

Regular Session, 2013

SENATE BILL NO. 90

BY SENATORS MILLS, APPEL, BROOME, CORTEZ, CROWE, JOHNS, LONG,  
MARTINY, NEVERS, PEACOCK, PERRY, RISER, TARVER,  
THOMPSON AND WARD

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

HEALTH CARE. Provides for certain requirements which must be met by a physician who performs an abortion. (gov sig)

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AN ACT

To amend and reenact R.S. 40:1299.35.1(7), 1299.35.2(A), 1299.35.19(introductory paragraph) and (1) and to enact R.S. 40:1299.35.2.1, relative to abortions; to amend the definition of "physician"; to provide for certain requirements which must be met by a physician who performs an abortion; to provide for drugs or chemicals used; to provide for penalties; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 40:1299.35.1(7), 1299.35.2(A), 1299.35.19(introductory paragraph) and (1) are hereby amended and reenacted and R.S. 40:1299.35.2.1 is hereby enacted to read as follows:

§1299.35.1. Definitions

As used in R.S. 40:1299.35.0 through 1299.35.19, the following words have the following meanings:

\* \* \*

(7) "Physician" means a person licensed to practice medicine in the state of Louisiana **who meets the requirements of R.S. 40:1299.35.2.**

\* \* \*

1 §1299.35.2. Abortion by physician; determination of viability; ultrasound test  
2 required; exceptions; penalties

3 A. Physician requirement. No person shall perform or induce an abortion  
4 unless that person is a physician licensed to practice medicine in the state of  
5 Louisiana **and completed a residency in obstetrics and gynecology.** Any  
6 outpatient abortion facility that knowingly **or negligently** employs, contracts with,  
7 or provides any valuable consideration for the performance of an abortion to **in an**  
8 **outpatient abortion facility by** any person who is ~~not a physician licensed to~~  
9 ~~practice medicine in the state of Louisiana,~~ **does not meet the requirements of this**  
10 **Section** is subject to having its license denied, non-renewed, or revoked by the  
11 Department of Health and Hospitals in accord with R.S. 40:2175.6.

12 \* \* \*

13 **§1299.35.2.1. Drugs or chemicals used; penalties**

14 **A. When any drug or chemical is used for the purpose of inducing an**  
15 **abortion as defined in R.S. 40:1299.35.1(1), the physician who prescribed the**  
16 **drug or chemical shall be in the same room and in the physical presence of the**  
17 **pregnant woman when the drug or chemical is initially administered, dispensed,**  
18 **or otherwise provided to the pregnant woman.**

19 **B. Any person who knowingly performs or attempts to perform an**  
20 **abortion without complying with the requirements of this Section shall be**  
21 **subject to penalties pursuant to R.S. 40:1299.35.19. No penalty may be assessed**  
22 **against the woman upon whom the abortion is performed or attempted to be**  
23 **performed.**

24 \* \* \*

25 §1299.35.19. Penalties

26 Whoever violates the provisions of this Part shall be fined not more than one  
27 thousand dollars **per incidence or occurrence,** or imprisoned for not more than two  
28 years, or both. In addition to whatever remedies are otherwise available under the  
29 law of this state, failure to comply with the provisions of this Part shall:

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

8 \* \* \*

9 Section 2. If any provision or item of this Act, or the application thereof, is held  
 10 invalid, such invalidity shall not affect other provisions, items, or applications of the Act  
 11 which can be given effect without the invalid provision, item, or application and to this end  
 12 the provisions of this Act are hereby declared severable.

13 Section 3. This Act shall become effective upon signature by the governor or, if not  
 14 signed by the governor, upon expiration of the time for bills to become law without signature  
 15 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
 16 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
 17 effective on the day following such approval.

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The original instrument was prepared by Christopher D. Adams. The following digest, which does not constitute a part of the legislative instrument, was prepared by Michelle Broussard-Johnson.

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#### DIGEST

Mills (SB 90)

Present law defines a "physician" to mean a person licensed to practice medicine in the state of Louisiana.

Proposed law amends present law to define a "physician" to mean a person licensed to practice medicine in the state of Louisiana and completed residency in obstetrics and gynecology.

Proposed law provides when any drug or chemical is used for the purpose of inducing an abortion as defined in present law, the physician who prescribed the drug or chemical shall be in the same room and in the physical presence of the pregnant woman when the drug or chemical is initially administered, dispensed, or otherwise provided to the pregnant woman.

Proposed law provides any person who knowingly performs or attempts to perform an abortion without complying with proposed law shall be subject to penalties pursuant to present law. No penalty may be assessed against the woman upon whom the abortion is performed or attempted to be performed.

Present law provides whoever violates the provisions of present law shall be fined not more than \$1,000, or imprisoned for not more than two years, or both. In addition to whatever remedies are otherwise available under the law of this state, failure to comply with the provisions of present law shall provide a basis for a civil malpractice action. Any intentional violation of present law shall be admissible in a civil suit as prima facie evidence of a failure to comply with the requirements of present law. When requested, the court shall allow a woman to proceed using solely her initials or a pseudonym and may 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 amends present law to whoever violates the provisions of present law shall be fined not more than \$1,000 per incidence or occurrence, or imprisoned for not more than two years, or both. In addition to whatever remedies are otherwise available under the law of this state, failure to comply with the provisions of present law shall provide a basis for a civil malpractice action. Such action may be brought by the woman on whom the abortion was performed. Any intentional violation of present law shall be admissible in a civil suit as prima facie evidence of a failure to comply with the requirements of present law. When requested, the court shall allow a woman to proceed using solely her initials or a pseudonym and may close any proceedings in the case and enter other protective orders to preserve the privacy of the woman upon whom the abortion was performed.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 40:1299.35.1(7), 1299.35.2(A), and 1299.35.19(intro para) and (1); adds R.S. 40:1299.35.2.1)

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Health and Welfare to the original bill

1. Deletes requirement that the attending physician give certain written instructions to pregnant woman regarding follow-up visit and the requirement relative to medical records notation.
2. Removes negligence as a cause for penalties for non-compliance or attempted non-compliance with the requirements regarding drugs or chemicals to induce an abortion.
3. Technical change.

##### Senate Floor Amendments to engrossed bill

1. Changes the physician requirement from board certification or eligibility to completion of residency in obstetrics and gynecology.
2. Changes the civil malpractice action from being brought upon by the woman whom the abortion was performed, natural or biological father or the maternal grandparents to being brought upon by any woman upon whom the abortion was performed.