

Regular Session, 2014

HOUSE BILL NO. 388

BY REPRESENTATIVES KATRINA JACKSON, BARROW, BURFORD, COX, HARRIS, HAVARD, HENSGENS, HILL, HOFFMANN, LEBAS, JAY MORRIS, ORTEGO, POPE, SIMON, STOKES, WHITNEY, PATRICK WILLIAMS, AND WILLMOTT

ABORTION: Provides for requirements of physicians who perform abortions

1 AN ACT  
2 To amend and reenact R.S. 40:1299.35.2(A), 1299.35.2.1, and 2175.3(2) and (5), relative to  
3 abortion; to provide for requirements of physicians who perform abortions; to require  
4 delivery of certain information concerning health care facilities and services to a  
5 pregnant woman prior to abortion; to provide regulations for the practice of inducing  
6 an abortion through use of drugs or chemicals; to provide for definitions of terms in  
7 the Outpatient Abortion Facility Licensing Law; to provide for penalties; to provide  
8 for application of laws; to provide for legislative intent; and to provide for related  
9 matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 40:1299.35.2(A), 1299.35.2.1, and 2175.3(2) and (5) are hereby  
12 amended and reenacted to read as follows:

13 §1299.35.2. Abortion by physician; determination of viability; ultrasound test  
14 required; exceptions; penalties

15 A.(1) Physician ~~requirement~~ requirements. No person shall perform or  
16 induce an abortion unless that person is a physician licensed to practice medicine in  
17 the state of Louisiana and is currently enrolled in or has completed a residency in  
18 obstetrics and gynecology or family medicine. Any outpatient abortion facility that  
19 knowingly or negligently employs, contracts with, or provides any valuable  
20 consideration for the performance of an abortion in an outpatient abortion facility by

1 any person who does not meet the requirements of this Section is subject to having  
2 its license denied, non-renewed, or revoked by the Department of Health and  
3 Hospitals in accord with R.S. 40:2175.6.

4 (2) On the date the abortion is performed or induced, a physician performing  
5 or inducing an abortion shall:

6 (a) Have active admitting privileges at a hospital that is located not further  
7 than thirty miles from the location at which the abortion is performed or induced and  
8 that provides obstetrical or gynecological health care services.

9 (b) Provide the pregnant woman with all of the following before the abortion  
10 is performed or induced:

11 (i) A telephone number by which the pregnant woman may reach the  
12 physician, or other health care personnel employed by the physician or facility at  
13 which the abortion was performed or induced, who has twenty-four hour per day  
14 access to the woman's relevant medical records so that the woman may request  
15 assistance related to any complication that arises from the performance or induction  
16 of the abortion, or to ask health-related questions regarding the abortion.

17 (ii) The name and telephone number of the nearest hospital to the home of  
18 the pregnant woman at which an emergency arising from the abortion would be  
19 treated.

20 (iii) Written notice informing the pregnant woman whether the outpatient  
21 abortion facility follows the practice of imposing abortion sales quotas on its  
22 employees.

23 \* \* \*

24 §1299.35.2.1. Drugs or chemicals used; penalties

25 A. When any drug or chemical is used for the purpose of inducing an  
26 abortion as defined in R.S. 40:1299.35.1, the physician who prescribed the drug or  
27 chemical shall be in the same room and in the physical presence of the pregnant  
28 woman when the drug or chemical is initially administered, dispensed, or otherwise  
29 provided to the pregnant woman.

1           B. The drug or chemical shall not be administered, dispensed, or otherwise  
 2           provided to the pregnant woman by a physician or any person acting under the  
 3           physician's direction, whether in a licensed outpatient abortion facility, private  
 4           medical office or any other facility, unless the physician has obtained the voluntary  
 5           and informed consent of the pregnant woman pursuant to the provisions of R.S.  
 6           40:1299.35.6 and the requirements set forth therein.

