

2016 Regular Session

HOUSE BILL NO. 1081

BY REPRESENTATIVES MIKE JOHNSON, ABRAHAM, AMEDEE, ARMES, BAGLEY, BARRAS, BERTHELOT, BILLIOT, BISHOP, BROADWATER, CHAD BROWN, TERRY BROWN, CARMODY, CARPENTER, ROBBY CARTER, STEVE CARTER, CHANEY, CONNICK, COUSSAN, COX, CROMER, DANAHAY, DAVIS, DEVILLIER, DWIGHT, EDMONDS, EMERSON, FALCONER, FOIL, FRANKLIN, GAROFALO, GUINN, HALL, LANCE HARRIS, HAVARD, HAZEL, HENRY, HENSGENS, HILFERTY, HILL, HODGES, HOFFMANN, HOLLIS, HORTON, HOWARD, HUVAL, IVEY, JACKSON, JAMES, JEFFERSON, JENKINS, ROBERT JOHNSON, JONES, NANCY LANDRY, LEBAS, LEOPOLD, LOPINTO, LYONS, MACK, MAGEE, MCFARLAND, MIGUEZ, DUSTIN MILLER, GREGORY MILLER, MONToucET, JAY MORRIS, JIM MORRIS, NORTON, PEARSON, PIERRE, POPE, PUGH, PYLANT, REYNOLDS, RICHARD, SCHEXNAYDER, SCHRODER, SHADOIN, STOKES, TALBOT, THIBAUT, WHITE, WILLMOTT, AND ZERINGUE

ABORTION: Provides for the Unborn Child Protection from Dismemberment Abortion Act

1 AN ACT

2 To enact R.S. 40:1061.1.1, relative to regulation of abortion; to provide for defined terms
3 including "dismemberment abortion"; to prohibit performance of dismemberment
4 abortions; to provide penalties for violations of the prohibition; to provide relative
5 to legal proceedings pursuant to violations of the prohibition; to provide for
6 construction of certain provisions; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 40:1061.1.1 is hereby enacted to read as follows:

9 §1061.1.1. Louisiana Unborn Child Protection from Dismemberment Abortion Act

10 A. This Section shall be known and may be cited as the "Louisiana Unborn
11 Child Protection from Dismemberment Abortion Act".

12 B. As used in this Section, the following terms have the meaning ascribed
13 in this Subsection:

14 (1) "Abortion" shall have the meaning ascribed in R.S. 40:1061.9.

1 (2) "Attempt to perform an abortion" means to do or omit to do anything
2 that, under the circumstances as the actor believes them to be, is an act or omission
3 constituting a substantial step in a course of conduct planned to culminate in
4 oneself's performing an abortion. Such substantial steps include, but are not limited
5 to:

6 (a) Agreeing with an individual to perform an abortion on that individual or
7 on some other person, whether or not the term "abortion" is used in the agreement,
8 and whether or not the agreement is contingent on another factor such as receipt of
9 payment or a determination of pregnancy.

10 (b) Scheduling or planning a time to perform an abortion on an individual,
11 whether or not the term "abortion" is used, and whether or not the performance is
12 contingent on another factor such as receipt of payment or a determination of
13 pregnancy.

14 (c) The definition provided in this Paragraph shall not be construed to
15 require that an abortion procedure must actually be initiated for an attempt to occur.

16 (3)(a) "Dismemberment abortion" means, with the purpose of causing the
17 death of an unborn child, to purposely dismember a living unborn child and extract
18 him or her one piece at a time from the uterus through use of clamps, grasping
19 forceps, tongs, scissors, or a similar instrument that, through the convergence of two
20 rigid levers, slices, crushes, or grasps a portion of the unborn child's body to cut or
21 rip it off or apart.

22 (b) The term "dismemberment abortion" does not include an abortion which
23 uses suction to dismember the body of an unborn child by vacuuming fetal parts into
24 a collection container, although it does include an abortion in which a
25 dismemberment abortion, as defined in this Paragraph, is used to cause the death of
26 an unborn child and suction is subsequently used to extract fetal parts after the death
27 of the unborn child.

