

## HOUSE SUMMARY OF SENATE AMENDMENTS

House Bill No. 636 by Representative Hoffmann

**ABORTION:** Provides requirements for content and delivery of information regarding abortion in certain medical settings and revises criteria for voluntary and informed consent to an abortion

### Synopsis of Senate Amendments

1. Changes the definition of abortion for purposes of present law and proposed law.
2. Clarifies that signage required by proposed law must only be placed in licensed outpatient abortion facilities as defined in present law.
3. Changes the language which is required to be shown on signage required by proposed law.
4. Removes a provision of proposed law requiring a physician to employ a method of terminating a pregnancy that gives the unborn child the greatest chance of survival consistent with protecting the life of the mother in an emergency situation where informed consent requirements could not be satisfied.
5. Removes a provision of proposed law requiring that a physician record the medical indications supporting the necessity for an abortion without informed consent in an emergency situation in the patient's record.
6. Decreases the minimum monetary penalty provided in proposed law for a violation of any provision of proposed law and present law relative to abortion (R.S. 40:1299.30 et seq.) from \$10,000 to \$1,000.
7. Relocates certain penalties provided in present law, changing applicability of such penalties from violation of Woman's Right To Know Law (R.S. 40:1299.35.6) to violation of any provision of proposed law and present law relative to abortion (R.S. 40:1299.30 et seq.); establishing that any such violation shall provide a basis for a civil malpractice action, professional disciplinary action, and for recovery for the woman for the death of her unborn child under present law (C.C. Art. 2315.2).
8. Restores provision of present law providing that no physician shall be guilty of violating present law (R.S. 40:1299.35.6) if he or she can demonstrate, by a preponderance of the evidence, that he or she reasonably believed that furnishing the required information would have resulted in a severely adverse effect on the physical or mental health of the pregnant woman; contingent, however, upon the following conditions established by proposed law:
  - (a) The pregnancy is terminated in a licensed hospital.
  - (b) Such termination is necessary to avert the woman's death or avoid serious risk of substantial and irreversible impairment of a major bodily function, or to induce the premature delivery of an unborn child who is eighteen weeks gestational age or greater when the physician has made a good faith medical judgment that the unborn child's medical condition is such that there is no realistic possibility of maintaining the life of the unborn child outside the womb even if the unborn child were to be delivered after a full term pregnancy.

9. Deletes changes made by proposed law to present law relative to conscience in health care protection (R.S. 40:1299.35.9).
10. Adds a provision that any outpatient abortion facility which knowingly employs, contracts with, or provides any valuable consideration for the performance of an abortion to any person who is not a physician licensed to practice medicine in the state of Louisiana, is subject to certain adverse licensure actions provided in present law (R.S. 40:2175.6).
11. Makes technical changes.

### **Digest of Bill as Finally Passed by Senate**

Proposed law provides that prescribing any instrument, medicine, drug, or any other means with the intent to terminate the pregnancy of a woman with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn child is not an abortion if done with the intent to remove the uterine contents in case of a positive diagnosis of spontaneous abortion, missed abortion, inevitable abortion, incomplete abortion, or septic abortion.

Proposed law provides that any outpatient abortion facility which knowingly employs, contracts with, or provides any valuable consideration for the performance of an abortion to any person who is not a physician licensed to practice medicine in the state of Louisiana, is subject to certain adverse licensure actions provided in present law (R.S. 40:2175.6).

Proposed law provides for the Forced Abortion Prevention Sign Act.

Proposed law provides that the Forced Abortion Prevention Sign Act applies to any outpatient abortion facility licensed by the Dept. of Health and Hospitals (DHH).

Proposed law requires such facilities to display signage which provides messages as specified in proposed law regarding women's rights, forced abortion, fatherhood, and adoptive parents; and provides the web address for the pregnancy resources website maintained by the Department of Health and Hospitals (DHH).

Proposed law assigns the duty of designing and producing such signs to DHH.

Proposed law requires that information delivered personally to women per the provisions of the Woman's Right to Know law be offered in a manner that ensures the woman's privacy, considers the woman's individual circumstances, and allows the woman to ask questions. Also provides that except in the case of a medical emergency, this requirement is a condition for consent to an abortion being voluntary and informed.

Present law provides that at least 24 hours before an abortion, the physician who is to perform the abortion or the referring physician shall provide, among other printed materials specified in present law, a list of facilities which offer obstetric ultrasounds free of charge.

Proposed law requires that such list of facilities offering obstetric ultrasounds free of charge not include any facility that counsels, refers, performs, induces, prescribes, or provides any means for abortion.

