

ACT No. 97

2016 Regular Session

HOUSE BILL NO. 386

BY REPRESENTATIVES HOFFMANN, ABRAHAM, AMEDEE, BACALA, BAGLEY, BAGNERIS, BARRAS, BROADWATER, CHAD BROWN, CARMODY, COX, DWIGHT, EDMONDS, EMERSON, FALCONER, GAROFALO, GUINN, LANCE HARRIS, HENSGENS, HILFERTY, HILL, HODGES, HORTON, HUVAL, IVEY, JACKSON, MIKE JOHNSON, ROBERT JOHNSON, NANCY LANDRY, LEBAS, MAGEE, DUSTIN MILLER, AND POPE AND SENATORS BARROW, BOUDREAUX, ERDEY, JOHNS, AND MILLS

1 AN ACT

2 To amend and reenact R.S. 40:1061.10(D)(2), 1061.16(B), 1061.17(B)(3), (4)(b), (5), (6),
3 and (8), and 1061.18(D), relative to regulation of abortion; to revise the time period
4 prescribed for certain activities that are required to occur prior to an abortion; to
5 provide for the time required to elapse between performance of an obstetric
6 ultrasound and performance of an abortion; to provide for the time required to elapse
7 between delivery of certain information to a woman seeking an abortion and
8 performance of the abortion; to provide relative to conditions for consent to an
9 abortion to be deemed voluntary and informed; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 40:1061.10(D)(2), 1061.16(B), 1061.17(B)(3), (4)(b), (5), (6), and
12 (8), and 1061.18(D) are hereby amended and reenacted to read as follows:

13 §1061.10. Abortion by physician; determination of viability; ultrasound test
14 required; exceptions; penalties

15 * * *

16 D. Ultrasound Requirements. Except in the case of a medical emergency,
17 and in addition to the provisions of R.S. 40:1061.17, consent to an abortion of an
18 unborn child at any stage of gestational development is voluntary and informed only

1 if an obstetric ultrasound is performed in accordance with the provisions of this
 2 Section.

3 * * *

4 (2)(a) Requirements. ~~At least twenty-four~~ Except as provided in
 5 Subparagraph (b) of this Paragraph, at least seventy-two hours prior to the ~~woman~~
 6 woman's having any part of an abortion performed or induced, and prior to the
 7 administration of any anesthesia or medication in preparation for the abortion on the
 8 woman, the physician who is to perform the abortion or a qualified person who is the
 9 physician's agent shall comply with all of the following requirements:

10 (a) (i) Perform an obstetric ultrasound on the pregnant woman;
 11 simultaneously display the screen which depicts the active ultrasound images so that
 12 the pregnant woman may view them; and make audible the fetal heartbeat, if present,
 13 in a quality consistent with current medical practice. Nothing in this Section shall
 14 be construed to prevent the pregnant woman from not listening to the sounds
 15 detected by the fetal heart monitor, or from not viewing the images displayed on the
 16 ultrasound screen.

17 (b) (ii) Provide a simultaneous and objectively accurate oral explanation of
 18 what the ultrasound is depicting, in a manner understandable to a layperson, which
 19 shall include the presence and location of the unborn child within the uterus and the
 20 number of unborn children depicted, the dimensions of the unborn child, and the
 21 presence of cardiac activity if present and viewable, along with the opportunity for
 22 the pregnant woman to ask questions.

23 (c) (iii) Offer the pregnant woman the option of requesting an ultrasound
 24 photograph or print of her unborn child of a quality consistent with current standard
 25 medical practice that accurately portrays, to the extent feasible, the body of the
 26 unborn child including limbs, if present and viewable.

27 (d) (iv) Prior to the ultrasound, obtain from the pregnant woman a copy of
 28 a completed, signed, and dated election form. The election form shall be produced
 29 and made available by the department, and shall state as follows:

30 "Ultrasound Before Abortion Notice and Election Form

1 Louisiana law requires an ultrasound examination prior to the performance
2 of an abortion. By signing below, I certify that I understand the following:

3 (1) I have the option to look at or look away from the ultrasound display
4 at any time.

5 (2) I have the option to listen to the heartbeat of the unborn child that is
6 required to be made audible unless I decline by initialing here: _____.

7 (3) I am required by law to hear an oral explanation of the ultrasound
8 images, unless I certify below that I am pregnant due to an act of rape or crime
9 against nature as defined by R.S. 14:89(A)(2).

10 (4) I have the option to ask and receive answers to any questions about
11 the images of the unborn child.

12 (5) I have the option to ask for an ultrasound photographic print depicting
13 the unborn child.

14 _____

15 Signature Date

16 OPTION FOR WOMEN WHO HAVE FILED LAW ENFORCEMENT REPORTS:

17 I certify that I have reported an act of rape or crime against nature as defined
18 by R.S. 14:89(A)(2) to law enforcement officials, and that I decline to hear an oral
19 explanation of the ultrasound images.

