

2022 Regular Session

SENATE BILL NO. 388

BY SENATORS HEWITT, ABRAHAM, ALLAIN, BARROW, CATHEY, CLOUD, CONNICK, CORTEZ, FESI, JACKSON, MCMATH, MILLIGAN, FRED MILLS, ROBERT MILLS, MORRIS, PEACOCK, POPE, REESE, STINE, TALBOT, TARVER, WARD AND WOMACK AND REPRESENTATIVE MOORE

ABORTION. Prohibits the sale of certain abortion-inducing drugs without a prescription and provides for criminal penalties. (8/1/22)

1 AN ACT

2 To amend and reenact R.S. 14:32.9 and R.S. 51:1402(10) and to enact R.S. 40:962.2,

3 relative to abortion-inducing drugs and the crime of criminal abortion; to define

4 criminal abortion; to prohibit criminal abortion by means of the use of an abortion-

5 inducing drug without the prescribing physician being physically present during the

6 administration of the drug; to provide criminal penalties; to provide for defenses; to

7 prohibit the selling, prescribing, distributing, dispensing, or delivering of certain

8 abortion-inducing drugs under certain circumstances; to define abortion-inducing

9 drugs; to provide for exceptions; to provide for the promulgation of rules; to provide

10 for unfair trade practices; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 14:32.9 is hereby amended and reenacted to read as follows:

13 §32.9. Criminal abortion

14 A. Criminal abortion is committed when a person knowingly does either

15 of the following:

16 (1) Performs an abortion, with or without the consent of the pregnant woman

17 or her legal guardian, that results in the death of an unborn child when the abortion

1 is performed by any individual who is not a physician licensed by the state of
2 Louisiana.

3 (2) Causes an abortion to occur by means of delivering, dispensing,
4 distributing, or providing a pregnant woman with an abortion-inducing drug
5 when the person administering the drug is not a physician licensed by the state
6 of Louisiana who administers the abortion-inducing drug in person to the
7 pregnant woman.

8 B. As used in this Section, the following terms, whether used in the
9 singular or plural, shall have the following meanings:

10 (1) "Abortion" means the act of using or prescribing any instrument,
11 medicine, drug, or any other substance, device, or means with the intent to terminate
12 the clinically diagnosable pregnancy of a woman with knowledge that ~~the~~
13 ~~termination by those means will, with reasonable likelihood, cause~~ the death of the
14 unborn child **is reasonably likely to occur**. Such use, prescription, or means is not
15 an abortion if done with the intent to:

16 (a) Save the life or preserve the health of an unborn child.

17 (b) Remove a dead unborn child or induce delivery of the uterine contents in
18 case of a positive diagnosis, certified in writing in the woman's medical record along
19 with the results of an obstetric ultrasound test, that the pregnancy has ended or is in
20 the unavoidable and untreatable process of ending due to spontaneous miscarriage,
21 also known in medical terminology as spontaneous abortion, missed abortion,
22 inevitable abortion, incomplete abortion, or septic abortion.

23 (c) Remove an ectopic pregnancy.

24 (2) "Abortion-inducing drug" means a drug, medicine, or other
25 substance prescribed, dispensed, or distributed that is intended to cause an
26 abortion. "Abortion-inducing drug" includes the use of drugs, medicines, or
27 other substances that are known to have abortion-inducing properties including
28 the Mifeprex regimen, misoprostol (Cytotec), or methotrexate.

29 ~~(2)~~(3) "Physician" means a natural person who is the holder of an allopathic

1 (M.D.) degree or an osteopathic (D.O.) degree from a medical college in good
 2 standing with the Louisiana State Board of Medical Examiners who holds a license,
 3 permit, certification, or registration issued by the Louisiana State Board of Medical
 4 Examiners to engage in the practice of medicine in this state.