Proposed law requires that in the initial contact with an abortion provider by any person seeking to schedule an abortion for a minor or adult woman or for herself, whether such initial contact is by telephone, by Internet communication, in person, or by any other means, the physician who is to perform the abortion or any person acting on behalf of the physician

shall inform the person of the address of DHH abortion alternatives and informed consent website provided for in proposed law. Also provides that except in the case of a medical emergency, this requirement is a condition for consent to an abortion being voluntary and informed.

Proposed law requires that at least 24 hours prior to a scheduled abortion, the physician who is to perform the abortion, the referring physician, or a qualified person inform the woman, orally and in person, that the DHH website:

- (1) May indicate medical assistance benefits available for prenatal care, childbirth, and neonatal care.
- (2) Describes the unborn child and lists agencies which offer alternatives to abortion.

Proposed law provides that except in the case of a medical emergency, the above requirement concerning indication of information on the DHH website is a condition for consent to an abortion being voluntary and informed.

Proposed law deletes present law which provides that if an interpreter is necessary to communicate certain required information to a woman, the cost of such interpreter shall be borne by the state of La.

Present law requires that for consent to an abortion to be voluntary and informed, the woman shall certify in writing prior to the abortion on a form provided by DHH that the information and materials required to be provided under present law have been provided. Proposed law adds requirement that such certification also indicate that information and materials required to be provided under proposed law was provided at least 24 hours prior to the abortion.

Present law requires DHH to publish certain printed materials providing information on abortion, alternatives to abortion, and the physiology of the unborn child. Proposed law requires that in addition to printed materials provided for in proposed law, DHH also publish an abortion alternatives and informed consent website. Also provides that such website shall:

- (1) Be published within 120 days of enactment of proposed law.
- (2) Provide the informed consent information required by proposed law.
- (3) Provide information about public and private agencies that provide medical assistance benefits that may be available for prenatal care, childbirth, and neonatal care, and easily comprehensible information on how to apply for such benefits.
- (4) Provide information about public and private pregnancy resource centers that provide information and services that may include free abortion alternatives counseling, prenatal care, pantry services and parenting skills, and that do not refer, counsel, perform, induce, prescribe, or provide any means for abortion.
- (5) Provide information about the support obligations of the father of a child who is born alive and information about judicial enforcement of child support.
- (6) Provide information on a separate and featured subpage of the DHH website that lists facilities that provide free obstetric ultrasound services under the provisions of present law and proposed law.
- (7) Provide information on public and private adoption agencies.
- (8) Provide information on the anatomical and physiological characteristics of the unborn child, including color photographs or images consistent with the most current technology depicting the unborn child at two-week gestational increments or closer.

- (9) Provide information describing the various methods of abortion procedures, the short-term and long-term medical risks associated with abortion, and the medical risks associated with carrying a child to term.
- (10) Provide information on the unborn child's ability to experience pain.
- (11) Provide video clips that convey objective and medically accurate information about abortion procedures, abortion risks, abortion alternative resources, and the development of an unborn child. Also provides that such video clips may be produced with the in-house resources of DHH, or acquired for no cost to the state from third parties if the video is approved by the secretary as providing objective and medically accurate information.
- (12) Provide information that helps women identify unlawful abortion coercion, including but not limited to resources or hotlines that a minor or adult woman may call if she is experiencing actual or threatened physical abuse or violence, loss of employment or employment privileges, loss of eligible social assistance, loss of educational scholarship, or loss of legally protected financial support or housing.
- (13) Provide information to assist minors who are considering abortion, including parental consent information, and resources to help minors seek the protection of state child welfare services, temporary guardianship, or law enforcement authorities to report abuse as defined in Article 603 of the Children's Code. The information designed to assist minors shall also include a link to pregnancy resource centers as defined in proposed law.
- (14) Provide information on ordering printed materials provided for in proposed law.

Proposed law provides that no information regarding who uses the DHH website required to be published under proposed law shall be collected or maintained, and that DHH shall monitor the website to prevent and correct tampering and shall immediately notify abortion providers of any change of the website address.

Proposed law provides that the search capabilities on the DHH main website shall ensure that entering the term "abortion" yields the website and information required to be published under proposed law regardless of how the information is labeled.

Proposed law provides that the information on the DHH website required to be published under proposed law shall be printable, and must be available to download from the website in a portable document format without cost.

Proposed law provides that the DHH website required to be published under proposed law shall be accessible to the public without requiring registration or use of a user name, a password, or any user identification.