7           C. If a physician prescribes, dispenses, administers, or provides any drug or  
 8           chemical to a pregnant woman for the purpose of inducing an abortion as defined in  
 9           R.S. 40:1299.35.1, the physician shall report the abortion to the Department of  
 10          Health and Hospitals as provided in R.S. 40:1299.35.10.

11          D. In addition to the requirements of reporting complications to the  
 12          Department of Health and Hospitals pursuant to R.S. 40:1299.35.10, if the physician  
 13          knows that the woman experiences a serious adverse event, as defined by the  
 14          MedWatch Reporting System, during or after the administration or use of the drug,  
 15          the physician shall also report the event to the United States Food and Drug  
 16          Administration through the MedWatch Reporting System not later than the third day  
 17          after the date the physician learns that the event occurred.

18          E. The Louisiana State Board of Medical Examiners may take disciplinary  
 19          action as authorized in R.S. 37:1261 et seq. or any other applicable provision of law  
 20          against a physician who violates any provision of this Section.

21          ~~B:~~ F. Any person not under the direction of a physician who knowingly  
 22          performs or attempts to perform an abortion ~~without complying with the~~  
 23          ~~requirements of using chemicals or drugs in violation of this Section shall be subject~~  
 24          to penalties pursuant to R.S. 40:1299.35.19. No penalty may be assessed against the  
 25          woman ~~upon whom~~ who undergoes the abortion ~~is performed or attempted to be~~  
 26          performed.

\*       \*       \*

1 §2175.3. Definitions

2 For purposes of this Part, the following definitions apply:

3 \* \* \*

4 (2) "First trimester" means the time period ~~from six~~ up to fourteen weeks  
5 after the first day of the last menstrual period.

6 \* \* \*

7 (5) "Outpatient abortion facility" means any outpatient facility, other than  
8 a hospital as defined in R.S. 40:2102 or an ambulatory surgical center as defined in  
9 R.S. 40:2133, in which any second trimester or five or more first trimester abortions  
10 per ~~month~~ calendar year are performed.

11 \* \* \*

12 Section 2.(A) This Act shall be known as the "Unsafe Abortion Protection Act".

13 (B) It is the intent of the legislature that each physician who performs an abortion  
14 as defined in R.S. 40:1299.35.1, whether the abortion is surgical or drug-induced, shall  
15 follow the long-established procedure of reporting anonymous, aggregate abortion statistics  
16 and health complications to the Department of Health and Hospitals, subject to all state and  
17 federal privacy protections, for the purpose of providing anonymous and accurate public  
18 health and safety data regarding abortion and its impact on women's health.

19 (C) Nothing in this Act shall be construed or interpreted to apply to emergency  
20 contraceptives or any other drugs or chemicals that do not cause abortion as defined in R.S.  
21 40:1299.35.1.

22 Section 3. The legislature intends that every application of this statute to every  
23 individual woman shall be severable from each other. In the unexpected event that the  
24 application of this statute is found to impose an impermissible undue burden on any pregnant  
25 woman or group of pregnant women, the application of the statute to those women shall be  
26 severed from the remaining applications of the statute that do not impose an undue burden,  
27 and those remaining applications shall remain in force and unaffected.

28 Section 4. The Louisiana State Law Institute is hereby authorized and requested to  
29 redesignate, in accordance with the provisions of the Act which originated as House Bill No.

- 1 667 of this 2014 Regular Session of the Legislature, the number of any section of statute  
2 amended by this Act and recodified by the provisions of the Act which originated as House  
3 Bill No. 667 of this 2014 Regular Session of the Legislature.
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### 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)]

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Katrina Jackson

HB No. 388

**Abstract:** Provides for requirements of physicians who perform abortions.

Present law provides requirements of physicians who perform abortions. Proposed law retains present law and adds thereto a requirement that on the date an abortion is performed or induced, the physician performing or inducing the abortion shall:

