

SENATE SUMMARY OF HOUSE AMENDMENTS

SB 388

2022 Regular Session

Hewitt

KEYWORD AND SUMMARY AS RETURNED TO THE SENATE

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

SUMMARY OF HOUSE AMENDMENTS TO THE SENATE BILL

1. Provide that, for purposes of proposed law, the term "abortion-inducing drug" shall not include the sale, use, prescription, or administration of a contraceptive measure, drug, or chemical if it is administered prior to the time when a pregnancy could be determined through conventional medical testing and if the contraceptive measure is sold, used, prescribed, or administered in accordance with manufacturer instructions.
2. Provide that, for purposes of proposed law, the term "woman" means a pregnant female whether she is a minor or of the age of majority.
3. Stipulate that any act by a licensed pharmacist or pharmacy related to filling a prescription for a drug, medicine, or other substance prescribed for a bona fide medical reason shall not subject the pharmacist or the pharmacy to the criminal consequences if a diagnosis or diagnosis code is written on the prescription by the prescriber indicating that the drug, medicine, or other substance is intended for a purpose other than to cause an abortion in violation of proposed law.
4. Require healthcare providers who are licensed to prescribe medications or drugs that are subject to the provisions of proposed law to write a diagnosis or diagnosis code on the prescription that clearly indicates that the prescription is not intended to cause an abortion in violation of proposed law.
5. Make technical changes.

DIGEST OF THE SENATE BILL AS RETURNED TO THE SENATE

DIGEST

SB 388 Reengrossed

2022 Regular Session

Hewitt

Proposed law creates the crime of abortion by means of abortion-inducing drugs and defines a "abortion-inducing drug"; defines "contraceptive", and "emergency contraceptive". Provides that violators are subject to imprisonment at hard labor for not less than one nor more than five years, a fine of not less than \$5,000 nor more than \$50,000, or both.

Proposed law provides, relative to statutory construction, that none of the following be construed to create the crime of criminal abortion by means of an abortion-inducing drug:

- (1) Any action taken when a physician or other licensed medical professional is acting in the course of administering lawful medical care.
- (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.
- (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.
- (5) Any act by a licensed pharmacist or pharmacy related to filling a prescription for a drug, medicine, or other substance prescribed for a bona fide medical reason shall not

subject the pharmacist or the pharmacy to criminal consequences. A diagnosis or a diagnosis code shall be written on the prescription by the prescriber indicating that the drug, medicine, or other substance is intended for a purpose other than to cause an abortion,

(6)(a) The act of administering an abortion-inducing drug when the drug is administered by a physician licensed by the state of Louisiana who administers the abortion-inducing drug in person to the pregnant woman and that these provisions are not a defense against prosecution under any other provision of law that makes the abortion unlawful, whether the other provision of law is in effect on the effective date of proposed law or becomes unlawful at a later date.

(7) Any act by a licensed pharmacist or pharmacy related to filling a prescription for a drug, medicine, or other substance prescribed for a bona fide medical reason shall not subject the pharmacist or the pharmacy to the criminal consequences. A diagnosis or a diagnosis code shall be written on the prescription by the prescriber indicating that the drug, medicine, or other substance is intended for a purpose other than to cause an abortion in violation of proposed law.

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. Stipulates, however, that the term "abortion-inducing drug" shall not include the sale, use, prescription, or administration of a contraceptive measure, drug, or chemical if it is administered prior to the time when a pregnancy could be determined through conventional medical testing and if the contraceptive measure is sold, used, prescribed, or administered in accordance with manufacturer instructions.

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 ten 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 relative to criminal abortion.

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 authorizes the La. Dept. of Health to promulgate rules to allow products that contain an abortion-inducing drug to be distributed for uses other than causing an abortion.

Proposed law requires healthcare providers who are licensed to prescribe medications or drugs that are subject to the provisions of proposed law to write a diagnosis or a diagnosis code on the prescription that clearly indicates that the prescription is not intended to cause an abortion in violation of proposed law

Proposed law 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 an abortion-inducing drug for personal consumption shall not subject a pregnant women to criminal consequences.

Proposed law provides that any act by a licensed pharmacist or pharmacy related to filling a prescription for a drug, medicine, or other substance prescribed for a bona fide medical reason does not subject the pharmacist or the pharmacy to the criminal consequences contained in proposed law. Requires that a diagnosis or a diagnosis code be written on the prescription by the prescriber indicating that the drug, medicine, or other substance is intended for a purpose other than to cause an abortion.

Proposed law provides it become effective following certain circumstances including a decision of the U.S. Supreme Court in the case of Dobbs v. Jackson Women's Health Organization, Docket No. 19-1392, which overrules, in whole or in part, Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed. 2d 147 (1973), thereby restoring to the state of Louisiana the authority to prohibit or limit abortion.

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 retains present law and provides that the advertising, offering for sale, sale, or distribution of abortion-inducing drugs without a prescription are unfair trade practices.

Effective August 1, 2022.

(Amends R.S. 40:1061(A) and R.S. 51:1402(10); adds R.S. 14:87.9 and R.S. 40:962.2; repeals R.S. 14:88)

Thomas L. Tyler
Senate Counsel