5 **(4) "Serious bodily injury" means bodily injury which involves**
 6 **unconsciousness; extreme physical pain; protracted and obvious disfigurement;**
 7 **protracted loss or impairment of the function of a bodily member, organ, or**
 8 **mental faculty; loss or damage to reproductive capacity; or a substantial risk**
 9 **of death.**

10 ~~(3)~~**(5) "Unborn child" means the unborn offspring of human beings from the**
 11 **moment of conception through pregnancy and until live birth shall have the same**
 12 **meaning as provided in R.S. 14:2.**

13 C.**(1)** Any person who knowingly performs **or induces** an abortion in
 14 violation of this Section **commits the crime of performing a criminal abortion**
 15 **and** shall be imprisoned at hard labor for not less than one nor more than five years,
 16 fined not less than five thousand nor more than fifty thousand dollars, or both.

17 **(2) Any person who knowingly performs an abortion in violation of this**
 18 **Section that results in the death or serious bodily injury of the pregnant woman**
 19 **shall be imprisoned at hard labor for not less than five nor more than ten years,**
 20 **fined not less than ten thousand nor more than seventy-five thousand dollars,**
 21 **or both.**

22 **(3) Any person who knowingly performs or induces an abortion that**
 23 **results in the death or serious bodily injury of a pregnant woman under the age**
 24 **of eighteen in violation of this Section shall be imprisoned at hard labor for not**
 25 **less than fifteen nor more than fifty years, fined not less than fifteen thousand**
 26 **nor more than one hundred thousand dollars, or both.**

27 D. Statutory Construction **and Defenses**. None of the following shall be
 28 construed to create the crime of criminal abortion **and shall be defenses against**
 29 **prosecution:**

1 (1) Any action taken when a physician or other licensed medical professional
2 is acting in the course of administering lawful medical care ~~and an unborn child dies.~~

3 (2) Any act taken or omission by a pregnant woman with regard to her own
4 unborn child.

5 **(3) Possessing for her own consumption or consuming an abortion-**
6 **inducing drug by a pregnant woman in violation of this Section shall not subject**
7 **the pregnant woman to the criminal consequences.**

8 **(4) Lawfully prescribing, dispensing, or distributing a drug, medicine,**
9 **or other substance for a bona fide medical reason that is not intended to cause**
10 **an abortion in violation of this Section.**

11 Section 2. R.S. 40:962.2 is hereby enacted to read as follows:

12 **§962.2. Chemical abortion and abortion-inducing drugs; restrictions of sales;**
13 **exceptions; penalties**

14 **A. Except as provided in R.S. 40:1061.11, no abortion-inducing drug may**
15 **be sold, prescribed, dispensed, distributed, or delivered in this state in violation**
16 **of this Section.**

17 **B. As used in this Section, "abortion-inducing drug" shall have the same**
18 **meaning as provided in R.S. 14:32.9. "Abortion-inducing drug" shall not**
19 **include any of the following:**

20 **(1) Contraceptive drugs or devices.**

21 **(2) Plan B or the morning-after pill.**

22 **(3) Other emergency contraception.**

23 **C. Notwithstanding any other provision of law to the contrary, delivery**
24 **to a person in Louisiana by mail-order, courier, or as a result of a sale made via**
25 **the internet in violation of this Section is strictly prohibited.**

26 **D. The Department of Health may promulgate rules pursuant to the**
27 **Administrative Procedure Act to provide for exemptions from this Section for**
28 **products using an abortion-inducing drug which are distributed for other**
29 **purposes that do not include causing an abortion.**

The original instrument was prepared by Carla S. Roberts. The following digest, which does not constitute a part of the legislative instrument, was prepared by Cheryl Serrett.

DIGEST

SB 388 Reengrossed

2022 Regular Session

Hewitt

Present law provides for the crime of criminal abortion. Present law defines "criminal abortion" as the performance of an abortion where the abortionist is not a La. licensed physician. Present law provides that any person who is guilty of criminal abortion will be imprisoned at hard labor for not less than one nor more than five years, fined not less than \$5,000 nor more than \$50,000, or both.

