ABORTION: Enacts the Louisiana Heartbeat Act

AN ACT

To enact R.S. 40:1063.1 through 1063.17 and to repeal R.S. 40:1061.1.3, relative to abortion; to enact the Louisiana Heartbeat Act; to prohibit abortion after detection of a fetal heartbeat; to provide for legislative findings and definitions; to provide for civil liability and venue; to authorize the right of civil action; to provide for affirmative defenses and defense limitations; to provide for awards and judgments; to provide for severability of provisions; to require certain reports and recordkeeping; to provide for enforcement; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 40:1061 through 1063.17 are hereby enacted to read as follows:

§1063.1. Short title

This Part shall be known and may be cited as the "Louisiana Heartbeat Act".

§1063.2. Legislative findings

A. The legislature hereby finds and declares that according to contemporary medical research, a fetal heartbeat has become a key medical predictor that an unborn child will reach live birth. Cardiac activity begins at a biologically identifiable moment in time, normally when the fetal heart is formed in the gestational sac.

B. The state has a compelling interest from the outset of a woman's pregnancy in protecting the health of the woman and the life of the unborn child. To
make an informed choice about whether to continue her pregnancy, the pregnant
woman has a compelling interest in knowing the likelihood of her unborn child
surviving a full-term birth based on the presence of cardiac activity.

§1063.3. Definitions

As used in this Part, the following terms have the meaning ascribed to them in this Section:

(1) "Fetal heartbeat" means cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.

(2) "Gestational age" has the meaning ascribed in R.S. 40:1061.9.

(3) "Gestational sac" means the structure comprising the extraembryonic membranes that envelop the unborn child and that is typically visible by ultrasound after the fourth week of pregnancy.

(4) "Physician" has the meaning ascribed in R.S. 40:1061.9.

(5) "Pregnancy" means the human female reproductive condition that encompasses all of the following:

(a) Begins with fertilization.

(b) Occurs when the woman is carrying the developing human offspring.

(c) Is calculated from the first day of the woman's last menstrual period.

(6) "Standard medical practice" means the degree of skill, care, and diligence that an obstetrician of ordinary judgment, learning, and skill would employ in like circumstances, including employing the appropriate means of detecting the fetal heartbeat based on the estimated gestational age of the unborn child and the condition of the woman and her pregnancy.

(7) "Unborn child" has the meaning ascribed in R.S. 40:1061.9.

§1063.4. Determination of the presence of a fetal heartbeat required; records

A. A physician shall use standard medical practice as defined in this Part to determine the presence of a fetal heartbeat.

B. Except as provided in R.S. 40:1063.6, a physician shall not knowingly perform or induce an abortion on a pregnant woman unless the physician has

CODING: Words in struck through type are deletions from existing law; words underscored are additions.
determined, in accordance with this Section, whether the woman's unborn child has a detectable fetal heartbeat. In making the determination, the physician shall use a test that meets both of the following criteria:

1. Is consistent with the physician's good faith and reasonable understanding of standard medical practice.
2. Is appropriate for the estimated gestational age of the unborn child and the condition of the pregnant woman and her pregnancy.

C. A physician making a determination as required in Subsection B of this Section shall record in the pregnant woman's medical record all of the following:

1. The estimated gestational age of the unborn child.
2. The method used to estimate the gestational age.
3. The test used for detecting a fetal heartbeat including the date, time, and results of the test.

§1063.5. Prohibited abortion of unborn child with detectable fetal heartbeat; effect

A. Except as provided in R.S. 40:1063.6, a physician shall not knowingly perform or induce an abortion on a pregnant woman if the physician detects a fetal heartbeat for the unborn child as required in R.S. 40:1063.4 or fails to perform a test to detect a fetal heartbeat.

B. A physician does not violate this Section if he performed a test for a fetal heartbeat and did not detect a fetal heartbeat.

C. This Section does not affect either of the following:

1. The provisions of this Chapter that restrict or regulate an abortion by a particular method or during a particular stage of pregnancy.
2. Any other provision of state law that regulates or prohibits abortion.

§1063.6. Exception for medical emergency; records

A. The provisions of R.S. 40:1063.4 and 1063.5 shall not apply if a physician believes a medical emergency exists that prevents compliance with this Part.
B. A physician who performs or induces an abortion pursuant to this Section shall make written notations in the pregnant woman's medical record of all of the following:

(1) The physician's belief that a medical emergency necessitated the abortion.

(2) The medical condition of the pregnant woman that prevented compliance with this Part.

C. A physician performing or inducing an abortion pursuant to this Section shall maintain in the physician's practice records a copy of the notations made in accordance with Subsection B of this Section.

