Regular Session, 2014

HOUSE BILL NO. 1262 (Substitute for House Bill No. 727 by Representative Ivey)

BY REPRESENTATIVES IVEY, ADAMS, BARROW, BURFORD, HENRY BURNS, CHANEY, COX, GREENE, HARRIS, HARRISON, HAVARD, HENSGENS, HILL, HODGES, HOFFMANN, HOLLIS, HOWARD, KATRINA JACKSON, KLECKLEY, LEBAS, LORUSSO, JAY MORRIS, POPE, PYLANT, SCHRODER, SEABAUGH, SIMON, STOKES, WHITNEY, PATRICK WILLIAMS, AND WILLMOTT

ABORTION: Provides relative to information to be conveyed to a woman prior to abortion

AN ACT

To amend and reenact R.S. 40:1299.35.6(B)(5) and to enact R.S. 40:1299.35.5.2, 1299.35.8(A)(6) and (7), and 1299.35.10(A)(27) and (28), relative to consent to abortion; to require provision of certain materials to women prior to abortion and to provide for the content of such materials; to provide for requirements of the Department of Health and Hospitals relative to development and publication of printed and Internet-based materials concerning abortion; to provide for duties of physicians who perform abortions; to provide for items to be retained in the medical record of each pregnant woman upon whom an abortion is performed or induced; to provide for the content of reports to the Department of Health and Hospitals by physicians concerning abortions performed or induced; to provide for a task force on informational materials to be delivered to women prior to abortion; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 40:1299.35.6(B)(5) is hereby amended and reenacted and R.S. 40:1299.35.5.2, 1299.35.8(A)(6) and (7), and 1299.35.10(A)(27) and (28) are hereby enacted to read as follows:

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§1299.35.5.2. Information on psychological impacts, illegal coercion, abuse, and human trafficking required prior to abortion; task force on information resources

A. The legislature hereby declares that women of this state have a right to know that undergoing an abortion may have serious psychological impacts, including severe emotional distress and mental and behavioral health afflictions.

B. At least twenty-four hours prior to undergoing an elective abortion as defined in R.S. 40:1299.35.1, and as a condition for consent to the abortion to be deemed voluntary and informed, the woman or minor female considering abortion shall be given a copy of the printed materials described in this Section by the physician who is to perform the abortion or a qualified person as defined in R.S. 40:1299.35.6(B)(4)(c).

C.(1) The physician or qualified person shall provide to the woman or minor female seeking an abortion the printed materials required by this Section individually and in a private room for the purpose of ensuring that she has an adequate opportunity to ask questions and discuss her individual circumstances.

(2) The physician or qualified person shall obtain the signature of the woman or minor female seeking an abortion on a form certifying that the printed materials were given to the woman or minor female.

(3) In the case of a minor female considering an abortion, if a parent accompanies the minor female to the appointment with the physician or qualified person described in Subsection B of this Section, then the physician or qualified person shall provide to the parent copies of the materials given to the female in accordance with Paragraph (1) of this Subsection.

(4) The signed certification form provided for in Paragraph (2) of this Subsection shall be kept within the medical record of the woman or minor female upon whom the abortion procedure was performed for a period of at least seven years.

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D. The department shall create printed materials and printable Internet-based resources that provide all of the following:

(1)(a) Information, telephone numbers, and links to Internet websites of nonprofit organizations that offer free and confidential access to mental health professionals, social workers, and other trained counselors who serve women and minor females who may experience psychological distress or other mental, emotional, or behavioral health afflictions prior to undergoing an abortion.

(b) The department shall take such actions as are necessary to ensure that any mental or behavioral health professional or other counselor to whom a woman or minor female may be referred through the organizations listed in the materials developed pursuant to this Paragraph meets all of the following criteria:

(i) Provides counseling services that objectively address the mental, emotional, and behavioral health effects that may occur prior to an abortion.

(ii) Is not affiliated with an abortion provider.

(2)(a) Information, telephone numbers, and links to Internet websites of nonprofit organizations that offer free and confidential access to mental health professionals, social workers, and other trained counselors who serve women and minor females who may experience psychological distress or other mental, emotional, or behavioral health afflictions after undergoing an abortion.

(b) The department shall take such actions as are necessary to ensure that any mental or behavioral health professional or other counselor to whom a woman or minor female may be referred through the organizations listed in the materials developed pursuant to this Paragraph meets all of the following criteria:

(i) Provides counseling services that objectively address the mental, emotional, and behavioral health effects that may result from undergoing the abortion procedure.

