

2015 Regular Session

HOUSE BILL NO. 701

BY REPRESENTATIVES WHITNEY AND HOFFMANN

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

ABORTION: Prohibits abortion based on sex selection

1 AN ACT

2 To enact R.S. 40:1299.30.2, relative to abortion; to provide relative to attempts to perform
3 abortions; to prohibit certain actions undertaken in connection with abortion; to
4 provide for civil actions pursuant to violation of certain abortion prohibitions; to
5 provide a legislative declaration; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 40:1299.30.2 is hereby enacted to read as follows:

8 §1299.30.2. Abortion as means of sex selection; prohibition; civil actions

9 A.(1) Definition. As used in this Section "attempt to perform an abortion"
10 shall mean to do or omit to do anything that, under the circumstances as the actor
11 believes them to be, is an act or omission constituting a substantial step in a course
12 of conduct planned to culminate in an abortion. Such a substantial step may include,
13 without limitation, any of the following:

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

18 (b) Scheduling or planning a time to perform an abortion on an individual,
19 whether or not the term "abortion" is used, and whether or not the performance is

1 contingent on another factor such as receipt of payment or a determination of
2 pregnancy.

3 (2) The definition provided in this Subsection shall not be construed to
4 require that an abortion procedure actually be initiated for an attempt to occur.

5 B. Prohibition. No person shall intentionally perform or attempt to perform
6 an abortion with knowledge that the pregnant woman is seeking the abortion because
7 of the sex of the unborn child.

8 C. Civil penalties. Any person upon whom an abortion was performed in
9 violation of this Section, or the father or a grandparent of the unborn child who was
10 the subject of such an abortion, may maintain an action against the person who
11 performed the abortion. Each person who establishes actual damages shall be
12 entitled to treble damages and punitive damages in the amount of ten thousand
13 dollars. No person shall be prohibited from recovery in such a suit on the grounds
14 that either the plaintiff or the woman upon whom the abortion was performed gave
15 consent to the abortion.

16 D.(1) Injunctive relief. A cause of action for injunctive relief against any
17 person who has knowingly violated a provision of this Section may be maintained
18 by any of the following persons:

19 (a) The woman upon whom an abortion was performed or attempted in
20 violation of this Section.

21 (b) A spouse, parent, sibling, or guardian of, or a current or former licensed
22 health care provider of, the woman upon whom an abortion has been performed or
23 attempted in violation of this Section.

24 (c) A state's attorney with appropriate jurisdiction.

25 (d) The attorney general.

26 (2) The injunction provided for in this Subsection shall prevent the abortion
27 provider from performing further abortions in violation of this Section.

28 E.(1) Violation of injunction. Any person who knowingly violates the terms
29 of an injunction issued in accordance with Subsection D of this Section shall be

1 subject to civil contempt, and shall be fined ten thousand dollars for the first
2 violation, fifty thousand dollars for the second violation, one hundred thousand
3 dollars for the third violation, and for each succeeding violation an amount in excess
4 of one hundred thousand dollars sufficient to deter future violations. The fines
5 provided for in this Subsection shall be the exclusive penalties for such contempt and
6 shall be cumulative.

7 (2) Each performance or attempted performance of an abortion in violation
8 of the terms of an injunction provided for in this Subsection shall constitute a
9 separate violation.

10 (3) No fine shall be assessed against the woman upon whom an abortion is
11 performed or attempted.

12 F. Attorney fees. If judgment is rendered in favor of the plaintiff in any
13 action described in this Section, the court shall also render judgment for reasonable
14 attorney fees in favor of the plaintiff against the defendant. If judgment is rendered
15 in favor of the defendant and the court finds that the plaintiff's suit was frivolous and
16 brought in bad faith, the court shall render judgment for reasonable attorney fees in
17 favor of the defendant against the plaintiff.

18 G. Privacy. In each proceeding or action brought pursuant to the provisions
19 of this Section, the anonymity of any woman upon whom an abortion is performed
20 or attempted shall be preserved from public disclosure unless she gives her consent
21 to such disclosure. The court, upon motion or sua sponte, shall issue orders to the
22 parties, witnesses, and counsel, and shall direct the sealing of the record and
23 exclusion of individuals from courtrooms or hearing rooms to the extent necessary
24 to safeguard the woman's identity from public disclosure. In the absence of written
25 consent of the woman upon whom an abortion has been performed or attempted, any
26 person who brings an action under Subsection C of this Section shall do so under a
27 pseudonym.