§1063.7. Acknowledgments; right of action not created

A. This Part does not create or recognize a right to abortion before a fetal heartbeat is detected.

B. This Part shall not be construed to do any of the following:

(1) Authorize the initiation of a cause of action against or the prosecution of a woman on whom an abortion is performed or induced or attempted to be performed or induced in violation of this Part.

(2) Wholly or partly repeal, either expressly or by implication, any other statute that regulates or prohibits abortion.

(3) Restrict a political subdivision from regulating or prohibiting abortion in a manner that is at least as stringent as the laws of this state.

§1063.8. Limitations on public enforcement

A. The requirements of this Part shall be enforced exclusively through the private civil actions described in R.S. 40:1063.9. No enforcement of this Part and no enforcement in response to violations of this Part shall be taken or threatened by this state, a political subdivision, a district or parish attorney, or an executive or administrative officer or employee of this state or a political subdivision against any person, except as provided in R.S. 40:1063.9.

B. This Section does not do any of the following:
(1) Legalize the conduct prohibited by this Part.

(2) Limit in any way or affect the availability of a remedy established in R.S. 40:1063.9.

(3) Limit the enforceability of any other laws that regulate or prohibit abortion.

§1063.9. Civil liability for violation; aiding or abetting violation

A. Any person, other than an officer or employee of a state or local governmental entity in this state, may bring a civil action against any person who does any of the following:

   (1) Performs or induces an abortion in violation of this Part.

   (2) Knowingly engages in conduct that aids or abets the performance or inducement of an abortion, including paying for or reimbursing the costs of an abortion through insurance or otherwise, regardless of whether the person knew or should have known that the abortion would be performed or induced in violation of this Part.

   (3) Intends to engage in the conduct described in this Subsection.

B. If a claimant prevails in an action brought pursuant to the provisions of this Section, the court shall award all of the following:

   (1) Injunctive relief sufficient to prevent the defendant from violating or engaging in acts that aid or abet violations of this Part.

   (2) Statutory damages in an amount of not less than ten thousand dollars for each abortion that the defendant performed or induced, and for each abortion the defendant aided or abetted in violation of this Part.

   (3) Costs and attorney fees.

C. Notwithstanding Subsection B of this Section, a court shall not award relief in response to a violation of Subsection A of this Section if the defendant demonstrates that the defendant previously paid the full amount of statutory damages prescribed in Subsection B of this Section in a previous action for that particular action.
abortion performed or induced, or for the particular conduct that aided or abetted an
abortion performed or induced in violation of this Part.

D. A person may bring an action pursuant to this Section not later than the
fourth anniversary of the date the cause of action accrues.

E. None of the following shall be a defense to an action brought pursuant to
this Section:

   (1) Ignorance or mistake of law;
   (2) A defendant's belief that the requirements of this Part are unconstitutional
or were unconstitutional.
   (3) A defendant's reliance on any court decision that has been overruled on
appeal or by a subsequent court, even if that court decision had not been overruled
when the defendant engaged in conduct that violates this Part.
   (4) A defendant's reliance on any state or federal court decision that is not
binding on the court in which the action has been brought.
   (5) Non-mutual issue preclusion or non-mutual claim preclusion.
   (6) The consent of the unborn child's mother to the abortion.
   (7) Any claim that the enforcement of this Part or the imposition of civil
liability against the defendant will violate the constitutional rights of third parties,
except as provided for in R.S. 40:1063.10.

F. It is an affirmative defense if either of the following occurs:

   (1) A physician defendant sued pursuant to Paragraph (A)(2) of this Section
reasonably believed, after conducting a reasonable investigation, that the physician
performing or inducing the abortion had complied or would comply with this Part.
   (2) A physician defendant sued pursuant to Paragraph (A)(3) of this Section
reasonably believed, after conducting a reasonable investigation, that the physician
performing or inducing the abortion will comply with this Part.
   (3) The physician defendant has the burden of proving an affirmative defense
by a preponderance of the evidence.
G. This Section shall not be construed to impose liability on any speech or conduct protected by the First Amendment to the Constitution of the United States, as made applicable to the states through the United States Supreme Court's interpretation of the Fourteenth Amendment to the Constitution of the United States, or by Article I, Section 7 of the Constitution of Louisiana.

H. A state official or a district or parish attorney shall not intervene in an action brought pursuant to this Section. This Subsection does not prohibit a person from filing an amicus curiae brief in the action.

I. A court shall not award costs or attorney fees pursuant to the Louisiana Code of Civil Procedure or any rule adopted by the Louisiana Supreme Court to a defendant in an action brought pursuant to this Section.

