

2018 Regular Session

HOUSE BILL NO. 891 (Substitute for House Bill No. 338 by Representative Hoffmann)

BY REPRESENTATIVES HOFFMANN, CHANEY, COX, HENSGENS, JACKSON, JOHNSON, LEBAS, POPE, STAGNI, AND STOKES

ABORTION: Provides relative to the prohibition on public funding for entities that perform abortions

1 AN ACT

2 To amend and reenact R.S. 36:21(B) and R.S. 40:1061.6(A)(2) and 2175.4(B), relative to
3 a prohibition on public funding for entities that perform abortions; to provide for
4 applicability of and exceptions to the prohibition; to provide relative to the validity
5 of outpatient abortion facility licenses; to provide for legislative findings; to provide
6 for the redesignation of certain statutes; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 36:21(B) is hereby amended and reenacted to read as follows:

9 §21. Public funding for abortion providers; prohibition

10 * * *

11 B.(1) No institution, board, commission, department, agency, official, or
12 employee of the state, or of any local political subdivision thereof, shall ~~contract~~
13 ~~with,~~ award any grant to, ~~or otherwise bestow any funding upon, an entity or~~
14 ~~organization that performs abortions, or that contracts with an entity or organization~~
15 ~~that performs abortions, in this state. The prohibition provided in this Section shall~~
16 ~~apply to state funds, federal funds, and any other funds that may be used for purposes~~
17 ~~of contracting for services, providing reimbursements, or grant issuance. of public~~
18 funds to, nor shall the Louisiana Department of Health enter into any provider

1 agreement for medical assistance program funding, as defined in R.S. 46:437.3, with
2 any healthcare provider, entity, or organization that does any of the following:

3 (a) Performs abortions in this state.

4 (b) Provides facilities to another healthcare provider, entity, or organization
5 for the purpose of performing abortions in this state.

6 (c) Hires or retains another healthcare provider, entity, or organization for
7 the purpose of performing abortions in this state.

8 (d) Provides reimbursable medical assistance program services in the same
9 physical facility as a licensed outpatient abortion facility.

10 (2) The prohibition provided in this Section shall apply to state funds, federal
11 funds, and any other public funds for procuring goods or services, or for providing
12 medical assistance program services, reimbursements, or grants.

13 (3) The prohibition provided in this Section shall not be construed to prohibit
14 provision of public protections, such as fire, police, or emergency medical services,
15 public utilities, or other such services to any entity or organization in the same
16 manner as provided to the general public.

17 (4) The prohibition in this Section shall not be construed to restrict funding
18 to an entity that may ~~perform~~ be engaged in performing the following types of
19 abortions, exclusively, provided such abortions are performed in accordance with
20 applicable state and federal laws:

21 (a) An abortion which is medically necessary to prevent the death of the
22 mother.

23 (b) An abortion in a case when the mother is a victim of rape or incest.

24 (c) An abortion performed when the pregnancy is diagnosed as medically
25 futile. For purposes of this Subparagraph, "medically futile" means that, in
26 reasonable medical judgment, the unborn child has a profound and irremediable
27 congenital or chromosomal anomaly that is incompatible with sustaining life after
28 birth. This diagnosis shall be a medical judgment certified in the pregnant woman's

1 medical record by a reasonably prudent physician who is knowledgeable about the
2 case and the treatment possibilities with respect to the medical conditions involved.

3 Section 2. R.S. 40:1061.6(A)(2) and 2175.4(B) are hereby amended and reenacted
4 to read as follows:

5 A.

6 * * *

7 (2)(a) As more specifically provided in Chapter 1-A of Title 49 of the
8 Louisiana Revised Statutes of 1950, no ~~No~~ institution, board, commission,
9 department, agency, official, or employee of the state, or of any local political
10 subdivision thereof, shall ~~contract with,~~ award any grant to, ~~or otherwise bestow any~~
11 ~~funding upon, an entity or organization that performs abortions, or that contracts with~~
12 ~~an entity or organization that performs abortions, in this state, as more specifically~~
13 ~~provided in Chapter 1-A of Title 36 of the Louisiana Revised Statutes of 1950. of~~
14 public funds to, nor shall the Louisiana Department of Health enter into any provider
15 agreement for medical assistance program funding, as defined in R.S. 46:437.3, with
16 any healthcare provider, entity, or organization that does any of the following:

- 17 (i) Performs abortions in this state.
- 18 (ii) Provides facilities to another healthcare provider, entity, or organization
19 for the purpose of performing abortions in this state.
- 20 (iii) Hires or retains another healthcare provider, entity, or organization for
21 the purpose of performing abortions in this state.
- 22 (iv) Provides reimbursable medical assistance program services in the same
23 physical facility as a licensed outpatient abortion facility.

24 (b) The prohibitions provided in this Subsection shall apply to state funds,
25 federal funds, and any other public funds for procuring goods or services, or for
26 providing medical assistance program services, reimbursements, or grants, but shall
27 not be construed to prohibit provision of public protections, such as fire, police, or
28 emergency medical services, public utilities, or other such services to any entity or
29 organization in the same manner as provided to the general public.

1 * * *

2 §2175.4. License required

3 * * *

4 B. A license issued to an outpatient abortion facility is valid for only one
5 location that shall be physically and financially separate from any facility where
6 publicly funded medical assistance program services are provided, in accordance
7 with Chapter 1-A of Title 49 of the Louisiana Revised Statutes of 1950.