28 Section 2. In accordance with R.S. 24:175, if any provision or item of this Act or the
29 application thereof to any person or circumstance is found to be unconstitutional, the same

1 is hereby declared to be severable and the balance of this Act shall remain effective
2 notwithstanding such unconstitutionality. The legislature hereby declares that it would have
3 passed this Act, and each provision, section, subsection, sentence, clause, phrase, or word
4 thereof, irrespective of the fact that any one or more provision or item be declared
5 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 701 Original

2015 Regular Session

Whitney

Abstract: Prohibits abortion based on sex selection and provides for civil actions pursuant to violations of the prohibition.

Proposed law prohibits the performance of an abortion and any attempt to perform an abortion by a person who has knowledge that the pregnant woman is seeking the abortion because of the sex of the unborn child.

Proposed law defines "attempt to perform an abortion" as doing or omitting to do anything that, under the circumstances as the actor believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in an abortion. Provides that a "substantial step" may include, without limitation, all of the following:

- (1) Agreeing with an individual to perform an abortion on that individual or on some other person, whether or not the term "abortion" is used in the agreement, and whether or not the agreement is contingent on another factor such as receipt of payment or a determination of pregnancy.
- (2) Scheduling or planning a time to perform an abortion on an individual, whether or not the term "abortion" is used, and whether or not the performance is contingent on another factor such as receipt of payment or a determination of pregnancy.

Proposed law provides that the definition of "attempt to perform an abortion" shall not be construed to require that an abortion procedure actually be initiated for an attempt to occur.

Proposed law provides that any of the following persons may maintain an action against the person who performed the abortion for treble damages and punitive damages in the amount of \$10,000:

- (1) The person upon whom an abortion was performed in violation of proposed law.
- (2) The father of the unborn child who was the subject of the abortion.
- (3) A grandparent of the unborn child who was the subject of the abortion.

Proposed law stipulates that no person shall be prohibited from recovery in such a suit on the grounds that either the plaintiff or the woman upon whom the abortion was performed gave consent to the abortion.

Proposed law provides that any of the following persons may maintain a cause of action for injunctive relief against any person who has knowingly violated a provision of proposed law:

- (1) The woman upon whom an abortion was performed or attempted in violation of proposed law.
- (2) A spouse, parent, sibling, or guardian of, or a current or former licensed health care provider of, the woman upon whom an abortion has been performed or attempted in violation of proposed law.
- (3) A state's attorney with appropriate jurisdiction.
- (4) The attorney general.

Proposed law stipulates that the injunction provided for in proposed law shall prevent the abortion provider from performing further abortions in violation of proposed law.

Proposed law provides that any person who knowingly violates the terms of an injunction issued in accordance with proposed law shall be subject to civil contempt and shall be fined as follows:

- (1) \$10,000 for the first violation.
- (2) \$50,000 for the second violation.
- (3) \$100,000 for the third violation.
- (4) For each succeeding violation, an amount in excess of \$100,000 sufficient to deter future violations.

Proposed law stipulates that no fine shall be assessed against the woman upon whom an abortion is performed or attempted.

Proposed law provides for reasonable attorney fees in favor of the plaintiff against the defendant, or the defendant against the plaintiff, depending upon which party the judgment favors in a civil action brought pursuant to proposed law.

Proposed law provides that in each proceeding or action brought pursuant to proposed law, the anonymity of any woman upon whom an abortion is performed or attempted shall be preserved from public disclosure unless she gives her consent to disclosure.

Proposed law provides that in accordance with present law relative to severability (R.S. 24:175), if any provision or item of proposed law or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of proposed law shall remain effective notwithstanding such unconstitutionality. Provides a declaration indicating that the legislature would have passed proposed law, and each provision, section, subsection, sentence, clause, phrase, or word thereof, irrespective of the fact that any provision or item be declared unconstitutional.

(Adds R.S. 40:1299.30.2)