Proposed law retains present law but expands the definition for the crime of criminal abortion to include the delivering, dispensing, distributing, or providing a pregnant woman with an abortion-inducing drug when the person administering the drug is not a physician licensed by the state who administers the abortion-inducing drug in person to the pregnant woman.

Proposed law defines "abortion-inducing drug" as a drug, medicine or other substance that is intended to cause an abortion. Includes drugs known to have abortion-inducing properties such as Mifeprex regimen, misoprostol, or methotrexate.

Proposed law defines "serious bodily injury" as bodily injury involving unconsciousness, extreme physical pain, protracted and obvious disfigurement, protracted loss or impairment of the function of a bodily member, organ, or mental faculty, loss or damage to reproductive capacity, or a substantial risk of death.

Proposed law increases the criminal penalties when a person knowingly performs a criminal abortion that results in the death or serious bodily injury of the pregnant woman to a prison term of not less than five nor more than 10 years, fined not less than \$10,000 nor more than \$75,000, or both. Proposed law further provides that, if the recipient of the criminal abortion is under the age of 18, the criminal penalty increases to imprisonment at hard labor for not less than 15 years nor more than 50 years, fined not less than \$15,000 nor more than \$100,000, or both.

Present law provides that the following are not criminal abortion:

- (1) Any action when a physician or other licensed medical professional is acting in the course of administering lawful medical care and an unborn child dies.
- (2) Any act taken or omission by a pregnant woman with regard to her own unborn child.
- (3) Possessing an abortion-inducing drug for her own use.
- (4) Lawfully prescribing, dispensing, or distributing a drug or medicine for a bona fide medical reason that is not intended to cause an abortion.

Proposed law provides that Item (1) does not require the death of the unborn child and Item (2) requires that the act or omission be lawful.

Proposed law otherwise retains present law.

Proposed law prohibits the sale or distribution of any abortion-inducing drug that may be sold, prescribed, dispensed, distributed, or delivered in Louisiana without a prescription of a duly licensed physician who is physically present with the pregnant woman when the drug

is administered.

Proposed law further provides that an abortion-inducing drug cannot include contraceptive drugs or devices, Plan B or the morning-after pill, or other emergency contraception.

Proposed law prohibits the delivery of an abortion-inducing drug to a person in Louisiana by mail-order, courier, or as a result of a sale made via the internet.

Proposed law provides that the Dept. of Health may promulgate rules to allow products that contain an abortion-inducing drug to be distributed for uses other than causing an abortion.

Proposed law further provides that whoever sells or distributes an abortion-inducing drug without a prescription is subject to criminal penalties of not more than \$1,000 or imprisoned for not more than six months, or both, and each instance of a sale or distribution of an abortion-inducing drug is considered a separate offense for purposes of the criminal penalties. Further provides that possessing for personal consumption shall not subject a pregnant woman to criminal consequences.

Present law provides that unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

Proposed law provides that the advertising, offering for sale, sale, or distribution of chemical abortion drugs without a prescription is an unfair trade practice.

Effective August 1, 2022.

(Amends R.S. 14:32.9 and R.S. 51:1402(10); adds R.S. 40:962.2)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary C to the original bill

1. Adds provision that "induced chemical abortion" means abortion caused by certain drugs dispensed or distributed by anyone other than a physician who is in the physical presence of the pregnant woman when the drug is administered.
2. Defines "induced chemical abortion" to also mean giving instructions via certain media regarding the self-administered inducement of a chemical abortion when a physician is not physically present.
3. Provides that certain proposed law penalties apply when the unlawful act results in serious bodily injury of the pregnant woman.
4. Adds provision that a lawful dispensing of a chemical abortion drug requires the physician to be in the physical presence of the pregnant woman when the drug is administered.

Senate Floor Amendments to engrossed bill

1. Changes definition of criminal abortion.
2. Defines "abortion-inducing drug".
3. Adds additional actions to list of activities not considered criminal abortion.

4. Prohibits delivery of abortion-inducing drug by mail-order, courier, or internet sale.
5. Provides severability.