8 * * *

9 Section 3.(A) The legislature hereby finds and declares all of the following:

10 (i) Abortion providers that operate in the same facility with publicly funded medical
11 providers create a high risk of misappropriation of public funds that could be used to directly
12 or indirectly subsidize abortion, in violation of the longstanding policy of this state to
13 prohibit the public funding of abortion-related services.

14 (ii) This Act is necessary pursuant to the intent and purpose of the Medical
15 Assistance Programs Integrity Law, R.S. 46:437.1 et seq., "to combat and prevent fraud and
16 abuse" in light of the fungible nature of medical assistance program funding granted under
17 circumstances where there is no practicable method to verify the strict segregation from
18 subsidizing the overhead costs of abortion-related activities.

19 (iii) It is the longstanding policy of this state to "express a preference for childbirth
20 over abortion", *Planned Parenthood v. Casey*, 505 U.S. 833, 883 (1992); see also R.S.
21 40:1061.8., because, as the U.S. Supreme Court has made clear, abortion is a "unique act",
22 *Casey*, 505 U.S. at 852, that is "inherently different from other medical procedures", *Harris*
23 *v. McRae*, 448 U.S. 297, 325 (1980), because in abortion "the fetus will be killed". *Gonzales*
24 *v. Carhart*, 550 U.S. 124, 159 (2007). The procedure is also unique because of the impact
25 of the abortion on the woman herself. *Id.* at 159 ("Whether to have an abortion requires a
26 difficult and painful moral decision which some women come to regret").

27 (iv) It is a well-established principle recognized by the United States Supreme Court
28 that government need not be neutral between abortion providers and other medical providers
29 in the context of governmental decisions regarding the use of public funds. See *Harris v.*

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 *McRae*, 448 U.S. 297, 316 (1980) (" . . .it simply does not follow that a woman's freedom of
2 choice carries with it a constitutional entitlement to the financial resources to avail herself
3 of the full range of protected choices").

4 (B) Based on these findings, it is the purpose and intent of the legislature to set
5 reasonable standards for the fiscal integrity qualifications of medical assistance program
6 providers in accordance with federal and state laws, rules, and regulations concerning
7 appropriation and expenditure of public funding.

8 Section 4. Any provision of this Act held to be invalid or unenforceable by its terms,
9 or as applied to any person or circumstance, shall be construed so as to give it the maximum
10 effect permitted by law, unless such holding is one of utter invalidity or unenforceability,
11 in which event such provision shall be deemed severable in accordance with R.S. 24:175,
12 and shall not affect the remainder hereof or the application of such provision to other persons
13 not similarly situated or to other dissimilar circumstances.

14 Section 5. The Louisiana State Law Institute is hereby directed to redesignate
15 Chapter 1-A of Title 36 of the Louisiana Revised Statutes of 1950, comprised of R.S. 36:21,
16 as amended by Section 1 of this Act, as Chapter 1-A of Title 49 of the Louisiana Revised
17 Statutes of 1950, to be comprised of R.S. 49:200.51, and to retain the heading of the Chapter.

18 Section 6. This Act shall become effective upon signature by the governor or, if not
19 signed by the governor, upon expiration of the time for bills to become law without signature
20 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
21 vetoed by the governor and subsequently approved by the legislature, this Act shall become
22 effective on the day following such approval.

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 891 Original

2018 Regular Session

Hoffmann

Abstract: Provides for applicability of and exceptions to the prohibition on public funding for entities that perform abortions.

Present law provides that no institution, board, commission, department, agency, official, or employee of the state, or of any local political subdivision thereof, shall contract with,

award any grant to, or otherwise bestow any funding upon, an entity or organization that performs abortions, or that contracts with an entity or organization that performs abortions, in this state. Stipulates that the prohibition shall apply to state funds, federal funds, and any other funds that may be used for purposes of contracting for services, providing reimbursements, or grant issuance.

Proposed law revises present law by removing references to contracting, thereby causing the prohibition to apply only to funding mechanisms other than contracts.

Proposed law revises present law to provide that entities prohibited from receiving certain public funding are those that do any of the following:

- (1) Performs abortions in this state.
- (2) Provides facilities to another healthcare provider, entity, or organization for the purpose of performing abortions in this state.
- (3) Hires or retains another healthcare provider, entity, or organization for the purpose of performing abortions in this state.
- (4) Provides reimbursable Medicaid services in the same physical facility as a licensed outpatient abortion facility.

Proposed law prohibits the La. Department of Health from entering into a Medicaid provider agreement with any entity that is prohibited from receiving certain public funding for abortion-related reasons.

Proposed law stipulates that the prohibition on public funding established by present law and proposed law shall apply to state funds, federal funds, and any other public funds for procuring goods or services, or for providing Medicaid services, reimbursements, or grants.

Proposed law provides that the prohibition on public funding established by present law and proposed law shall not be construed to prohibit provision of public protections such as fire, police, or emergency medical services, public utilities, or other such services to any entity or organization in the same manner as provided to the general public.

Present law provides that a license issued to an outpatient abortion facility is valid for only one location. Proposed law retains present law and adds thereto a requirement that each abortion facility's location shall be physically and financially separate from any facility where publicly funded Medicaid services are provided, as required by proposed law.

Proposed law provides for redesignation of a chapter of present law comprised of R.S. 36:21 to a chapter comprised of R.S. 49:200.51.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 36:21(B) and R.S. 40:1061.6(A)(2) and 2175.4(B))