

2016 Regular Session

HOUSE BILL NO. 386

BY REPRESENTATIVES HOFFMANN, BAGLEY, COX, HENSGENS, HORTON,
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ABORTION: Extends the mandatory waiting period between certain required pre-abortion
procedures and the performance of an abortion

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 having any part of an abortion performed or induced, and prior to the administration
7 of any anesthesia or medication in preparation for the abortion on the woman, the
8 physician who is to perform the abortion or a qualified person who is the physician's
9 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:

1 "Ultrasound Before Abortion Notice and Election Form

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

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

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

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

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

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

15 _____

16 Signature Date

17 **OPTION FOR WOMEN WHO HAVE FILED LAW ENFORCEMENT REPORTS:**

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

21 _____

22 Signature Date"

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

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

1 you declined on the election form. You have the right to receive answers to any
2 questions you ask about your ultrasound examination. You have the right to receive
3 an ultrasound photographic print, which will be provided at your request."

4 ~~(f)~~ (vi) Retain copies of the election form and certification prescribed by
5 ~~Subparagraphs (d) and (e) of this Paragraph~~ Items (iv) and (v) of this Subparagraph.
6 The certification shall be placed in the medical file of the woman and shall be kept
7 by the abortion provider for a period of not less than seven years. If the woman is a
8 minor, the certification shall be placed in the medical file of the minor and kept for
9 at least seven years or for five years after the minor reaches the age of majority,
10 whichever is greater. The woman's medical files shall be kept confidential as
11 provided by law.

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

18 * * *

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

21 * * *

22 ~~B.(1) At least twenty-four~~ Except as provided in Paragraph (2) of this
23 Subsection, at least seventy-two hours prior to undergoing an elective abortion as
24 defined in R.S. 40:1061.9, and as a condition for consent to the abortion to be
25 deemed voluntary and informed, the woman or minor female considering abortion
26 shall be given a copy of the printed materials described in this Section by the
27 physician who is to perform the abortion or a qualified person as defined in R.S.
28 40:1061.17(B)(4)(c), except in the case of medical emergency as provided in R.S.
29 40:1061.23.

1 (2) If the woman or minor female considering abortion certifies in writing
2 that she currently lives one hundred fifty miles or more from the nearest licensed
3 outpatient abortion facility to her residence, then she shall be given a copy of the
4 printed materials described in this Section at least twenty-four hours prior to an
5 elective abortion procedure by the physician who is to perform the abortion or a
6 qualified person as defined in R.S. 40:1061.17(B)(4)(c), except in the case of
7 medical emergency as provided in R.S. 40:1061.23.

* * *

§1061.17. Woman's Right To Know

* * *

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

* * *

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

21 (α) (i) The name of the physician who meets the requirements of R.S.
22 46:1061.10(A) and who will perform the abortion.

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

27 (γ) (iii) The probable gestational age of the unborn child at the time the
28 abortion is to be performed; and, if the unborn child is viable or has reached the

1 gestational age of twenty-four weeks and the abortion may be otherwise lawfully
2 performed under existing law, that:

3 (i) (aa) The unborn child may be able to survive outside the womb.

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

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

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

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

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

15 (g) (vii) The availability of anesthesia or analgesics to alleviate or eliminate
16 organic pain to the unborn child that could be caused by the method of abortion to
17 be employed.

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

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

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

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

2 * * *

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

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

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

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

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

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

25 * * *

26 (5)(a) Provision of printed materials. ~~At least twenty-four~~ Except as
27 provided in Subparagraph (b) of this Paragraph, at least seventy-two hours before the
28 abortion, the woman is given a copy of the printed materials described in this Section
29 by the physician who is to perform the abortion, the referring physician, or a

1 qualified person as defined in Subparagraph (4)(c) of this Subsection. If the woman
2 is unable to read the materials, they shall be read to her. If the woman asks questions
3 concerning any of the information or materials, answers shall be provided to her in
4 her own language.

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

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

23 * * *

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

29 * * *

1 §1061.18. Abortion sought due to rape or certain acts of crime against nature;
2 reporting and certification

3 * * *

4 D. Whenever an abortion is being sought pursuant to R.S. 40:1061.6 to
5 terminate a pregnancy resulting from an alleged act of rape or crime against nature
6 as defined by R.S. 14:89(A)(2), the victim may request spiritual counseling and shall
7 be offered the same informed consent information, without the seventy-two-hour or
8 twenty-four-hour delay, contained in whichever may be applicable pursuant to R.S.
9 40:1061.17(B), prior to the performance of the abortion.

10 * * *

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 386 Engrossed

2016 Regular Session

Hoffmann

Abstract: With limited exceptions, extends the mandatory waiting period between certain required pre-abortion procedures and the performance of an abortion from 24 hours to 72 hours.

Present law requires that at least 24 hours prior to an elective abortion being performed or induced, all of the following shall occur in order for a physician to perform an elective abortion procedure legally, and for consent by the woman to the abortion procedure to be deemed voluntary and informed:

- (1) Performance of an obstetric ultrasound on the woman that conforms with all specifications for the procedure provided in present law (R.S. 40:1061.10).
- (2) Provision of information to the woman on psychological impacts of abortion, illegal coercion, abuse, and human trafficking in accordance with present law (R.S. 40:1061.16).
- (3) Provision of oral information, printed materials, and completion of certification functions in accordance with all specifications of present law known as the Woman's Right To Know law (R.S. 40:1061.17).

Proposed law extends the time period in which the pre-abortion functions required by present law are to occur from at least 24 hours prior to the abortion to at least 72 hours prior to the abortion, except in the case of a woman who certifies that she currently lives 150 miles or more from the nearest licensed outpatient abortion facility to her residence. In such cases, proposed law retains the 24-hour period provided in present law for the required pre-abortion functions to occur.

(Amends R.S. 40:1061.10(D)(2), 1061.16(B), 1061.17(B)(3), (4)(b), (5), (6), and (8), and 1061.18(D))