

ACT No. 435

2019 Regular Session
HOUSE BILL NO. 484

BY REPRESENTATIVE CREWS AND SENATOR MIZELL AND REPRESENTATIVE GAROFALO

1 AN ACT

2 To amend and reenact R.S. 40:1061.19 and 1061.29, relative to regulation of abortion; to
3 provide requirements relative to medical records of women upon whom abortions are
4 performed; to establish duties of physicians and medical directors, administrators,
5 and owners of abortion facilities relative to such medical records; to establish
6 retention periods for such records; to institute penalties for violations of laws relative
7 to abortion-related records; to provide conditions and requirements for obtaining and
8 maintaining an abortion facility license; to provide legislative findings; and to
9 provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 40:1061.19 and 1061.29 are hereby amended and reenacted to read
12 as follows:

13 §1061.19. Records

14 ~~A. Each physician shall retain and make part of the medical record of each~~
15 ~~pregnant woman upon whom an abortion is performed or induced, copies of the~~
16 ~~following:~~ In addition to any other duty that may be imposed by state law or
17 regulations, each physician who performs or induces an abortion, the medical
18 director of the facility where an abortion is performed or induced, the administrator
19 of an abortion facility, each abortion facility, and each owner of an abortion facility
20 shall have an independent duty to ensure that a designated custodian of records for
21 the facility obtains, retains, and makes part of the medical record of each pregnant
22 woman upon whom an abortion is performed or induced at least one copy of each of
23 the following documents:

- 24 (1) The certificate required by R.S. 40:1061.13.
25 (2) If the pregnant woman is an unemancipated minor, one of the following:

1 (a) A notarized consent form and copies of identification as provided for in
 2 R.S. 40:1061.14(A)(1).

3 (b) A court order required by R.S. 40:1061.14(B), if applicable.

4 (3) The consent form required by R.S. 40:1061.17.

5 (4) The reports required by R.S. 40:1061.21.

6 (5) The certificate required by R.S. 40:1061.23, if applicable.

7 (6) The signed certification form provided for in R.S. 40:1061.16(C)
 8 indicating that the woman or minor female acknowledged receipt of informational
 9 materials concerning psychological impacts, illegal coercion, abuse, and human
 10 trafficking.

11 (7) Any report made pursuant to Title VI of the Children's Code and any
 12 other report made to law enforcement in relation the patient.

13 ~~B. The physician shall retain the documents required in Subsection A of this~~
 14 ~~Section for not less than seven years. The individuals listed in Subsection A of this~~
 15 ~~Section and the abortion facility shall each have an independent duty to ensure that~~
 16 ~~the custodian of records for the abortion facility where the abortion was performed~~
 17 ~~or induced retains the documents required in Subsection A of this Section for not less~~
 18 ~~than seven years for adult patients and not less than ten years from the age of~~
 19 ~~majority for minor patients. The ten-year period for minors shall begin to run when~~
 20 ~~the patient attains the age of eighteen; provided, however, that in any case where the~~
 21 ~~patient has reported facts that would require reporting under Title VI of the~~
 22 ~~Children's Code, the retention period shall be thirty years.~~

23 C. For purposes of this Section, "owner" shall include each person with an
 24 ownership interest totaling five percent or more in an abortion facility.

25 D.(1) Any person who intentionally or negligently fails to comply with the
 26 requirements of this Section or any duty recognized therein shall be subject to the
 27 penalties provided for in R.S. 40:1061.29.

28 (2) Any abortion facility that fails to comply with the requirements of this
 29 Section or any duty recognized therein shall be subject to the penalties provided for
 30 in R.S. 40:1061.29.

1 (3) Each medical record that does not include the documents identified in
2 Subsection A of this Section, or which is not retained for the time specified in
3 Subsection B of this Section, shall constitute a separate incidence or occurrence for
4 purposes of R.S. 40:1061.29, and shall constitute a continuing violation until the
5 relevant retention period specified in Subsection B of this Section has expired.

6 E.(1) In addition to the remedies provided in this Section and any other
7 remedies available under the laws of this state, a person listed in Subsection A of this
8 Section who, either intentionally or with negligence, fails to obtain, make part of a
9 medical record, or retain any document in compliance with this Section may be
10 temporarily or permanently disqualified from performing or inducing an abortion,
11 applying for a medical facility license, or otherwise operating or managing a medical
12 facility in this state.

