

2022 Regular Session

SENATE BILL NO. 388

BY SENATOR HEWITT

ABORTION. Prohibits the sale of certain abortion inducing drugs without a prescription and creates the crime of criminal induced chemical abortion. (8/1/22)

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AN ACT

To amend and reenact R.S. 14:32.9 and R.S. 51:1402(10) and to enact R.S. 40:962.2, relative to chemical abortion drugs and the crime of criminal abortion; to define criminal induced chemical abortion; to prohibit the inducing of a criminal abortion by means of certain chemical abortion drugs without a required doctor's prescription; to provide for criminal penalties; to provide for defenses; to prohibit the sale, marketing, advertising, labeling, distributing, or importing of certain chemical abortion drugs; to define chemical abortion drugs; to provide for exceptions; to provide for the promulgation of rules; to provide for unfair trade practices; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

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

§32.9. Criminal abortion

A. Criminal abortion is an abortion that is performed or induced, 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 or induced by any individual who is not a physician licensed by the state of Louisiana.

1 B. As used in this Section:

2 (1) "Abortion" means the act of using or prescribing any instrument,  
3 medicine, drug, or any other substance, device, or means with the intent to terminate  
4 the clinically diagnosable pregnancy of a woman with knowledge that the  
5 termination by those means will, with reasonable likelihood, cause the death of the  
6 unborn child, **including an induced chemical abortion**. Such use, prescription, or  
7 means is not an abortion if done with the intent to:

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

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

15 (c) Remove an ectopic pregnancy.

16 **(2) "Induced chemical abortion" means an abortion that is a**  
17 **non-surgical abortion of a pregnancy that is caused by the delivery, sale, or**  
18 **distribution of mifepristone or misoprostol as the abortifacient when dispensed**  
19 **or distributed without a prescription written by a physician.**

20 ~~(2)~~**(3)** "Physician" means a natural person who is the holder of an allopathic  
21 (M.D.) degree or an osteopathic (D.O.) degree from a medical college in good  
22 standing with the Louisiana State Board of Medical Examiners who holds a license,  
23 permit, certification, or registration issued by the Louisiana State Board of Medical  
24 Examiners to engage in the practice of medicine in this state.

25 ~~(3)~~**(4)** "Unborn child" means the unborn offspring of human beings from the  
26 moment of conception through pregnancy and until live birth.

27 C.**(1)** Any person who knowingly performs **or induces** an abortion in  
28 violation of this Section **commits the crime of performing a criminal abortion**  
29 **and** shall be imprisoned at hard labor for not less than one nor more than five years,

1 fined not less than five thousand nor more than fifty thousand dollars, or both.

2 (2) Any person who knowingly performs an abortion in violation of this  
3 Section that results in the death of the pregnant woman shall be imprisoned at  
4 hard labor for not less than five nor more than ten years, fined not less than ten  
5 thousand nor more than seventy-five thousand dollars, or both.

6 (3) Any person who knowingly performs or induces an abortion that  
7 results in the death of a pregnant woman under the age of eighteen in violation  
8 of this Section shall be imprisoned at hard labor for not less than fifteen nor  
9 more than fifty years, fined not less than fifteen thousand nor more than one  
10 hundred thousand dollars, or both.

11 D. Statutory Construction. None of the following shall be construed to create  
12 the crime of criminal abortion **and shall be defenses against prosecution:**

13 (1) Any action taken when a physician or other licensed medical professional  
14 is acting in the course of administering lawful medical care and an unborn child **or**  
15 **a pregnant woman** dies.

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

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

19 **§962.2. Chemical abortion drugs; restrictions of sales; exceptions; penalties**

20 **A. Except as provided in Subsection B of this Section, any product that**  
21 **contains any chemical abortion drugs which contain mifepristone or misoprostol**  
22 **may be dispensed or distributed only upon the prescription of a duly licensed**  
23 **practitioner authorized by the laws of the state to prescribe prescription drugs.**

24 **B. As used in this Section, chemical abortion drugs shall not include any**  
25 **of the following:**

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

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

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

29 **C. The marketing, advertising, labeling, or distributing or importing**

1 any product containing mifepristone or misoprostol for the indication to cause  
2 a chemical abortion in violation of this Section is prohibited.

3 D. The Department of Health may promulgate rules pursuant to the  
4 Administrative Procedures Act to provide for exemptions from this Section for  
5 products using mifepristone or misoprostol which are distributed for other  
6 purposes that do not include chemical abortions.

7 E.(1) Whoever violates any provision of this Section shall be fined not  
8 more than one thousand dollars or imprisoned for not more than six months,  
9 or both.

10 (2) Each instance of a sale or distribution of mifepristone or misoprostol  
11 shall be considered a separate offence for purposes of the penalties provided in  
12 Paragraph (1) of this Subsection.

13 Section 3. R.S. 51:1402(10) is hereby amended and reenacted to read as follows:  
14 §1402. Definitions

15 As used in this Chapter, the following words and phrases shall have the  
16 meanings hereinafter ascribed to them:

17 \* \* \*

18 (10)(a) "Trade" or "commerce" means the advertising, offering for sale, sale,  
19 or distribution of any services and any property, corporeal or incorporeal, immovable  
20 or movable, and any other article, commodity, or thing of value wherever situated,  
21 and includes any trade or commerce directly or indirectly affecting the people of the  
22 state.

23 (b) "Trade" or "commerce" shall include the advertising, offering for  
24 sale, sale, or distribution of chemical abortion drugs in violation of R.S.  
25 40:962.2.

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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Carla S. Roberts.

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## DIGEST

SB 388 Original

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 of crime of criminal abortion to include the distribution or delivery of certain abortion causing pharmaceutical drugs without a prescription obtained from a La. physician.

Proposed law increases the criminal penalties when a person knowingly performs a criminal abortion that results in the death 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 provides that, if the victim 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.

Proposed law prohibits the sale or distribution of any chemical abortion drugs which contain mifepristone or misoprostol without a prescription of a duly licensed practitioner authorized by the laws of the state to prescribe prescription drugs. Proposed law provides an exception for contraceptive drugs or devices, Plan B, the morning after-pill, or other emergency contraception which may continue to be sold without a doctor's prescription. Proposed law provides that the Dept. of Health may promulgate rules to allow other products that use mifepristone or misoprostol for uses other than chemical abortions to be marketed and sold without a doctor's prescription. Proposed law provide that whoever sells or distributes chemical abortion drugs 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 a chemical abortion drug shall be considered a separate offence for purposes of the criminal penalties.

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 shall be defined as 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)