J. A civil action pursuant to this Section shall not be brought by a person who impregnated the abortion patient through an act of rape, sexual assault, incest, or any other related prohibited act defined in the Louisiana Criminal Code.

§1063.10. Civil liability; undue burden defense limitations

A. A defendant against whom an action is brought pursuant to R.S. 40:1063.9 does not have standing to assert the rights of women seeking an abortion as a defense to liability pursuant to that Section unless either of the following occurs:

(1) The United States Supreme Court holds that the courts of this state shall confer standing on that defendant to assert the third-party rights of women seeking an abortion in state court as a matter of federal constitutional law.

(2) The defendant has standing to assert the rights of women seeking an abortion under the tests for third-party standing established by the United States Supreme Court.

B. A defendant in an action brought pursuant to R.S. 40:1063.9 may assert an affirmative defense to liability pursuant to this Section if any of the following occur:
(1) The defendant has standing to assert the third-party rights of a woman or group of women seeking an abortion in accordance with Subsection A of this Section.

(2) The defendant demonstrates that the relief sought by the claimant will impose an undue burden on that woman or that group of women seeking an abortion.

C. A court shall not find an undue burden pursuant to Subsection B of this Section unless the defendant introduces evidence proving either of the following:

(1) An award of relief will prevent a woman or a group of women from obtaining an abortion.

(2) An award of relief will place a substantial obstacle in the path of a woman or a group of women who are seeking an abortion.

D. A defendant shall not establish an undue burden by doing either of the following:

(1) Merely demonstrating that an award of relief will prevent women from obtaining support or assistance, financial or otherwise, from others in their effort to obtain an abortion.

(2) Arguing or attempting to demonstrate that an award of relief against other defendants or other potential defendants will impose an undue burden on women seeking an abortion.

E. The affirmative defenses described in Subsection B of this Section are not available if the United States Supreme Court overrules Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed. 2d 147 (1973) or Planned Parenthood v. Casey, 505 U.S. 833 (1992), regardless of whether the conduct on which the cause of action based on the provisions of R.S. 40:1063.9 occurred before the United States Supreme Court overruled either of those decisions.

F. Nothing in this Section shall in any way limit or preclude a defendant from asserting the defendant's personal constitutional rights as a defense to liability pursuant to R.S. 40:1063.9 and a court shall not award relief if the conduct for which
the defendant has been sued was an exercise of state or federal constitutional rights
that personally belong to the defendant.

§1063.11. Civil liability; venue

A. A civil action brought pursuant to R.S. 40:1063.9 may be brought in one
of the following jurisdictions:

(1) The parish in which all or a substantial part of the events or omissions
giving rise to the claim occurred.

(2) The parish of residence for any one of the natural person defendants at
the time the cause of action accrues.

(3) The parish of the principal office in this state of any one of the
defendants that is not a natural person.

(4) The parish of residence for the claimant if the claimant is a natural person
residing in this state.

B. If a civil action is brought pursuant to R.S. 40:1063.9 in any one of the
venues described by Subsection A of this Section, the action shall not be transferred
to a different venue without the written consent of all parties.

§1063.12. Sovereign, governmental, and official immunity preserved

A. This state has sovereign immunity, a political subdivision has
governmental immunity, and each officer and employee of this state or a political
subdivision has official immunity in any action, claim, or counterclaim or any type
of legal or equitable action that challenges the validity of any provision or
application of this Part on constitutional grounds or otherwise.

B. A provision of state law shall not be construed to waive or abrogate an
immunity described in Subsection A of this Section unless it expressly waives
immunity pursuant to this Section.

§1063.13. Construction of abortion statutes; severability; legislative declarations

A. A statute that regulates or prohibits abortion shall not be construed to
repeal any other statute that regulates or prohibits abortion, either wholly or partly,
unless the repealing statute explicitly states that it is repealing the other statute.
B. A statute shall not be construed to restrict a political subdivision from regulating or prohibiting abortion in a manner that is at least as stringent as the laws of this state unless the statute explicitly states that political subdivisions are prohibited from regulating or prohibiting abortion in the manner described by the statute.

C. Every statute that regulates or prohibits abortion is severable in each of its applications to every person and circumstance. If any statute that regulates or prohibits abortion is found by any court to be unconstitutional, either on its face or as applied, then all applications of that statute that do not violate the Constitution of the United States and the Constitution of Louisiana shall be severed from the unconstitutional applications and shall remain enforceable, notwithstanding any other law, and the statute shall be interpreted as if containing language limiting the statute's application to the persons, group of persons, or circumstances for which the statute's application will not violate the Constitution of the United States and the Constitution of Louisiana.

