician, or a qualified person working in conjunction with either physician.**
 20 **For purposes of this Section, "qualified person" means a person having**
 21 **documented evidence that he or she has completed a course in the operation of**
 22 **ultrasound equipment and is in compliance with any other requirements of law**
 23 **regarding the operation of ultrasound equipment.**

24 **(2) Requirements. At least two hours prior to the woman having any**
 25 **part of an abortion performed or induced, and prior to the administration of**
 26 **any anesthesia or medication in preparation for the abortion on the woman, the**
 27 **physician who is to perform the abortion, the referring physician, or a qualified**
 28 **person working in conjunction with either physician shall comply with all of the**
 29 **following requirements:**

30 **(a) Perform an obstetric ultrasound on the pregnant woman and offer**

1 to simultaneously display the screen which depicts the active ultrasound images
2 so that the pregnant woman may view them.

3 (b) Offer to provide a simultaneous explanation of what the ultrasound
4 is depicting, which shall include the presence and location of the unborn child
5 within the uterus and the number of unborn children depicted, the dimensions
6 of the unborn child, and the presence of external members and internal organs,
7 if present and viewable.

8 (c) Offer to provide the pregnant woman with a sealed envelope clearly
9 marked "ultrasound print" that contains an ultrasound photograph or print of
10 her unborn child of a quality consistent with current standard medical practice
11 that accurately portrays, to the extent feasible, the body of the unborn child
12 including external members, if present and viewable; provided that the
13 pregnant woman shall be informed that R.S. 40:1299.35.2 requires that she be
14 provided with the envelope containing the ultrasound print, but that there is no
15 requirement that she view the print image of her unborn child.

16 (d) Orally read the following statement to the pregnant woman in the
17 examination room prior to beginning the ultrasound examination:

18 "Louisiana law requires that you be informed of three options that you
19 may request at any time during this ultrasound examination:

20 (1) You have the option to view the ultrasound screen at any time during
21 the examination.

22 (2) You have the option to receive an oral explanation of the ultrasound
23 images.

24 (3) You have the option to receive an ultrasound photographic print.
25 Please inform me now or at any time during the ultrasound examination if you
26 want to view the screen, receive an oral explanation or receive an ultrasound
27 print."

28 (e) Obtain a written certification from the woman, after the ultrasound
29 and prior to the abortion, that the requirements of this Subsection have been
30 complied with.

1 **(f) Retain a copy of the written certification prescribed by Subparagraph**
2 **(e) of this Paragraph. The certification shall be placed in the medical file of the**
3 **woman and shall be kept by the abortion provider for a period of not less than**
4 **seven years. If the woman is a minor, the certification shall be placed in the**
5 **medical file of the minor and kept for at least seven years or for five years after**
6 **the minor reaches the age of majority, whichever is greater. The woman's**
7 **medical files shall be kept confidential as provided by law.**

8 **(3) Medical Emergencies.**

9 **(a) "Medical emergency" as used in this Section, means the existence of**
10 **any physical condition, not including any emotional, psychological, or mental**
11 **condition, which a reasonably prudent physician, with knowledge of the case**
12 **and treatment possibilities with respect to the medical conditions involved,**
13 **would determine necessitates the immediate abortion of the pregnancy to avert**
14 **the pregnant woman's death or to avert substantial and irreversible impairment**
15 **of a major bodily function arising from continued pregnancy.**

16 **(b) Upon a determination by a physician that a medical emergency exists**
17 **with respect to a pregnant woman, the provider shall certify in writing the**
18 **specific medical conditions that constitute the emergency. The certification shall**
19 **be placed in the medical file of the woman and shall be kept by the abortion**
20 **provider for a period of not less than seven years. If the woman is a minor, then**
21 **the certification shall be placed in the medical file of the minor and kept for at**
22 **least seven years or for five years after the minor reaches the age of majority,**
23 **whichever is greater. The woman's medical files shall be kept confidential as**
24 **provided by law.**

25 **(4) Civil penalties. In addition to whatever remedies are otherwise**
26 **available under the laws of this state, failure to comply with the requirements**
27 **of this Section shall provide a basis for professional disciplinary action provided**
28 **for under law.**

29 **(5) Protection of privacy in court proceedings. In every civil or criminal**
30 **proceeding or action brought under this Section, the court shall rule whether**

1 the anonymity of any female upon whom an abortion has been performed or
 2 attempted shall be preserved from public disclosure if she does not give her
 3 consent to such disclosure. The court may close any proceedings in the case and
 4 enter other protective orders to preserve the privacy of the woman upon whom
 5 the abortion has been performed or attempted. This Section may not be
 6 construed to conceal the identity of the plaintiff or of witnesses from the
 7 defendant.