- (1) Have active admitting privileges at a hospital that is located not further than 30 miles from the location at which the abortion is performed or induced and that provides obstetrical or gynecological health care services.
- (2) Provide the pregnant woman with all of the following before the abortion is performed or induced:
  - (a) A telephone number by which the pregnant woman may reach the physician, or other health care personnel employed by the physician or facility at which the abortion was performed or induced, who has twenty-four hour per day access to the woman's relevant medical records so that the woman may request assistance related to any complication that arises from the performance or induction of the abortion, or to ask health-related questions regarding the abortion.
  - (b) The name and telephone number of the nearest hospital to the home of the pregnant woman at which an emergency arising from the abortion would be treated.
  - (c) Written notice informing the pregnant woman whether the outpatient abortion facility follows the practice of imposing abortion sales quotas on its employees.

Present law provides regulations for the practice of inducing an abortion through use of drugs or chemicals. Proposed law retains present law and adds thereto the following requirements:

- (1) No drug or chemical shall be administered, dispensed, or otherwise provided to the pregnant woman by a physician or any person acting under the physician's direction, whether in a licensed outpatient abortion facility, private medical office or any other facility, unless the physician has obtained the voluntary and informed consent of the pregnant woman pursuant to the requirements of present law.
- (2) If a physician prescribes, dispenses, administers, or provides any drug or chemical to a pregnant woman for the purpose of inducing an abortion, the physician shall report the abortion to DHH in accordance with provisions of present law.

- (3) If the physician knows that the woman experiences a serious adverse event, as defined by the MedWatch Reporting System, during or after the administration or use of a drug to induce an abortion, the physician shall report the event to the U.S. Food and Drug Administration through the MedWatch Reporting System not later than the third day after the date he learns that the event occurred.

Proposed law authorizes the La. State Board of Medical Examiners to take disciplinary action as authorized in present law against a physician who violates any provision of proposed law.

For purposes of present law comprising the Outpatient Abortion Facility Licensing Law, present law defines "first trimester" as the time period from 6 to 14 weeks after the first day of the last menstrual period. Proposed law revises definition to provide that "first trimester" means the time period up to 14 weeks after the first day of the last menstrual period.

For purposes of present law comprising the Outpatient Abortion Facility Licensing Law, present law defines "outpatient abortion facility" as any outpatient facility, other than a hospital or an ambulatory surgical center, in which any second trimester or five or more first trimester abortions per month are performed. Proposed law changes the abortions per unit of time metric provided in the definition from five or more first trimester abortions per month to five or more first trimester abortions per calendar year.

Proposed law provides all of the following expressions of legislative intent:

- (1) It is the intent of the legislature that each physician who performs an abortion as defined in present law shall follow the long-established procedure of reporting anonymous, aggregate abortion statistics and health complications to DHH, subject to all state and federal privacy protections, for the purpose of providing anonymous and accurate public health and safety data regarding abortion and its impact on women's health.
- (2) It is the intent of the legislature that every application of proposed law to every individual woman shall be severable from each other. In the event the application of proposed law is found to impose an impermissible undue burden on any pregnant woman or group of pregnant women, the application of proposed law to those women shall be severed from the remaining applications of proposed law that do not impose an undue burden, and those remaining applications shall remain in force and unaffected.

Proposed law provides that proposed law shall be known as the "Unsafe Abortion Protection Act".

(Amends R.S. 40:1299.35.2(A), 1299.35.2.1, and 2175.3(2) and (5))

#### Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Health and Welfare to the original bill.

1. Added provision expressing the intent of the legislature that each physician who performs an abortion as defined in present law shall follow the long-established procedure of reporting anonymous, aggregate abortion statistics and health complications to DHH, subject to all state and federal privacy protections, for the purpose of providing anonymous and accurate public health and safety data regarding abortion and its impact on women's health.

2. Added provision stipulating that proposed law shall not be construed or interpreted to apply to emergency contraceptives or any other drugs or chemicals that do not cause abortion as defined in present law.
3. Made technical change.