20 _____

21 Signature Date"

22 ~~(e)~~ (v) Orally read the following statement to the pregnant woman in the
23 ultrasound examination room prior to beginning the ultrasound examination, and
24 certify by signature on a form that shall be produced and made available by the
25 department that the following statement was delivered orally:

26 "During this ultrasound examination, you have the right to an oral
27 explanation of the results. You have the option to view the images on the ultrasound
28 screen. The heartbeat of the unborn child, if present, will be made audible, unless
29 you declined on the election form. You have the right to receive answers to any

1 questions you ask about your ultrasound examination. You have the right to receive
2 an ultrasound photographic print, which will be provided at your request."

3 ~~(f)~~ (vi) Retain copies of the election form and certification prescribed by
4 ~~Subparagraphs (d) and (e) of this Paragraph~~ Items (iv) and (v) of this Subparagraph.

5 The certification shall be placed in the medical file of the woman and shall be kept
6 by the abortion provider for a period of not less than seven years. If the woman is a
7 minor, the certification shall be placed in the medical file of the minor and kept for
8 at least seven years or for five years after the minor reaches the age of majority,
9 whichever is greater. The woman's medical files shall be kept confidential as
10 provided by law.

11 (b) If the pregnant woman certifies in writing that she currently lives one
12 hundred fifty miles or more from the nearest licensed outpatient abortion facility to
13 her residence, then the physician who is to perform the abortion or a qualified person
14 who is the physician's agent shall comply with all of the requirements of
15 Subparagraph (a) of this Paragraph at least twenty-four hours prior to the woman
16 having any part of an abortion performed or induced.

17 * * *

18 §1061.16. Information on psychological impacts, illegal coercion, abuse, and human
19 trafficking required prior to abortion; task force on information resources

20 * * *

21 B.(1) At least twenty-four ~~Except as provided in Paragraph (2) of this~~
22 Subsection, at least seventy-two hours prior to undergoing an elective abortion as
23 defined in R.S. 40:1061.9, and as a condition for consent to the abortion to be
24 deemed voluntary and informed, the woman or minor female considering abortion
25 shall be given a copy of the printed materials described in this Section by the
26 physician who is to perform the abortion or a qualified person as defined in R.S.
27 40:1061.17(B)(4)(c), except in the case of medical emergency as provided in R.S.
28 40:1061.23.

29 (2) If the woman or minor female considering abortion certifies in writing
30 that she currently lives one hundred fifty miles or more from the nearest licensed

1 outpatient abortion facility to her residence, then she shall be given a copy of the
 2 printed materials described in this Section at least twenty-four hours prior to an
 3 elective abortion procedure by the physician who is to perform the abortion or a
 4 qualified person as defined in R.S. 40:1061.17(B)(4)(c), except in the case of
 5 medical emergency as provided in R.S. 40:1061.23.

6 * * *

7 §1061.17. Woman's Right To Know

8 * * *

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

14 * * *

15 (3)(a) Oral information from the physician. ~~At least twenty-four~~ Except as
 16 provided in Subparagraph (b) of this Paragraph, at least seventy-two hours before the
 17 abortion, the physician who is to perform the abortion or the referring physician has
 18 informed the woman, orally and in person, of:

19 (a) (i) The name of the physician who meets the requirements of R.S.
 20 46:1061.10(A) and who will perform the abortion.

21 (b) (ii) A description of the proposed abortion method and of those risks
 22 (including risks to the woman's reproductive health) and alternatives to the abortion
 23 that a reasonable patient would consider material to the decision of whether or not
 24 to undergo the abortion.

25 (c) (iii) The probable gestational age of the unborn child at the time the
 26 abortion is to be performed; and, if the unborn child is viable or has reached the
 27 gestational age of twenty-four weeks and the abortion may be otherwise lawfully
 28 performed under existing law, that:

29 (d) (aa) The unborn child may be able to survive outside the womb.

1 ~~(ii)~~ (bb) The woman has the right to request the physician to use the method
 2 of abortion that is most likely to preserve the life of the unborn child.

3 ~~(iii)~~ (cc) If the unborn child is born alive, that attending physicians have the
 4 legal obligation to take all reasonable steps necessary to maintain the life and health
 5 of the child.

6 ~~(d)~~ (iv) The probable anatomical and physiological characteristics of the
 7 unborn child at the time the abortion is to be performed.

8 ~~(e)~~ (v) The medical risks associated with carrying her child to term.

9 ~~(f)~~ (vi) Any need for anti-Rh immune globulin therapy, if she is Rh negative,
 10 the likely consequences of refusing such therapy, and a good faith estimate of the
 11 cost of the therapy.

12 ~~(g)~~ (vii) The availability of anesthesia or analgesics to alleviate or eliminate
 13 organic pain to the unborn child that could be caused by the method of abortion to
 14 be employed.