(ii) Is not affiliated with an abortion provider.

(3)(a) Information, telephone numbers, and links to Internet websites of nonprofit organizations that offer free and confidential access to mental health

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professionals, social workers, and other trained counselors who are trained in counseling women and minor females who experience coercion to obtain an abortion concerning the psychological impacts or other mental, emotional, or behavioral health afflictions that may result from experiencing coercion to obtain an abortion.

(b) The department shall take such actions as are necessary to ensure that any mental or behavioral health professional or other counselor to whom a woman or minor female may be referred through the organizations listed in the materials developed pursuant to this Paragraph meets all of the following criteria:

(i) Provides counseling services that objectively address the mental, emotional, and behavioral health effects that may result from experiencing coercion to obtain an abortion.

(ii) Is not affiliated with an abortion provider.

(c) The materials developed pursuant to this Paragraph shall clearly indicate that coerced abortion is defined in Louisiana law, Children's Code Article 603, as a form of abuse that seriously endangers the physical, mental, and emotional health and safety of a child.

(4)(a) Information, telephone numbers, and links to Internet websites of nonprofit organizations that offer free and confidential access to mental health professionals, social workers, and other trained counselors for women and minor females who are victims of the crime of human trafficking or the crime of trafficking of children for sexual purposes.

(b) The department shall take such actions as are necessary to ensure that any mental or behavioral health professional or other counselor to whom a woman or minor female may be referred through the organizations listed in the materials developed pursuant to this Paragraph meets all of the following criteria:

(i) Provides counseling services that objectively address the mental, emotional, and behavioral health effects that may result from being a victim of human trafficking or a victim of trafficking of children for sexual purposes.

(ii) Is not affiliated with an abortion provider.

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(c) The materials developed pursuant to this Paragraph shall clearly indicate all of the following:

(i) That victims of trafficking can be safe after their rescue from being trafficked.

(ii) That Louisiana provides for assistance to victims of human trafficking, as required by R.S. 46:2162 et seq.

(iii) That there are public and private agencies providing valuable assistance to women and minor females who have been commercially and sexually exploited; and that help available to victims of trafficking and other exploitation includes housing assistance, education, job training, and drug addiction counseling.

(iv) That legal assistance is available to women and minor females seeking to escape the sex trade, including assistance in vacating prior prostitution convictions.

(v) That the crime of trafficking of children for sexual purposes is subject to the mandatory reporting laws set forth in Children's Code Articles 603, 609, and 610.

(d) Any pamphlet developed pursuant to this Paragraph shall be known as the "Point of Rescue" pamphlet.

E.(1) Each copy of a pamphlet or other printed item that the department creates pursuant to Subsection D of this Section for distribution to women and minor females considering abortion shall be marked with a unique identifier printed on three segments that are perforated and can be torn easily from the pamphlet or other printed item.

(2) When the physician or other qualified person conveys the pamphlet or other printed item to a woman or minor female considering an abortion as required in this Section, he shall remove two segments bearing the unique identifier and dispense with those segments as follows:

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(a) He shall place one segment bearing the unique identifier in the medical record of the woman along with all other documentation required by R.S. 40:1299.35.8.

(b) He shall submit one segment bearing the unique identifier to the department within thirty days after the date of the abortion along with all other documentation required by R.S. 40:1299.35.10.

(3) The department may produce copies of the materials described in Subsection D of this Section that do not bear unique identifiers, and such materials lacking unique identifiers may be distributed to persons other than women and minor females who are required to receive the materials by the provisions of this Section, and to have certification of receipt of the materials included in their medical records in accordance with R.S. 40:1299.35.8(A). All copies of materials that women and minor females considering abortion are required to receive shall bear a unique identifier in accordance with Paragraph (1) of this Subsection for the purpose of facilitating recordation in accordance with Paragraph (2) of this Subsection.

F. The governor shall convene a task force to assist the Department of Health and Hospitals in the preparation of the printed and Internet materials provided for in this Section. The task force shall be comprised of the following members:

(1) One psychologist licensed by the Louisiana State Board of Examiners of Psychologists.

(2) One physician who is board certified as a psychiatrist and licensed by the Louisiana State Board of Medical Examiners.

(3) One licensed clinical social worker licensed by the Louisiana State Board of Social Work Examiners.

(4) Two Louisiana residents who provide pre-abortion or post-abortion counseling in association with a nonprofit organization that does not counsel for or provide abortion.

