

2016 Regular Session

HOUSE BILL NO. 1081

BY REPRESENTATIVE MIKE JOHNSON

ABORTION: Provides for the Unborn Child Protection from Dismemberment Abortion Act

1 AN ACT

2 To enact R.S. 40:1061.1.1, relative to regulation of abortion; to provide for defined terms
3 including "dismemberment abortion"; to prohibit performance of dismemberment
4 abortions; to provide penalties for violations of the prohibition; to provide relative
5 to legal proceedings pursuant to violations of the prohibition; to provide for
6 construction of certain provisions; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 40:1061.1.1 is hereby enacted to read as follows:

9 §1061.1.1. Louisiana Unborn Child Protection from Dismemberment Abortion Act

10 A. This Section shall be known and may be cited as the "Louisiana Unborn
11 Child Protection from Dismemberment Abortion Act".

12 B. As used in this Section, the following terms have the meaning ascribed
13 in this Subsection:

14 (1) "Abortion" shall have the meaning ascribed in R.S. 40:1061.9.

15 (2) "Attempt to perform an abortion" means to do or omit to do anything
16 that, under the circumstances as the actor believes them to be, is an act or omission
17 constituting a substantial step in a course of conduct planned to culminate in oneself
18 performing an abortion. Such substantial steps include, but are not limited to:

19 (a) Agreeing with an individual to perform an abortion on that individual or
20 on some other person, whether or not the term "abortion" is used in the agreement,

1 and whether or not the agreement is contingent on another factor such as receipt of
2 payment or a determination of pregnancy.

3 (b) Scheduling or planning a time to perform an abortion on an individual,
4 whether or not the term "abortion" is used, and whether or not the performance is
5 contingent on another factor such as receipt of payment or a determination of
6 pregnancy.

7 (c) The definition provided in this Paragraph shall not be construed to
8 require that an abortion procedure must actually be initiated for an attempt to occur.

9 (3)(a) "Dismemberment abortion" means, with the purpose of causing the
10 death of an unborn child, to purposely dismember a living unborn child and extract
11 him or her one piece at a time from the uterus through use of clamps, grasping
12 forceps, tongs, scissors, or a similar instrument that, through the convergence of two
13 rigid levers, slices, crushes, or grasps a portion of the unborn child's body to cut or
14 rip it off or apart.

15 (b) The term "dismemberment abortion" does not include an abortion which
16 uses suction to dismember the body of an unborn child by vacuuming fetal parts into
17 a collection container, although it does include an abortion in which a
18 dismemberment abortion, as defined in this Paragraph, is used to cause the death of
19 an unborn child and suction is subsequently used to extract fetal parts after the death
20 of the unborn child.

21 (4) "Intentionally" means the person who acts either consciously desires the
22 physical result of his act, whatever the likelihood of that result happening from his
23 conduct; or knows that the result is substantially certain to follow from his conduct,
24 whatever his desire may be as to that result.

25 (5) "Physician" means a person licensed to practice medicine in the state of
26 Louisiana who meets the requirements of R.S. 40:1061.10.

27 (6) "Serious health risk to the unborn child's mother" means that in
28 reasonable medical judgment she has a condition that so complicates her medical
29 condition that it necessitates the abortion of her pregnancy to avert her death or to

1 avert serious risk of substantial and irreversible physical impairment of a major
2 bodily function, not including psychological or emotional conditions. No such
3 condition may be determined to exist if it is based on a claim or diagnosis that the
4 woman will engage in conduct which she intends to result in her death or in
5 substantial and irreversible physical impairment of a major bodily function.

6 (7) "Woman" means a female human being whether or not she has reached
7 the age of majority.

8 C.(1) Notwithstanding any other provision of law, it shall be unlawful for
9 any person to intentionally perform or attempt to perform a dismemberment abortion
10 and thereby kill an unborn child unless necessary to prevent serious health risk to the
11 unborn child's mother.

12 (2) No woman upon whom an abortion is performed or attempted to be
13 performed shall be thereby liable for performing or attempting to perform a
14 dismemberment abortion. No nurse, technician, secretary, receptionist, or other
15 employee or agent who is not a physician but who acts at the direction of a
16 physician, and no pharmacist or other individual who is not a physician but who fills
17 a prescription or provides instruments or materials used in an abortion at the
18 direction of or to a physician shall be thereby liable for performing or attempting to
19 perform a dismemberment abortion.

20 D. Whoever violates the provisions of this Section shall be fined not more
21 than one thousand dollars per incidence or occurrence, or imprisoned for not more
22 than two years, or both. In addition to whatever remedies are otherwise available
23 under the laws of this state, failure to comply with the provisions of this Section shall
24 provide all of the following:

25 (1) A basis for a cause of action for civil damages for injuries and wrongful
26 death as more fully set forth in Civil Code Articles 2315.1 and 2315.2, whether or
27 not the unborn child was viable at the time the abortion was performed, or was born
28 alive, except that such causes of action shall only be maintained by the following
29 persons:

1 (a) The natural or biological father of the aborted infant or fetus, unless such
2 father's criminal conduct caused the pregnancy.

3 (b) The mother of the aborted infant or fetus, subject to the provisions of
4 Subsection F of this Section.

