

Regular Session, 2012

SENATE BILL NO. 330

BY SENATOR WARD

CRIME/PUNISHMENT. Criminalizes the act of performing an abortion where the abortionist is not a licensed physician. (8/1/12)

AN ACT

To enact R.S. 14:32.9 and 32.9.1, relative to abortion; to create the crime of criminal abortion; to create the crime of aggravated criminal abortion; to prohibit any individual who is not a licensed physician from performing an abortion; to prohibit the dismemberment of an unborn child by an abortionist who is not a licensed physician; to provide for definitions; to provide for exceptions; to provide for construction; to provide for penalties; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 14:32.9 and 32.9.1 are hereby enacted to read as follows:

§32.9. Criminal abortion

A. Criminal abortion is an abortion performed, with or without the consent of the pregnant woman or her legal guardian, that results in the death of an unborn child when the abortion is performed by any individual who is not a physician licensed by the state of Louisiana.

B. As used in this Section:

(1) "Abortion" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to

1 terminate the clinically diagnosable pregnancy of a woman with knowledge that
2 the termination by those means will, with reasonable likelihood, cause the death
3 of the unborn child. Such use, prescription, or means is not an abortion if done
4 with the intent to:

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

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

13 (c) Remove an ectopic pregnancy.

14 (2) "Physician" means a natural person who is the holder of an
15 allopathic (M.D.) degree or an osteopathic (D.O.) degree from a medical college
16 in good standing with the Louisiana State Board of Medical Examiners who
17 holds a license, permit, certification, or registration issued by the Louisiana
18 State Board of Medical Examiners to engage in the practice of medicine in this
19 state.

20 (3) "Unborn child" means the unborn offspring of human beings from
21 the moment of conception through pregnancy and until live birth.

22 C. Any person who knowingly performs an abortion in violation of this
23 Section shall be imprisoned at hard labor for not less than one nor more than
24 five years, fined not less than five thousand nor more than fifty thousand
25 dollars, or both.

26 D. Statutory Construction. None of the following shall be construed to
27 create the crime of criminal abortion:

28 (1) Any action taken when a physician or other licensed medical
29 professional is acting in the course of administering lawful medical care and an

1 unborn child dies.

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

4 §32.9.1. Aggravated criminal abortion by dismemberment

5 A. Aggravated criminal abortion by dismemberment is the commission
6 of a criminal abortion, as defined in R.S. 14:32.9(A), when the unborn child is
7 intentionally dismembered, whether the act of dismemberment was in the
8 course of or following the death of the unborn child.

9 B. As used in this Section:

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
12 terminate the clinically diagnosable pregnancy of a woman with knowledge that
13 the termination by those means will, with reasonable likelihood, cause the death
14 of the unborn child. Such use, prescription, or means is not an abortion if done
15 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
18 contents in case of a positive diagnosis, certified in writing in the woman's
19 medical record along with the results of an obstetric ultrasound test, that the
20 pregnancy has ended or is in the unavoidable and untreatable process of ending
21 due to spontaneous miscarriage, also known in medical terminology as
22 spontaneous abortion, missed abortion, inevitable abortion, incomplete
23 abortion, or septic abortion.

24 (c) Remove an ectopic pregnancy.

25 (2) "Dismembered" or "dismemberment" means the use of a clamp,
26 forceps, curette, suction cannula, or any other surgical tool or instrument with
27 the intent to disarticulate the head or limbs from the body of the unborn child
28 during an abortion, including but not limited to the common abortion methods
29 known as suction curettage and dilation and evacuation.

(3) "Physician" means a natural person who is the holder of an allopathic (M.D.) degree or an osteopathic (D.O.) degree from a medical college in good standing with the Louisiana State Board of Medical Examiners who holds a license, permit, certification, or registration issued by the Louisiana State Board of Medical Examiners to engage in the practice of medicine in this state.

(4) "Unborn child" means the unborn offspring of human beings from the moment of conception through pregnancy and until live birth.

C. Any person who knowingly performs an abortion in violation of this Section shall be imprisoned at hard labor for not less than one nor more than ten years, fined not less than ten thousand nor more than one hundred thousand dollars, or both.

D. Exceptions. None of the following shall be construed to create the crime of criminal abortion:

(1) Any action taken 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.

Section 2. Nothing in this Act shall be construed as creating or recognizing a right to abortion. It is not the intention of this Act to make lawful an abortion that is currently unlawful. Nothing in this Act shall be construed to preclude a prosecution under any other section or provision of the law.

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 Michelle Broussard-Johnson

DIGEST

Ward (SB 330)

Proposed law creates the crime of criminal abortion.

Proposed law defines "criminal abortion" as the performance of an abortion where the abortionist is not a La. licensed physician.

Proposed 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 creates the crime of aggravated criminal abortion by dismemberment.

Proposed law defines "aggravated criminal abortion" by dismemberment as an abortion where the unborn child is intentionally dismembered, whether the act of dismemberment was in the course of or following the death of the unborn child.

Proposed law provides that any person who is guilty of aggravated criminal abortion will be imprisoned at hard labor for not less than one nor more than 10 years, fined not less than \$10,000 nor more than \$100,000, or both.

Proposed law provides for the following definitions:

1. "Abortion" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to:
 - (a) Save the life or preserve the health of an unborn child.
 - (b) Remove a dead unborn child or induce delivery of the uterine contents in case of a positive diagnosis, certified in writing in the woman's medical record along with the results of an obstetric ultrasound test, that the pregnancy has ended or is in the unavoidable and untreatable process of ending due to spontaneous miscarriage, also known in medical terminology as spontaneous abortion, missed abortion, inevitable abortion, incomplete abortion, or septic abortion.
 - (c) Remove an ectopic pregnancy.
2. "Dismembered" or "dismemberment" means the use of a clamp, forceps, curette, suction cannula, or any other surgical tool or instrument with the intent to disarticulate the head or limbs from the body of the unborn child during an abortion, including but not limited to the common abortion methods known as suction curettage and dilation and evacuation.
3. "Physician" means a natural person who is the holder of an allopathic (M.D.) degree or an osteopathic (D.O.) degree from a medical college in good standing with the Louisiana State Board of Medical Examiners who holds a license, permit, certification, or registration issued by the Louisiana State Board of Medical Examiners to engage in the practice of medicine in this state.
4. "Unborn child" means the unborn offspring of human beings from the moment of conception through pregnancy and until live birth.

Proposed law provides that none of the following will be construed to create the crime of criminal abortion:

1. Any action taken 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.

Proposed law provides nothing in proposed law will be construed as creating or recognizing a right to abortion.

Proposed law provides nothing in proposed law is intended to make lawful an abortion that is currently unlawful.

Proposed law provides that prosecution for a criminal abortion or aggravated criminal abortion will not preclude prosecution for another violation of criminal law.

Effective August 1, 2012.

(Adds R.S. 14:32.9 and 32.9.1)

Summary of Amendments Adopted by Senate

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

1. Changes "dismembered" to "intentionally dismembered" in proposed law definition of crime of abortion by dismemberment.
2. Changes definition for purposes of proposed law from "dismemberment" to "dismembered or dismemberment."
3. Makes technical changes.

Senate Floor Amendments to engrossed bill

1. Makes technical changes.