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(5) Two attorneys licensed in Louisiana who specialize in advocacy for women and minor females who are at risk of being coerced into or psychologically harmed by abortion.

(6) The executive director of the Louisiana Human Trafficking Task Force.

(7) The executive director and the residential director of a residential program for women who have been commercially and sexually exploited.

(8) Two members of the Senate appointed by the president.

(9) Two members of the House of Representatives appointed by the speaker.

(10) The secretary of the Department of Health and Hospitals, who shall serve as the chairperson of the task force.

G. Nothing in this Section shall be construed to conflict with or supercede the requirement for mandatory reporting of child abuse provided in Children's Code Article 609.

§1299.35.6. Woman's Right To Know

* * *

B. Informed consent; requirements. After a woman is determined to be pregnant, no abortion shall be performed or induced without the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if:

* * *

(5)(a) Provision of printed materials. At least twenty-four hours before the abortion, the woman is given a copy of the printed materials described in this Section by the physician who is to perform the abortion, the referring physician, or a qualified person as defined in Subparagraph (4)(c) of this Subsection. If the woman is unable to read the materials, they shall be read to her. If the woman asks questions concerning any of the information or materials, answers shall be provided to her in her own language.

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(b) Each copy of a printed item that the department creates for the purpose of distribution to a woman considering abortion, as required by this Section, shall be marked with a unique identifier printed on three segments that are perforated and can be torn easily from the printed item.

(c) When the physician or other qualified person conveys the booklet or other printed item to a woman or minor female considering an abortion as required in this Section, he shall remove two segments bearing the unique identifier and dispense with those segments as follows:

(i) He shall place one segment bearing the unique identifier in the medical record of the woman along with all other documentation required by R.S. 40:1299.35.8.

(ii) He shall submit one segment bearing the unique identifier to the department within thirty days after the date of the abortion along with all other documentation required by R.S. 40:1299.35.10.

(d) The department may produce copies of the materials described in this Section that do not bear unique identifiers, and such materials lacking unique identifiers may be distributed to persons other than women and minor females who are required to receive the materials by the provisions of this Section, and to have certification of receipt of the materials included in their medical records in accordance with R.S. 40:1299.35.8(A). All copies of materials that women and minor females considering abortion are required to receive shall bear a unique identifier in accordance with Subparagraph (b) of this Paragraph for the purpose of facilitating recordation in accordance with Subparagraph (c) of this Paragraph.

* * *

§1299.35.8. Records

A. Each physician shall retain and make part of the medical record of each pregnant woman upon whom an abortion is performed or induced, copies of the following:

* * *

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(6) The signed certification form provided for in R.S. 40:1299.35.5.2(C) indicating that the woman or minor female acknowledged receipt of informational materials concerning psychological impacts, illegal coercion, abuse, and human trafficking.

(7) The segments bearing the unique identifiers of the pamphlets and other printed items conveyed to a woman or minor female prior to the abortion procedure as required in R.S. 40:1299.35.6(B)(5) and 1299.35.5.2(E).

* * *

§1299.35.10. Reports

A. An individual abortion report for each abortion performed or induced shall be completed by the attending physician. The report shall be confidential and shall not contain the name or address of the woman. The report shall include:

* * *

(27) The signed certification form provided for in R.S. 40:1299.35.5.2(C) indicating that the woman or minor female acknowledged receipt of informational materials concerning psychological impacts, illegal coercion, abuse, and human trafficking.

(28) The segments bearing the unique identifiers of the pamphlets and other printed items conveyed to a woman or minor female prior to the abortion procedure as required in R.S. 40:1299.35.6(B)(5) and 1299.35.5.2(E).

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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)]

Ivey HB No. 1262

Abstract: Provides for information on psychological impacts, illegal coercion, abuse, and human trafficking to be delivered to women and minor females prior to abortion.

Present law provides that after a woman is determined to be pregnant, no abortion shall be performed or induced without the woman's voluntary and informed consent. Proposed law retains present law and adds requirements and conditions for consent to an abortion to be deemed voluntary and informed.