28 (4) "Intentionally" means the person who acts either consciously desires the
29 physical result of his act, whatever the likelihood of that result happening from his

1 conduct; or knows that the result is substantially certain to follow from his conduct,
2 whatever his desire may be as to that result.

3 (5) "Physician" means a person licensed to practice medicine in the state of
4 Louisiana who meets the requirements of R.S. 40:1061.10.

5 (6) "Serious health risk to the unborn child's mother" means that in
6 reasonable medical judgment the mother has a condition that so complicates her
7 medical condition that it necessitates the abortion of her pregnancy to avert her death
8 or to avert serious risk of substantial and irreversible physical impairment of a major
9 bodily function, not including psychological or emotional conditions. No such
10 condition may be determined to exist if it is based on a claim or diagnosis that the
11 woman will engage in conduct which she intends to result in her death or in
12 substantial and irreversible physical impairment of a major bodily function.

13 (7) "Woman" means a female human being whether or not she has reached
14 the age of majority.

15 C.(1) Notwithstanding any other provision of law, it shall be unlawful for
16 any person to intentionally perform or attempt to perform a dismemberment abortion
17 and thereby kill an unborn child unless necessary to prevent serious health risk to the
18 unborn child's mother.

19 (2) No woman upon whom an abortion is performed or attempted to be
20 performed shall be thereby liable for performing or attempting to perform a
21 dismemberment abortion. No nurse, technician, secretary, receptionist, or other
22 employee or agent who is not a physician but who acts at the direction of a
23 physician, and no pharmacist or other individual who is not a physician but who fills
24 a prescription or provides instruments or materials used in an abortion at the
25 direction of or to a physician shall be thereby liable for performing or attempting to
26 perform a dismemberment abortion.

27 D. Whoever violates the provisions of this Section shall be fined not more
28 than one thousand dollars per incidence or occurrence, or imprisoned for not more
29 than two years, or both. In addition to whatever remedies are otherwise available

1 under the laws of this state, failure to comply with the provisions of this Section shall
2 provide all of the following:

3 (1) A basis for a cause of action for civil damages for injuries and wrongful
4 death as more fully set forth in Civil Code Articles 2315.1 and 2315.2, whether or
5 not the unborn child was viable at the time the abortion was performed, or was born
6 alive, except that such causes of action shall be maintained only by the following
7 persons:

8 (a) The natural or biological father of the aborted infant or fetus, unless such
9 father's criminal conduct caused the pregnancy.

10 (b) The mother of the aborted infant or fetus, subject to the provisions of
11 Subsection F of this Section.

12 (c) The parents or guardian on behalf of the mother of the aborted infant or
13 fetus if the mother was a minor at the time of the abortion, unless the parents or
14 guardian consented to the dismemberment abortion.

15 (2) A basis for professional disciplinary action under R.S. 37:1261 et seq.

16 E.(1) A physician charged with an offense pursuant to this Section may seek
17 a hearing before the Louisiana State Board of Medical Examiners on whether the
18 physician's conduct was necessary to save the life of the mother whose life was
19 endangered by a physical disorder, physical illness, or physical injury, including a
20 life-endangering physical condition caused by or arising from the pregnancy itself.

21 (2) The findings concerning the issue provided for in Paragraph (1) of this
22 Subsection are admissible on that issue at the trial of the physician. Upon motion of
23 the physician, the court shall delay the beginning of the trial for not more than thirty
24 days to permit such hearing to take place; however, this delay may be extended for
25 good cause.

26 F. When requested, the court shall allow a woman to proceed using solely
27 her initials or a pseudonym and may close any proceedings in the case and enter
28 other protective orders to preserve the privacy of the woman upon whom the
29 abortion was performed.

