

Regular Session, 2006

SENATE BILL NO. 33

BY SENATOR NEVERS

ABORTION. Prohibits abortion, except when necessary to save the life of the mother.

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AN ACT

To amend and reenact R.S. 14:87, to enact R.S. 40:1299.30 and to repeal R.S. 40:1299.31 through R.S. 40:1299.35.18, relative to abortion; to prohibit abortion of a human being, except when necessary to save the life of the mother; to provide for criminal consequences for violations; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 40:1299.30 is hereby enacted to read as follows:

**§1299.30. Abortion; prohibition**

**A. No person may knowingly administer to, prescribe for, or procure for, or sell to any pregnant woman any medicine, drug, or other substance with the specific intent of causing or abetting the termination of the life of an unborn human being. No person may knowingly use or employ any instrument or procedure upon a pregnant woman with the specific intent of causing or abetting the termination of the life of an unborn human being.**

**B. Any violation of this Section shall be prosecuted pursuant to R.S. 14:87.**

**C. Nothing in this Section may be construed to prohibit the sale, use,**

1 prescription, or administration of a contraceptive measure, drug or chemical,  
2 if it is administered prior to the time when a pregnancy could be determined  
3 through conventional medical testing and if the contraceptive measure is sold,  
4 used, prescribed, or administered in accordance with manufacturer  
5 instructions.

6 D. No licensed physician who performs a medical procedure designed or  
7 intended to prevent the death of a pregnant mother shall be guilty of violating  
8 Subsection A of this Section. However, the physician shall make reasonable  
9 medical efforts under the circumstances to preserve both the life of the mother  
10 and the life of her unborn child in a manner consistent with conventional  
11 medical practice.

12 E. Medical treatment provided to the mother by a licensed physician  
13 which results in the accidental or unintentional injury or death to the unborn  
14 child is not a violation of this statute.

15 F. Nothing in this Section may be construed to subject the pregnant  
16 mother upon whom any abortion is performed or attempted to any criminal  
17 conviction and penalty.

18 G. Terms used in this Section mean:

19 (1) "Pregnant," the human female reproductive condition, of having a  
20 living unborn human being within her body throughout the entire embryonic  
21 and fetal ages of the unborn child from fertilization to full gestation and child  
22 birth;

23 (2) "Unborn human being," an individual living member of the species,  
24 homo sapiens, throughout the entire embryonic and fetal ages of the unborn  
25 child from fertilization to full gestation and childbirth;

26 (3) "Fertilization," that point in time when a male human sperm  
27 penetrates the zona pellucida of a female human ovum.

28 H. If any court of law enjoins, suspends, or delays the implementation  
29 of a provision of this Section, the provisions of Subsections A through E, of this

1        **Section are similarly enjoined, suspended, or delayed during such injunction,**  
2        **suspension, or delayed implementation.**

3                **I. If any court of law finds any provision of this Section to be**  
4        **unconstitutional, the other provisions of this Section are severable. If any court**  
5        **of law declares the provisions of this Section to be entirely or substantially**  
6        **unconstitutional, the provisions of R.S. 40:1299.31 through R.S. 40:1299.35.18**  
7        **as they existed prior to the effective date of this Section shall be immediately re-**  
8        **instituted to the extent they are not in conflict with the declarations of the court.**

9                **J. This Section shall be known, and may be cited, as the Human Life**  
10        **Protection Act.**

11        Section 2. R.S. 14:87 is hereby amended and reenacted to read as follows:

12        §87 Abortion

13                A.(1) Abortion is the performance of any of the following acts, with the  
14        specific intent of terminating a pregnancy:

15                    (a) Administering or prescribing any drug, potion, medicine, or any other  
16        substance to a female; or

17                    (b) Using any instrument or external force whatsoever on a female.

18                (2) This Section shall not apply to the female who has an abortion.

19                B. It shall not be unlawful for a physician to perform any of the acts  
20        described in Subsection A of this Section if performed under the following  
21        circumstances:

22                    (1) The physician terminates the pregnancy in order to preserve the life or  
23        health of the unborn child or to remove a dead unborn child.

24                    (2) The physician terminates a pregnancy for the express purpose of saving  
25        the life of the mother.

