

2018 Regular Session

HOUSE BILL NO. 891 (Substitute for House Bill No. 338 by Representative Hoffmann)

BY REPRESENTATIVES HOFFMANN, CHANEY, COX, HENSGENS, JACKSON,
JOHNSON, LEBAS, POPE, STAGNI, AND STOKES

ABORTION: Provides relative to the prohibition on public funding for entities that perform abortions

1 AN ACT

2 To amend and reenact R.S. 36:21(B) and R.S. 40:1061.6(A)(2) and 2175.4(B), relative to
3 a prohibition on public funding for entities that perform abortions; to provide for
4 applicability of and exceptions to the prohibition; to provide relative to the validity
5 of outpatient abortion facility licenses; to provide for legislative findings; to provide
6 for the redesignation of certain statutes; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 36:21(B) is hereby amended and reenacted to read as follows:

9 §21. Public funding for abortion providers; prohibition

10 * * *

11 B.(1) No institution, board, commission, department, agency, official, or
12 employee of the state, or of any local political subdivision thereof, shall ~~contract~~
13 ~~with,~~ award any grant to, or otherwise bestow any funding upon, an entity or
14 ~~organization that performs abortions, or that contracts with an entity or organization~~
15 ~~that performs abortions, in this state. The prohibition provided in this Section shall~~
16 ~~apply to state funds, federal funds, and any other funds that may be used for purposes~~
17 ~~of contracting for services, providing reimbursements, or grant issuance. of public~~
18 funds to, nor shall the Louisiana Department of Health enter into any provider

1 agreement for medical assistance program funding, as defined in R.S. 46:437.3, with
2 any healthcare provider, entity, or organization that does any of the following:

3 (a) Performs abortions in this state.

4 (b) Provides facilities to another healthcare provider, entity, or organization
5 for the purpose of performing abortions in this state.

6 (c) Hires or retains another healthcare provider, entity, or organization for
7 the purpose of performing abortions in this state.

8 (d) Provides reimbursable medical assistance program services in the same
9 physical facility as a licensed outpatient abortion facility.

10 (2) The prohibition provided in this Section shall apply to state funds, federal
11 funds, and any other public funds for procuring goods or services, or for providing
12 medical assistance program services, reimbursements, or grants.

13 (3) The prohibition provided in this Section shall not be construed to prohibit
14 provision of public protections, such as fire, police, or emergency medical services,
15 public utilities, or other such services to any entity or organization in the same
16 manner as provided to the general public.

17 (4) The prohibition in this Section shall not be construed to restrict funding
18 to an entity that may ~~perform~~ be engaged in performing the following types of
19 abortions, exclusively, provided such abortions are performed in accordance with
20 applicable state and federal laws:

21 (a) An abortion which is medically necessary to prevent the death of the
22 mother.

23 (b) An abortion in a case when the mother is a victim of rape or incest.

24 (c) An abortion performed when the pregnancy is diagnosed as medically
25 futile. For purposes of this Subparagraph, "medically futile" means that, in
26 reasonable medical judgment, the unborn child has a profound and irremediable
27 congenital or chromosomal anomaly that is incompatible with sustaining life after
28 birth. This diagnosis shall be a medical judgment certified in the pregnant woman's

1 medical record by a reasonably prudent physician who is knowledgeable about the
2 case and the treatment possibilities with respect to the medical conditions involved.

3 Section 2. R.S. 40:1061.6(A)(2) and 2175.4(B) are hereby amended and reenacted
4 to read as follows:

5 §1061.6. Use of public funds

6 A.

7 * * *

8 (2)(a) As more specifically provided in Chapter 1-A of Title 49 of the
9 Louisiana Revised Statutes of 1950, no ~~no~~ institution, board, commission,
10 department, agency, official, or employee of the state, or of any local political
11 subdivision thereof, shall contract with, award any grant to, or otherwise bestow any
12 funding upon, an entity or organization that performs abortions, or that contracts with
13 an entity or organization that performs abortions, in this state, as more specifically
14 provided in Chapter 1-A of Title 36 of the Louisiana Revised Statutes of 1950. of
15 public funds to, nor shall the Louisiana Department of Health enter into any provider
16 agreement for medical assistance program funding, as defined in R.S. 46:437.3, with
17 any healthcare provider, entity, or organization that does any of the following:

18 (i) Performs abortions in this state.

19 (ii) Provides facilities to another healthcare provider, entity, or organization
20 for the purpose of performing abortions in this state.