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Present law provides that at least 24 hours before an abortion, the woman shall be given a copy of certain printed materials described in the Woman's Right To Know law (R.S. 40:1299.35.6 of present law) by the physician who is to perform the abortion, the referring physician, or a qualified person as defined in present law. Proposed law retains present law and adds thereto a requirement that DHH mark each copy of a printed item it creates and provides pursuant to present law with a unique identifier printed on three segments that are perforated and can be torn easily from the printed item. Proposed law provides further that when the physician or other qualified person conveys the booklet or other printed item to a woman or minor female considering an abortion, he shall remove two segments bearing the unique identifier and dispense with those segments as follows:

(1) He shall place one segment bearing the unique identifier in the medical record of the woman along with all other documentation required by present law, R.S. 40:1299.35.8.

(2) He shall submit one segment bearing the unique identifier to DHH within 30 days after the date of the abortion along with all other documentation required by present law R.S. 40:1299.35.10.

Proposed law authorizes DHH to produce copies of the materials described in present law that do not bear unique identifiers. Provides that such materials lacking unique identifiers may be distributed to persons other than women and minor females who are required to receive the materials by present law, and to have certification of receipt of the materials included in their medical records.

Proposed law provides a declaration indicating that women of this state have a right to know that undergoing an abortion may have serious psychological impacts, including severe emotional distress and mental and behavioral health afflictions.

Proposed law provides that at least 24 hours prior to undergoing an elective abortion, the woman or minor female considering abortion shall be given a copy of the printed materials on psychological impacts, illegal coercion, abuse, and human trafficking described in proposed law. Proposed law stipulates that provision of these materials is a condition for the woman's or minor female's consent to the abortion to be deemed voluntary and informed.

Proposed law requires that the physician or qualified person, as defined in present law, shall provide to the woman or minor female seeking an abortion the materials required by proposed law individually and in a private room for the purpose of ensuring that she has an adequate opportunity to ask questions and discuss her individual circumstances.

Proposed law requires that the physician or qualified person obtain the signature of the woman or minor female certifying that the printed materials were given to her.

Proposed law provides that in the case of a minor female considering an abortion, if a parent accompanies the minor female to the appointment with the physician or qualified person, then the physician or qualified person shall provide to the parent copies of the materials that were given to the female in accordance with proposed law.

Proposed law requires DHH to create printed materials and printable Internet-based resources that provide information on mental, emotional, and behavioral health impacts prior to abortion; mental, emotional, and behavioral health impacts after abortion; coerced abortion; and human trafficking. Stipulates that provision of all materials described in proposed law prior to abortion is a condition for the woman's or minor female's consent to the abortion to be deemed voluntary and informed. Provides that the materials resources shall include the following:

(1) Information, telephone numbers, and links to Internet websites of nonprofit organizations that offer free and confidential access to mental health professionals,

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social workers, and other trained counselors who serve women and minor females who may experience psychological distress or other mental, emotional, or behavioral health afflictions prior to undergoing an abortion.

(2) Information, telephone numbers, and links to Internet websites of nonprofit organizations that offer free and confidential access to mental health professionals, social workers, and other trained counselors who serve women and minor females who may experience psychological distress or other mental, emotional, or behavioral health afflictions after undergoing an abortion.

(3) Information, telephone numbers, and links to Internet websites of nonprofit organizations that offer free and confidential access to mental health professionals, social workers, and other trained counselors who are trained in counseling women and minor females who experience coercion to obtain an abortion concerning the psychological impacts or other mental, emotional, or behavioral health afflictions that may result from experiencing a coerced abortion. Proposed law requires that such materials clearly indicate that coerced abortion is defined in present law as a form of abuse that seriously endangers the physical, mental, and emotional health and safety of a child.

(4) Information, telephone numbers, and links to Internet websites of nonprofit organizations that offer free and confidential access to mental health professionals, social workers, and other trained counselors for women and minor females who are victims of the crime of human trafficking or the crime of trafficking of children for sexual purposes. Proposed law requires that such materials clearly indicate all of the following:

(a) That victims of human trafficking can be safe after their rescue from being trafficked.

(b) That Louisiana provides by law for assistance to victims of human trafficking.

(c) That there are public and private agencies providing valuable assistance to women and girls who have been commercially and sexually exploited; and that help available to victims of trafficking and other exploitation includes housing assistance, education, job training, and drug addiction counseling.

(d) That legal assistance is available to women and girls seeking to escape the sex trade, including assistance in vacating prior prostitution convictions.

(e) That the crime of trafficking of children for sexual purposes is subject to the mandatory reporting requirements set forth in present law.

Proposed law provides that any pamphlet concerning human trafficking developed pursuant to proposed law shall be known as the "Point of Rescue" pamphlet.