26                    ~~(3) The physician terminates a pregnancy which is the result of rape as~~  
27        ~~defined in either R.S. 14:42, R.S. 14:42.1, or R.S. 14:43 and in which all of the~~  
28        ~~following requirements are met prior to the pregnancy termination:~~

29                    ~~(a) The rape victim obtains a physical examination and/or treatment from a~~

1 physician other than the physician who is to terminate the pregnancy within five days  
2 of the rape to determine whether she was pregnant prior to the rape and to prevent  
3 pregnancy and venereal disease, unless the rape victim is incapacitated to such a  
4 degree that she is unable to obtain this examination. If the victim is unable to obtain  
5 the examination due to such incapacity, then an examination shall be performed  
6 within five days after the incapacity is removed, and

7 (b) ~~The rape victim reports the rape to law enforcement officials within~~  
8 ~~seven days of the rape unless the victim is incapacitated to such a degree that she is~~  
9 ~~unable to report the rape. If the victim is unable to report the rape due to such~~  
10 ~~incapacity, then a report shall be made within seven days after the incapacity is~~  
11 ~~removed, and~~

12 (c) ~~The abortion is performed within thirteen weeks of conception.~~

13 (4) ~~The physician terminates a pregnancy which is the result of incest as~~  
14 ~~defined in R.S. 14:78, provided the crime is reported to law enforcement officials~~  
15 ~~and the abortion is performed within thirteen weeks of conception.~~

16 C.(1) ~~Prior to the performance of any abortion under Subsection (B)(3) or~~  
17 ~~(B)(4) of this Section, the physician who is to perform the abortion shall obtain from~~  
18 ~~the victim a statement in writing verifying that she has obtained the physical~~  
19 ~~examination and shall obtain written verification by a law enforcement official that~~  
20 ~~the victim reported the rape to law enforcement officials as required under this~~  
21 ~~Section.~~

22 (2) ~~Every physician who conducts a physical examination of a rape victim~~  
23 ~~within five days of the rape shall immediately, upon written request of either the~~  
24 ~~victim or the physician who is to perform the abortion on the victim, provide to the~~  
25 ~~victim or the requesting physician written verification of his examination.~~

26 (3) ~~Every law enforcement official who receives a report of a rape victim~~  
27 ~~within seven days of the rape or receives a report of incest shall immediately, upon~~  
28 ~~written request of either the victim or the physician who is to perform the abortion,~~  
29 ~~provide to the victim or requesting physician written verification of the report which~~

1 ~~was made to the official.~~

2 DC. As used in this Section, the following words and phrases are defined as  
3 follows:

4 ~~(1) "Law enforcement official or officer" means any peace officer or agency~~  
5 ~~empowered to enforce the law in criminal matters within his or its respective~~  
6 ~~jurisdiction, including but not limited to a state police officer, sheriff, constable,~~  
7 ~~local police officer, and district attorney.~~

8 ~~(2)~~(1) "Physician" means any person licensed to practice medicine in this  
9 state.

10 ~~(3)~~(2) "Unborn child" means the unborn offspring of human beings from the  
11 moment of conception until birth.

12 ~~(4) "Conception" means the contact of spermatozoan with the ovum.~~

13 E.D.(1) Whoever commits the crime of abortion shall be imprisoned at hard  
14 labor for not less than one nor more than ten years and shall be fined not less than ten  
15 thousand dollars nor more than one hundred thousand dollars.

16 (2) This penalty shall not apply to the female who has an abortion.

17 Section 3. R.S. 40:1299.31 through R.S. 40:1299.35.18 are hereby repealed.

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The original instrument and the following digest, which constitutes no part  
of the legislative instrument, were prepared by Dennis C. Weber.

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#### DIGEST

Present law (R.S. 40:1299.31 through R.S. 40:1299.35.18) permits abortion for any reason,  
protects a person who performs an abortion from liability or criminal responsibility.

Proposed law (R.S. 40:1299.30), protects the life of the unborn child from the instant of  
conception to the instant of birth. Abortion is permitted only to protect the life of the birth  
mother.

Proposed law (R.S. 40:1299.31 through R.S. 40:1299.35.18), repeals present law.

Present law (R.S. 14:87) permits abortion for a pregnancy that results from rape or incest  
when the mothers' health is not in danger.

Proposed law permits abortion only when the life of the birth mother is in danger.

(Amends R.S. 14:87; adds R.S. 40:1299.30; repeals R.S. 40:1299.31-1299.35.18)