21 (iii) Hires or retains another healthcare provider, entity, or organization for
22 the purpose of performing abortions in this state.

23 (iv) Provides reimbursable medical assistance program services in the same
24 physical facility as a licensed outpatient abortion facility.

25 (b) The prohibitions provided in this Subsection shall apply to state funds,
26 federal funds, and any other public funds for procuring goods or services, or for
27 providing medical assistance program services, reimbursements, or grants, but shall
28 not be construed to prohibit provision of public protections, such as fire, police, or

1 (iv) It is a well-established principle recognized by the United States Supreme Court
2 that government need not be neutral between abortion providers and other medical providers
3 in the context of governmental decisions regarding the use of public funds. See *Harris v.*
4 *McRae*, 448 U.S. 297, 316 (1980) (" . . .it simply does not follow that a woman's freedom of
5 choice carries with it a constitutional entitlement to the financial resources to avail herself
6 of the full range of protected choices").

7 (B) Based on these findings, it is the purpose and intent of the legislature to set
8 reasonable standards for the fiscal integrity qualifications of medical assistance program
9 providers in accordance with federal and state laws, rules, and regulations concerning
10 appropriation and expenditure of public funding.

11 Section 4. Any provision of this Act held to be invalid or unenforceable by its terms,
12 or as applied to any person or circumstance, shall be construed so as to give it the maximum
13 effect permitted by law, unless such holding is one of utter invalidity or unenforceability,
14 in which event such provision shall be deemed severable in accordance with R.S. 24:175,
15 and shall not affect the remainder hereof or the application of such provision to other persons
16 not similarly situated or to other dissimilar circumstances.

17 Section 5. The Louisiana State Law Institute is hereby directed to redesignate
18 Chapter 1-A of Title 36 of the Louisiana Revised Statutes of 1950, comprised of R.S. 36:21,
19 as amended by Section 1 of this Act, as Chapter 1-A of Title 49 of the Louisiana Revised
20 Statutes of 1950, to be comprised of R.S. 49:200.51, and to retain the heading of the Chapter.

21 Section 6. This Act shall become effective upon signature by the governor or, if not
22 signed by the governor, upon expiration of the time for bills to become law without signature
23 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
24 vetoed by the governor and subsequently approved by the legislature, this Act shall become
25 effective on the day following such approval.

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 891 Engrossed

2018 Regular Session

Hoffmann

Abstract: Provides for applicability of and exceptions to the prohibition on public funding for entities that perform abortions.

Present law provides that no institution, board, commission, department, agency, official, or employee of the state, or of any local political subdivision thereof, shall contract with, award any grant to, or otherwise bestow any funding upon, an entity or organization that performs abortions, or that contracts with an entity or organization that performs abortions, in this state. Stipulates that the prohibition shall apply to state funds, federal funds, and any other funds that may be used for purposes of contracting for services, providing reimbursements, or grant issuance.

Proposed law revises present law by removing references to contracting, thereby causing the prohibition to apply only to funding mechanisms other than contracts.

Proposed law revises present law to provide that entities prohibited from receiving certain public funding are those that do any of the following:

- (1) Performs abortions in this state.
- (2) Provides facilities to another healthcare provider, entity, or organization for the purpose of performing abortions in this state.
- (3) Hires or retains another healthcare provider, entity, or organization for the purpose of performing abortions in this state.
- (4) Provides reimbursable Medicaid services in the same physical facility as a licensed outpatient abortion facility.

Proposed law prohibits the La. Department of Health from entering into a Medicaid provider agreement with any entity that is prohibited from receiving certain public funding for abortion-related reasons.

Proposed law stipulates that the prohibition on public funding established by present law and proposed law shall apply to state funds, federal funds, and any other public funds for procuring goods or services, or for providing Medicaid services, reimbursements, or grants.

Proposed law provides that the prohibition on public funding established by present law and proposed law shall not be construed to prohibit provision of public protections such as fire, police, or emergency medical services, public utilities, or other such services to any entity or organization in the same manner as provided to the general public.

Present law provides that a license issued to an outpatient abortion facility is valid for only one location. Proposed law retains present law and adds thereto a requirement that each abortion facility's location shall be physically and financially separate from any facility where publicly funded Medicaid services are provided, as required by proposed law.

Proposed law provides for redesignation of a chapter of present law comprised of R.S. 36:21 to a chapter comprised of R.S. 49:200.51.

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

(Amends R.S. 36:21(B) and R.S. 40:1061.6(A)(2) and 2175.4(B))