5 (c) The parents or guardian on behalf of the mother of the aborted infant or
6 fetus if the mother was a minor at the time of the abortion, unless the parents or
7 guardian consented to the dismemberment abortion.

8 (2) A basis for professional disciplinary action under R.S. 37:1261 et seq.

9 E.(1) A physician charged with an offense pursuant to this Section may seek
10 a hearing before the Louisiana State Board of Medical Examiners on whether the
11 physician's conduct was necessary to save the life of the mother whose life was
12 endangered by a physical disorder, physical illness, or physical injury, including a
13 life-endangering physical condition caused by or arising from the pregnancy itself.

14 (2) The findings concerning the issue provided for in Paragraph (1) of this
15 Subsection are admissible on that issue at the trial of the physician. Upon motion of
16 the physician, the court shall delay the beginning of the trial for not more than thirty
17 days to permit such hearing to take place; however, this delay may be extended for
18 good cause.

19 F. When requested, the court shall allow a woman to proceed using solely
20 her initials or a pseudonym and may close any proceedings in the case and enter
21 other protective orders to preserve the privacy of the woman upon whom the
22 abortion was performed.

23 G. Any person who is not a physician or not otherwise legally authorized by
24 the state to perform abortions, but who nevertheless directly performs a
25 dismemberment abortion, shall be subject to the provisions of this Section.

26 H. Nothing in this Section shall be construed as creating or recognizing a
27 right to abortion, or a right to a particular method of abortion.

28 Section 2. If any one or more provisions, sections, subsections, sentences, clauses,
29 phrases, or words of this Act or the application thereof to any person or circumstance is

1 found to be unconstitutional, the same is hereby declared to be severable in accordance with
 2 R.S. 24:175 and the balance of this Act shall remain effective notwithstanding such
 3 unconstitutionality. The legislature hereby declares that it would have passed this Act, and
 4 each provision, section, subsection, sentence, clause, phrase, or word thereof, irrespective
 5 of the fact that any one or more provisions, sections, subsections, sentences, clauses, phrases,
 6 or words be declared unconstitutional.

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)]

HB 1081 Original

2016 Regular Session

Mike Johnson

Abstract: Enacts the Unborn Child Protection from Dismemberment Abortion Act to define and prohibit dismemberment abortions.

Proposed law provides that "dismemberment abortion" means, with the purpose of causing the death of an unborn child, to purposely dismember a living unborn child and extract him or her one piece at a time from the uterus through use of clamps, grasping forceps, tongs, scissors, or a similar instrument that, through the convergence of two rigid levers, slices, crushes, or grasps a portion of the unborn child's body to cut or rip it off or apart. Stipulates that the term does not include an abortion which uses suction to dismember the body of an unborn child by vacuuming fetal parts into a collection container, although it does include an instance in which a dismemberment abortion is used to cause the death of an unborn child and suction is subsequently used to extract fetal parts after the death of the unborn child.

Proposed law provides that it shall be unlawful for any person to intentionally perform or attempt to perform a dismemberment abortion and thereby kill an unborn child unless necessary to prevent serious health risk to the unborn child's mother.

Proposed law stipulates that none of the following persons shall be liable for performing or attempting to perform a dismemberment abortion:

- (1) The woman upon whom an abortion is performed or attempted.
- (2) A nurse, technician, secretary, receptionist, or other employee or agent who is not a physician but who acts at the direction of a physician, and no pharmacist or other individual who is not a physician but who fills a prescription or provides instruments or materials used in an abortion at the direction of or to a physician.

Proposed law provides that whoever violates the provisions of proposed law shall be fined not more than \$1,000 per incidence or occurrence, or imprisoned for not more than two years, or both. Provides that in addition to whatever remedies are otherwise available under present law, failure to comply with the provisions of proposed law shall provide all of the following:

- (1) A basis for a cause of action for civil damages for injuries and wrongful death as more fully set forth in present law (C.C. Arts. 2315.1 and 2315.2), whether or not the

unborn child was viable at the time the abortion was performed, or was born alive, except that such causes of action shall only be maintained by the following persons:

- (a) The natural or biological father of the aborted infant or fetus, unless such father's criminal conduct caused the pregnancy.
 - (b) The mother of the aborted infant or fetus.
 - (c) The parents or guardian on behalf of the mother of the aborted infant or fetus if the mother was a minor at the time of the abortion, unless the parents or guardian consented to the dismember abortion.
- (2) A basis for professional disciplinary action under present law relative to licensure of physicians and regulation of the practice of medicine (R.S. 37:1261 et seq.).

Proposed law authorizes courts, when requested, to allow a woman to proceed in a cause of action pursuant to proposed law using solely her initials or a pseudonym; and to close any proceedings in the case and enter other protective orders to preserve the privacy of the woman upon whom the abortion was performed.

Proposed law provides that any person who is not a physician or not otherwise legally authorized by the state to perform abortions, but who nevertheless directly performs a dismemberment abortion, shall be subject to the provisions of proposed law.

Proposed law provides that nothing therein shall be construed as creating or recognizing a right to abortion, or a right to a particular method of abortion.

(Adds R.S. 40:1061.1.1)