8 * * *

9 §1299.35.6. Woman's Right To Know

10 * * *

11 B. Informed consent; requirements. After a woman is determined to be
 12 pregnant, no abortion shall be performed or induced without the voluntary and
 13 informed consent of the woman upon whom the abortion is to be performed or
 14 induced. Except in the case of a medical emergency, consent to an abortion is
 15 voluntary and informed if and only if **the provisions of R.S. 40:1299.35.2 requiring**
 16 **an ultrasound test and determination of viability are met, and:**

17 (1) At least twenty-four hours before the abortion, the physician who is to
 18 perform the abortion or the referring physician has informed the woman, orally and
 19 in person, of:

20 * * *

21 ~~(h) The option of reviewing and receiving an explanation of an obstetric~~
 22 ~~ultrasound image of the unborn child. Nothing contained in this Subparagraph shall~~
 23 ~~require a woman to view or receive an explanation of the obstetric ultrasound~~
 24 ~~images. Neither The requirement that at least two hours prior to the woman~~
 25 ~~having any part of an abortion performed or induced, the physician, referring~~
 26 ~~physician, or qualified person working in conjunction with either physician~~
 27 ~~must perform an obstetric ultrasound under the provisions of R.S. 40:1299.35.2~~
 28 ~~for the purpose of preserving the woman's health and determining the viability~~
 29 ~~of the unborn child, and that neither the physician ~~or~~ nor the woman shall be~~
 30 penalized should the woman choose not to view ~~or receive an explanation of the~~

1 obstetric ultrasound images or the photographic print provided to her in a sealed
2 envelope.

3 (i) The inclusion in her printed materials of a comprehensive list,
4 compiled by the Department of Health and Hospitals, of facilities that offer
5 obstetric ultrasounds free of charge, along with an oral explanation of the
6 provision that shall be included on the department's list that if the woman
7 voluntarily chooses to obtain free ultrasound services, that ultrasound would
8 likely be in addition to the ultrasound required by law for purposes of
9 determining viability and preserving the woman's health, unless the free
10 ultrasound is performed by the physician performing the abortion, the referring
11 physician, or a qualified person working in conjunction with either physician.
12 The list shall be arranged geographically and shall include the name, address,
13 hours of operation, and telephone number of each entity.

14 * * *

15 C.(1) Publication of materials. The Department of Health and Hospitals shall
16 cause to be published in English, within ninety days after June 20, 1995, and shall
17 update on an annual basis, the following easily comprehensible printed materials:

18 (a) Geographically indexed materials designed to inform the woman of public
19 and private agencies and services available to assist a woman through pregnancy,
20 upon childbirth, and while her child is dependent, including but not limited to
21 adoption agencies. The materials shall include a comprehensive list of the agencies,
22 a description of the services they offer, and the telephone number and addresses of
23 the agencies, and inform the woman about available medical assistance benefits for
24 prenatal care, childbirth, and neonatal care, and about the support obligations of the
25 father of a child who is born alive. The department shall ensure that the materials
26 described in this Section are comprehensive and do not directly or indirectly
27 promote, exclude, or discourage the use of any agency or service described in this
28 Section. The materials shall also contain ~~a toll-free, all-hours-a-day telephone~~
29 ~~number which may be called to obtain orally such a list and description of agencies~~
30 ~~in the locality of the caller and of the services they offer~~ **a separate printed listing**

1 of facilities that provide obstetric ultrasound services free of charge, as
2 described in Subparagraph (B)(1)(i) of this Section. All materials shall include
3 a website address where the required materials can be accessed on the Internet.

4 Such ~~toll-free telephone number~~ website shall be funded maintained by the
5 Department of Health and Hospitals. The materials shall state that it is unlawful for
6 any individual to coerce a woman to undergo an abortion, that any physician who
7 performs an abortion upon a woman without her informed consent may be liable to
8 her for damages in a civil action at law, and that the law permits adoptive parents to
9 pay costs of prenatal care, childbirth, and neonatal care. The materials shall include
10 the following statements:

11 * * *

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____