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## DIGEST

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HB 701 Reengrossed

2015 Regular Session

Whitney

**Abstract:** Requires that physicians who perform or induce abortions determine the sex of the unborn child in certain instances, prohibits abortion based on sex selection, and provides for civil actions pursuant to violations of that 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 district 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 adds the following to requirements in present law of a physician who performs or induces an abortion:

- (1) If the unborn child is determined to have a probable postfertilization age of 10 weeks or greater, the physician shall attempt to determine the sex of the unborn child according to a standard prescribed in proposed law.
- (2) If the sex is determined, the mother shall be informed of the sex at least 24 hours before the abortion in accordance with proposed law.
- (3) If the physician is unable to determine the sex of the unborn child, the mother shall be informed that the sex was not determinable.
- (4) That the physician, in attempting to make the determination of sex, perform such medical examinations and tests as a reasonably prudent physician, knowledgeable about the case and the medical conditions involved, would consider necessary to perform in making an accurate diagnosis with respect to the sex of the unborn child.

Proposed law adds to present law known as the "Woman's Right To Know" law a requirement that the sex of the unborn child, if known, be communicated to the woman orally and in person by the physician who is to perform the abortion or the referring physician at least 24 hours before the abortion.

Proposed law adds to present law relative to individual abortion reports requirements that the following information be included in the reports:

- (1) The probable postfertilization age of the unborn child, as determined in accordance with present law.
- (2) The sex of the unborn child, if known, as determined in accordance with proposed law; or an indication that the sex of the unborn child was not determinable.

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 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.

(Amends R.S. 40:1299.35.6(B)(3)(d); Adds R.S. 40:1299.30.2, 1299.35.2(A)(3), and 1299.35.10(A)(27) and (28))

#### Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Health and Welfare to the original bill:

1. Add the following to requirements in present law of a physician who performs or induces an abortion:
  - (a) If the unborn child is determined to have a probable postfertilization age of 10 weeks or greater, the physician shall attempt to determine the sex of the unborn child according to a standard prescribed in proposed law.
  - (b) If the sex is determined, the mother shall be informed of the sex at least 24 hours before the abortion in accordance with proposed law.
  - (c) If the physician is unable to determine the sex of the unborn child, the mother shall be informed that the sex was not determinable.
  - (d) That the physician, in attempting to make the determination of sex, perform such medical examinations and tests as a reasonably prudent physician, knowledgeable about the case and the medical conditions involved, would consider necessary to perform in making an accurate diagnosis with respect to the sex of the unborn child.
2. Add to present law known as the "Woman's Right To Know" law a requirement that the sex of the unborn child, if known, be communicated to the woman orally and in person by the physician who is to perform the abortion or the referring physician at least 24 hours before the abortion.
3. Add to present law relative to individual abortion reports requirements that the following information be included in the reports:
  - (a) The probable postfertilization age of the unborn child, as determined in accordance with present law.
  - (b) The sex of the unborn child, if known, as determined in accordance with proposed law; or an indication that the sex of the unborn child was not determinable.
4. Make technical changes.

The House Floor Amendments to the engrossed bill:

1. Designate a district attorney, in lieu of a "state's attorney", as a party who may maintain a cause of action for injunctive relief against a person who has knowingly violated proposed law.