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

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 abortion-inducing drugs and the crime of criminal abortion; to define criminal abortion; to prohibit criminal abortion by means of the use of an abortion-inducing drug without the prescribing physician being physically present during the administration of the drug; to provide criminal penalties; to provide for defenses; to prohibit the selling, prescribing, distributing, dispensing, or delivering of certain abortion-inducing drugs under certain circumstances; to define abortion-inducing 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 **committed when a person knowingly does either**

  (1) **Performs** an abortion, 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.

(2) Causes an abortion to occur by means of 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 of Louisiana who administers the abortion-inducing drug in person to the pregnant woman.

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

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

(2)(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) "Serious bodily injury" means bodily injury which involves
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.

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

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

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

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

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

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

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

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

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

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

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

(1) Contraceptive drugs or devices.

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

(3) Other emergency contraception.

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

D. The Department of Health may promulgate rules pursuant to the
Administrative Procedure Act to provide for exemptions from this Section for
products using an abortion-inducing drug which are distributed for other
purposes that do not include causing an abortion.
E.(1) Whoever violates any provision of this Section shall be fined not more than one thousand dollars or imprisoned for not more than six months, or both.

(2) Each instance of a sale or distribution of an abortion-inducing drug shall be considered a separate offense for purposes of the penalties provided in Paragraph (1) of this Subsection.

F. Possessing for her own consumption or consuming an abortion-inducing drug by a pregnant woman in violation of this Section shall not subject the pregnant woman to the criminal consequences.

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

§1402. Definitions

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

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

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

Section 4. If any provision or item of this Act, or the application thereof, is held invalid, such invalidity shall not affect other provisions, items, or applications of the Act which can be given effect without the invalid provision, item, or application and to this end the provisions of this Act are hereby declared severable.
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 women 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.