13 (2) For purposes of this Subsection, "operating" or "managing" shall include
14 acting as an owner, governing board member, physician, medical director,
15 administrator, or in any comparable role or title in which the individual has executive
16 responsibility for the medical facility or has professional medical responsibility for
17 patient care.

18 F. Each abortion facility, as a condition of obtaining and maintaining a
19 license under R.S. 40:2175.1 et seq., shall establish a written record retention and
20 archiving policy, which shall be submitted within thirty days of the effective date of
21 this Section to the department. The department shall review and approve the policy
22 within ninety days of its receipt. During the pendency of the ninety days, the facility
23 shall be deemed in compliance with this Section and if the department fails to act
24 within ninety days of receipt of the proposed policy, the policy shall be deemed
25 approved. The policy shall be signed by the individuals identified in Subsection A
26 of this Section who shall acknowledge their legal obligations and acknowledge
27 receiving a copy of the policy.

28 G. A person may comply with this Section by depositing a copy of each
29 document required by Subsection A of this Section with the department in an
30 organized and readily accessible format. The department shall have a cause of action

1 against the persons identified in Subsection A of this Section for the reasonably
2 anticipated cost of storing the documents for the required period of time, for which
3 those persons shall be liable in solido.

4 * * *

5 §1061.29. Penalties

6 A. Whoever violates the provisions of this Chapter shall be fined not more
7 than one thousand dollars per incidence or occurrence, or imprisoned for not more
8 than two years, or both.

9 B. Whoever violates the provisions of this Chapter shall be subject to a civil
10 fine of one thousand dollars per incidence or occurrence. In addition to any other
11 authority granted by the constitution and laws of this state, the attorney general shall
12 have the authority to pursue the civil fines provided for in this Section.

13 C. In addition to whatever remedies are otherwise available under the law
14 of this state, failure to comply with the provisions of this Chapter shall:

15 (1) Provide a basis for a civil malpractice action. Such an action may be
16 brought by the woman upon whom the abortion was performed. Any intentional
17 violation of this Chapter shall be admissible in a civil suit as prima facie evidence
18 of a failure to comply with the requirements of this Chapter. When requested, the
19 court shall allow a woman to proceed using solely her initials or a pseudonym and
20 may close any proceedings in the case and enter other protective orders to preserve
21 the privacy of the woman upon whom the abortion was performed.

22 (2) Provide a basis for professional disciplinary action, including but not
23 limited to any action authorized under R.S. 37:1261 et seq.

24 (3) Provide a basis for recovery for the woman for the death of her unborn
25 child under Louisiana Civil Code Article 2315.2, whether or not the unborn child
26 was viable at the time the abortion was performed, or was born alive.

27 (4) Provide a basis for the attorney general, the district attorney in whose
28 jurisdiction the violation occurred, or the secretary of the department to obtain a writ
29 of injunction, which shall not be subject to being released upon bond. The trial of
30 the proceeding shall be summary and by the judge without a jury.

1 Section 2. The Legislature of Louisiana hereby finds and declares the following:

2 (A) Laws enacted prior to the effective date of this Act are inadequate to deter and
3 punish the illegal destruction of patient medical records by abortion clinics.

4 (B) Abortion facilities have among their clients women who have been victims of
5 sexual assault, domestic violence, and human trafficking.

6 (C) Like other medical professionals, abortion providers are required by law to
7 report child abuse and neglect.

8 (D) Medical records of Louisiana abortion facility patients have been destroyed in
9 violation of current record retention requirements. These acts of destruction have obstructed
10 investigation of sexual assaults involving minors and allegations of illegally performed
11 abortions, and have permanently hindered the rights of victims to pursue or obtain justice.

12 Section 3. If any provision or item of this Act or the application thereof is held
13 invalid, such invalidity shall not affect other provisions, items, or applications of this Act
14 which can be given effect without the invalid provisions, items, or applications, and to this
15 end the provisions of this Act are hereby declared severable in accordance with R.S. 24:175.

16 Section 4. This Act shall become effective upon signature by the governor or, if not
17 signed by the governor, upon expiration of the time for bills to become law without signature
18 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
19 vetoed by the governor and subsequently approved by the legislature, this Act shall become
20 effective on the day following such approval.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____