1 G. Any person who is not a physician or not otherwise legally authorized by
2 the state to perform abortions, but who nevertheless directly performs a
3 dismemberment abortion, shall be subject to the provisions of this Section.

4 H. Nothing in this Section shall be construed as creating or recognizing a
5 right to abortion, or a right to a particular method of abortion.

6 Section 2. If any one or more provisions, sections, subsections, sentences, clauses,
7 phrases, or words of this Act or the application thereof to any person or circumstance is
8 found to be unconstitutional, the same is hereby declared to be severable in accordance with
9 R.S. 24:175 and the balance of this Act shall remain effective notwithstanding such
10 unconstitutionality. The legislature hereby declares that it would have passed this Act, and
11 each provision, section, subsection, sentence, clause, phrase, or word thereof, irrespective
12 of the fact that any one or more provisions, sections, subsections, sentences, clauses, phrases,
13 or words be declared unconstitutional.

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 1081 Reengrossed

2016 Regular Session

Mike Johnson

Abstract: Enacts the Unborn Child Protection from Dismemberment Abortion Act to define and prohibit dismemberment abortions.

Proposed law provides that "dismemberment abortion" means, with the purpose of causing the death of an unborn child, to purposely dismember a living unborn child and extract him or her one piece at a time from the uterus through use of clamps, grasping forceps, tongs, scissors, or a similar instrument that, through the convergence of two rigid levers, slices, crushes, or grasps a portion of the unborn child's body to cut or rip it off or apart. Stipulates that the term does not include an abortion which uses suction to dismember the body of an unborn child by vacuuming fetal parts into a collection container, although it does include an instance in which a dismemberment abortion is used to cause the death of an unborn child and suction is subsequently used to extract fetal parts after the death of the unborn child.

Proposed law provides that it shall be unlawful for any person to intentionally perform or attempt to perform a dismemberment abortion and thereby kill an unborn child unless necessary to prevent serious health risk to the unborn child's mother.

Proposed law stipulates that none of the following persons shall be liable for performing or attempting to perform a dismemberment abortion:

- (1) The woman upon whom an abortion is performed or attempted.

- (2) A nurse, technician, secretary, receptionist, or other employee or agent who is not a physician but who acts at the direction of a physician, and no pharmacist or other individual who is not a physician but who fills a prescription or provides instruments or materials used in an abortion at the direction of or to a physician.

Proposed law provides that whoever violates the provisions of proposed law shall be fined not more than \$1,000 per incidence or occurrence, or imprisoned for not more than two years, or both. Provides that in addition to whatever remedies are otherwise available under present law, failure to comply with the provisions of proposed law shall provide all of the following:

- (1) A basis for a cause of action for civil damages for injuries and wrongful death as more fully set forth in present law (C.C. Arts. 2315.1 and 2315.2), whether or not the unborn child was viable at the time the abortion was performed, or was born alive, except that such causes of action shall only be maintained by the following persons:
- (a) The natural or biological father of the aborted infant or fetus, unless such father's criminal conduct caused the pregnancy.
 - (b) The mother of the aborted infant or fetus.
 - (c) The parents or guardian on behalf of the mother of the aborted infant or fetus if the mother was a minor at the time of the abortion, unless the parents or guardian consented to the dismemberment abortion.
- (2) A basis for professional disciplinary action under present law relative to licensure of physicians and regulation of the practice of medicine (R.S. 37:1261 et seq.).

Proposed law authorizes courts, when requested, to allow a woman to proceed in a cause of action pursuant to proposed law using solely her initials or a pseudonym; and to close any proceedings in the case and enter other protective orders to preserve the privacy of the woman upon whom the abortion was performed.

Proposed law provides that any person who is not a physician or not otherwise legally authorized by the state to perform abortions, but who nevertheless directly performs a dismemberment abortion, shall be subject to the provisions of proposed law.

Proposed law provides that nothing therein shall be construed as creating or recognizing a right to abortion, or a right to a particular method of abortion.

(Adds R.S. 40:1061.1.1)