Proposed law requires DHH to ensure that any mental or behavioral health professional or other counselor to whom a woman or minor female may be referred through the organizations listed in the materials developed pursuant to proposed law meets all of the following criteria:

(1) Provides counseling services that objectively address the mental, emotional, and behavioral health effects that may result prior to abortion, after abortion, pursuant to coerced abortion, and from human trafficking.

(2) Is not affiliated with an abortion provider.

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Proposed law requires that each copy of a pamphlet or other printed item created pursuant to proposed law shall be marked with a unique identifier printed on three segments that are perforated and can be torn easily from the pamphlet or other printed item. Requires further that when the physician or other qualified person conveys the pamphlet or other printed item to a woman or minor female considering an abortion, he shall remove two segments bearing the unique identifier and dispense with those segments as follows:

(1) He shall place one segment bearing the unique identifier in the medical record of the woman along with all other documentation required by present law, R.S. 40:1299.35.8.

(2) He shall submit one segment bearing the unique identifier to DHH within 30 days after the date of the abortion along with all other documentation required by present law, R.S. 40:1299.35.10.

Proposed law authorizes DHH to produce copies of the materials described in proposed law that do not bear unique identifiers. Provides that such materials lacking unique identifiers may be distributed to persons other than women and minor females who are required to receive the materials by proposed law, and to have certification of receipt of the materials included in their medical records.

Proposed law provides that the governor shall convene a 14-member task force to assist DHH in the preparation of the printed and Internet materials provided for in proposed law. Provides that the task force shall be comprised of the following members:

(1) One psychologist licensed by the La. State Board of Examiners of Psychologists.

(2) One physician who is board certified as a psychiatrist and licensed by the La. State Board of Medical Examiners.

(3) One licensed clinical social worker licensed by the La. State Board of Social Work Examiners.

(4) Two La. residents who provide pre-abortion or post-abortion counseling in association with a nonprofit organization that does not counsel for or provide abortion.

(5) Two attorneys licensed in La. who specialize in advocacy for women and minor females who are at risk of being coerced into or psychologically harmed by abortion.

(6) The executive director of the La. Human Trafficking Task Force.

(7) The executive director and the residential director of a residential program for women who have been commercially and sexually exploited.

(8) Two members of the Senate appointed by the president.

(9) Two members of the House of Representatives appointed by the speaker.

(10) The secretary of DHH, who shall serve as the chairperson of the task force.

Proposed law stipulates that nothing therein shall be construed to conflict with or supercede the requirement for mandatory reporting of child abuse provided in Ch.C. Art. 609 of present law.

Present law, R.S. 40:1299.35.8, requires each physician who performs an abortion to retain and make part of the medical record of each pregnant woman upon whom an abortion is performed or induced copies of certain forms, certificates, and other documents. Proposed

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law retains present law and adds the following to the enumerated list of items to be retained and made part of the medical record:

(1) The signed certification form provided for in proposed law indicating that the woman acknowledged receipt of the informational materials concerning psychological impacts, illegal coercion, abuse, and human trafficking.

(2) The segments bearing the unique identifiers of the pamphlets and other printed items conveyed to a woman or minor female prior to the abortion procedure addressing psychological impacts, illegal coercion, abuse, and human trafficking as required in proposed law.

Present law, R.S. 40:1299.35.10, requires each physician who performs an abortion to submit to DHH, within 30 days of the date of the abortion, a report encompassing de-identified health and demographic data on the woman upon whom the abortion was performed, along with certain other forms and documents. Proposed law retains present law and adds the following to the enumerated list of items to be included in the report to DHH:

(1) The signed certification form provided for in proposed law indicating that the woman acknowledged receipt of the informational materials concerning psychological impacts, illegal coercion, abuse, and human trafficking.

(2) The segments bearing the unique identifiers of the pamphlets and other printed items conveyed to a woman or minor female prior to the abortion procedure addressing psychological impacts, illegal coercion, abuse, and human trafficking as required in proposed law.

(Amends R.S. 40:1299.35.6(B)(5); Adds R.S. 40:1299.35.5.2, 1299.35.8(A)(6) and (7), and 1299.35.10(A)(27) and (28))

Summary of Amendments Adopted by House

House Floor Amendments to the engrossed bill.

1. Changed reference in proposed law to a certain type of printed item from "pamphlet" to "booklet" for purposes of consistency with present law.

2. Made grammatical and technical changes, including a correction to the order in which Sections of law appear within the legislative instrument.

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