15 ~~(h)~~ (viii) The requirement that at least ~~twenty-four~~ seventy-two hours prior
 16 to the ~~woman~~ woman's having any part of an abortion performed or induced, the
 17 physician, referring physician, or qualified person working in conjunction with either
 18 physician must perform an obstetric ultrasound under the provisions of R.S.
 19 40:1061.10.

20 ~~(i)~~ (ix) The inclusion in her printed materials of a comprehensive list,
 21 compiled by the department, of facilities that offer obstetric ultrasounds free of
 22 charge.

23 (b) If the woman certifies in writing that she currently lives one hundred fifty
 24 miles or more from the nearest licensed outpatient abortion facility to her residence,
 25 then the physician who is to perform the abortion or the referring physician shall
 26 comply with all of the requirements of Subparagraph (a) of this Paragraph at least
 27 twenty-four hours prior to the abortion.

28 (4) Oral information from a physician or qualified person.

29 * * *

1 (b)(i) ~~At least twenty-four~~ Except as provided in Item (ii) of this
2 Subparagraph, at least seventy-two hours before a scheduled abortion, the physician
3 who is to perform the abortion, the referring physician, or a qualified person has
4 informed the woman, orally and in person, that:

5 (i) ~~(aa)~~ Medical assistance benefits may be available for prenatal care,
6 childbirth, and neonatal care, and that more detailed information on the availability
7 of such assistance is contained on the department's website and in the printed
8 materials which shall be given to her as provided in this Section.

9 (ii) ~~(bb)~~ The department's website and printed materials describe the unborn
10 child and list agencies which offer alternatives to abortion.

11 (iii) ~~(cc)~~ The father of the unborn child is liable to assist in the support of her
12 child, even in instances where he has offered to pay for the abortion. In the case of
13 rape, this information may be omitted.

14 (iv) ~~(dd)~~ She is free to withhold or withdraw her consent to the abortion at
15 any time before or during the abortion without affecting her right to future care or
16 treatment and without the loss of any state or federally funded benefits to which she
17 might otherwise be entitled.

18 (ii) If the woman certifies in writing that she currently lives one hundred
19 fifty miles or more from the nearest licensed outpatient abortion facility to her
20 residence, then the physician who is to perform the abortion, the referring physician,
21 or a qualified person shall comply with all of the requirements of Item (i) of this
22 Subparagraph at least twenty-four hours before a scheduled abortion.

23 * * *

24 (5)(a) Provision of printed materials. ~~At least twenty-four~~ Except as
25 provided in Subparagraph (b) of this Paragraph, at least seventy-two hours before the
26 abortion, the woman is given a copy of the printed materials described in this Section
27 by the physician who is to perform the abortion, the referring physician, or a
28 qualified person as defined in Subparagraph (4)(c) of this Subsection. If the woman
29 is unable to read the materials, they shall be read to her. If the woman asks questions

1 concerning any of the information or materials, answers shall be provided to her in
2 her own language.

3 (b) If the woman certifies in writing that she currently lives one hundred fifty
4 miles or more from the nearest licensed outpatient abortion facility to her residence,
5 then the woman shall be given a copy of the printed materials described in this
6 Section by the physician who is to perform the abortion, the referring physician, or
7 a qualified person as defined in Subparagraph (4)(c) of this Subsection at least
8 twenty-four hours before the abortion. If the woman is unable to read the materials,
9 they shall be read to her. If the woman asks questions concerning any of the
10 information or materials, answers shall be provided to her in her own language.

11 (6) Certification and reporting. The woman certifies in writing on a form
12 provided by the department, prior to the abortion, that the information and materials
13 required to be provided under this Section have been provided at least ~~twenty-four~~
14 seventy-two hours prior to the abortion; or, if applicable, at least twenty-four hours
15 prior to the abortion in the case of a woman who has given prior certification in
16 writing that she currently lives one hundred fifty miles or more from the nearest
17 licensed outpatient abortion facility to her residence. All physicians who perform
18 abortions shall report the total number of certifications received monthly to the
19 department. The department shall make the number of certifications received
20 available to the public on an annual basis.

21 * * *

22 (8) The woman is not required to pay any amount for the abortion procedures
23 until the ~~twenty-four-hour~~ seventy-two-hour period has expired; or until expiration
24 of the twenty-four-hour period applicable in the case of a woman who has given
25 prior certification in writing that she currently lives one hundred fifty miles or more
26 from the nearest licensed outpatient abortion facility to her residence.

27 * * *

28 §1061.18. Abortion sought due to rape or certain acts of crime against nature;
29 reporting and certification

30 * * *

1 D. Whenever an abortion is being sought pursuant to R.S. 40:1061.6 to
 2 terminate a pregnancy resulting from an alleged act of rape or crime against nature
 3 as defined by R.S. 14:89(A)(2), the victim may request spiritual counseling and shall
 4 be offered the same informed consent information, without the seventy-two-hour or
 5 twenty-four-hour delay, ~~contained in~~ whichever may be applicable pursuant to R.S.
 6 40:1061.17(B), prior to the performance of the abortion.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____