Proposed law provides that the DHH website required to be published under proposed law shall have the capability of detecting when it is being accessed by a mobile device and shall have the capability of converting to a platform designed to be easily viewable on mobile devices.

Proposed law provides that if an abortion provider has a website, then the home page of such website must include a prominent link to the DHH website required to be published under proposed law.

Proposed law provides that within 120 days of enactment of proposed law, DHH shall cause to be published a printed booklet that features the web address of the DHH website required to be published under proposed law featured in a bold large typeface.

Proposed law requires that the printed booklet provided for in proposed law include the following:

- (1) Signs required in proposed law providing for the Forced Abortion Prevention Sign Act.
- (2) A list arranged geographically, including the name, address, hours of operation, website address if available, and telephone number of each entity which offers obstetric ultrasounds free of charge. Proposed law requires that this list not include any facility that counsels, refers, performs, induces, prescribes, or provides any means for abortion.
- (3) An outline of the various topics on the DHH website required to be published under proposed law along with an explanation that more detailed information can be found at such website.
- (4) Materials that inform the pregnant woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from fertilization to full term, including color photographs or medical images consistent with the most current technology depicting the development of unborn children at two-week gestational increments or closer, and any relevant information on the possibility of the unborn child's survival; however, any such color photographs or images must contain the dimensions of the unborn child and must be medically accurate.

Proposed law requires that the DHH website and printed booklet provided for in proposed law include the following statements:

- (1) "There are many public and private agencies willing and able to help you to carry your child to term, and to assist you and your child after your child is born, whether you choose to keep your child or to place her or him for adoption. The state of Louisiana strongly urges you to consult an independent physician about the risks of abortion to your physical and psychological well-being and to contact the resources provided on our website before making a final decision about abortion. The law requires that the abortion provider give you the opportunity to contact agencies like these before you undergo an abortion."
- (2) "By 20 weeks gestation, the unborn child has the physical structures necessary to experience pain. There is evidence that by 20 weeks gestation unborn children seek to evade certain stimuli in a manner which in an infant or an adult would be interpreted to be a response to pain. Anesthesia is routinely administered to unborn children who are twenty weeks gestational age or older who undergo prenatal surgery."

Proposed law requires that the printed materials provided for in proposed law be objective, nonjudgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages.

Proposed law requires that the printed materials provided for in proposed law contain objective information describing the methods of abortion procedures and the short-term and long-term medical risks associated with abortion, and the medical risks associated with carrying a child to term.

Proposed law requires that the printed materials provided for in proposed law be available at no cost from DHH upon request and in appropriate number to any person, facility, or hospital.

Proposed law provides that DHH shall promulgate rules and regulations relative to the methods of distribution of printed materials.

Proposed law retains provision of present law providing that no physician shall be guilty of violating informed consent to abortion requirements if he or she can demonstrate, by a preponderance of the evidence, that he or she reasonably believed that furnishing the required

information would have resulted in a severely adverse effect on the physical or mental health of the pregnant woman; contingent, however, upon the following conditions established by proposed law:

- (1) The pregnancy is terminated in a licensed hospital.
- (2) Such termination is necessary to avert the woman's death or avoid serious risk of substantial and irreversible impairment of a major bodily function, or to induce the premature delivery of an unborn child who is eighteen weeks gestational age or greater when the physician has made a good faith medical judgment that the unborn child's medical condition is such that there is no realistic possibility of maintaining the life of the unborn child outside the womb even if the unborn child were to be delivered after a full term pregnancy.

Proposed law provides that it is not the intention of proposed law to make lawful an abortion that is unlawful upon the effective date of proposed law, or which later becomes unlawful.

Present law provides that whoever violates the provisions of present law relative to abortion (R.S. 40:1299.30 et seq.) shall be fined not more than \$1,000, or imprisoned for not more than two years, or both.

Proposed law retains fine and imprisonment penalties provided in present law and relocates certain penalties provided in present law, changing applicability of such penalties from violation of Woman's Right To Know Law (R.S. 40:1299.35.6) to violation of any provision of proposed law and present law relative to abortion (R.S. 40:1299.30 et seq.); establishing that any such violation shall provide a basis for a civil malpractice action, professional disciplinary action, and for recovery for the woman for the death of her unborn child under present law (C.C. Art. 2315.2).

Proposed law provides that its provisions shall be severable.

(Amends R.S. 40:1299.35.1(1)(b), 1299.35.2, 1299.35.6, and 1299.35.19; Adds R.S. 40:1299.35.1(11) and 1299.35.5.1)