D. Mindful of Leavitt v. Jane L., 518 U.S. 137 (1996), in the context of determining the severability of a state statute regulating abortion, the United States Supreme Court held that an explicit statement of legislative intent is controlling. It is the intent of the legislature that every provision, Section, Subsection, sentence, clause, phrase, or word in this Part, and every application of the provisions in this Part are severable from each other.

E.(1) If any application of any provision in this Part to any person, group of persons, or circumstances is found by a court to be invalid or unconstitutional, the remaining applications of that provision to all other persons and circumstances shall be severed and shall not be affected. All constitutionally valid applications of this Part shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the legislature's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this Part to impose an undue burden in a large or substantial fraction of
relevant cases, the applications that do not present an undue burden shall be severed
from the remaining applications and shall remain in force, and shall be treated as if
the legislature had enacted a statute limited to the persons, group of persons, or
circumstances for which the statute's application does not present an undue burden.

(2) If any court declares or finds a provision of this Part facially
unconstitutional, when discrete applications of that provision can be enforced against
a person, group of persons, or circumstances without violating the Constitution of the
United States and the Constitution of Louisiana, those applications shall be severed
from all remaining applications of the provision, and the provision shall be
interpreted as if the legislature had enacted a provision limited to the persons, group
of persons, or circumstances for which the provision's application will not violate the
Constitution of the United States and the Constitution of Louisiana.

F. The legislature further declares that it would have enacted this Part and
each provision, Section, Subsection, sentence, clause, phrase, or word, and all
constitutional applications of this Part, irrespective of the fact that any provision,
Section, Subsection, sentence, clause, phrase, or word, or applications of this Part
were to be declared unconstitutional or to represent an undue burden.

G. If any provision of this Part is found by any court to be unconstitutionally
vague, then the applications of that provision that do not present constitutional
vagueness problems shall be severed and remain in force.

H.(1) A court shall not decline to enforce the severability requirements of
this Section on the ground that severance would rewrite the statute or involve the
court in legislative or lawmaking activity. A court that declines to enforce or enjoins
a state official from enforcing a statutory provision does not rewrite a statute, as the
statute continues to contain the same words as before the court's decision.

(2)(a) A judicial injunction or declaration of unconstitutionality is both of
the following:

(i) Nothing more than an edict prohibiting enforcement that may
subsequently be vacated by a later court if that court has a different understanding
of the requirements of the Constitution of Louisiana or the Constitution of the United
States.

(ii) Not a formal amendment of the language in a statute.

(b) A judicial injunction or declaration of unconstitutionality no more
rewrites a statute than a decision by the executive not to enforce a duly enacted
statute in a limited and defined set of circumstances.

§1063.14. Award of attorney fees in actions challenging abortion laws

A. Any person, including an entity, attorney, or law firm who seeks
declaratory or injunctive relief to prevent this state, a political subdivision, any
governmental entity or public official in this state, or any person in this state from
enforcing any statute, ordinance, rule, regulation, or any other type of law that
regulates or restricts abortion or that limits taxpayer funding for individuals or
entities that perform or promote abortions, in any state or federal court, or that
represents any litigant seeking such relief in any state or federal court, is jointly and
severally liable to pay the costs and attorney fees of the prevailing party.

B. For purposes of this Section, a party is considered a prevailing party if a
state or federal court does either of the following:

(1) Dismisses any claim or cause of action brought against the party that
seeks the declaratory or injunctive relief described in Subsection A of this Section,
regardless of the reason for the dismissal.

(2) Enters judgment in the party's favor on any such claim or cause of action.

C.(1) Regardless of whether a prevailing party sought to recover costs or
attorney fees in the underlying action, a prevailing party may bring a civil action to
recover costs and attorney fees against a person including an entity, attorney, or law
firm that sought declaratory or injunctive relief described by Subsection A of this
Section not later than the third anniversary of the date on which either of the
following, as may be applicable, occurs:

(a) The dismissal or judgment described in Subsection B of this Section
becomes final on the conclusion of appellate review.
(b) The time for seeking appellate review expires.

(2) None of the following shall be a defense to an action brought pursuant to this Subsection:

(a) A prevailing party failed to seek recovery of costs or attorney fees in the underlying action.

(b) The court in the underlying action declined to recognize or enforce the requirements of this Section.

(c) The court in the underlying action held that any provisions of this Section are invalid, unconstitutional, or preempted by federal law, notwithstanding the doctrines of issue or claim preclusion.

§1063.15. Enforcement

The provisions of this Part shall be enforced exclusively through the private civil enforcement actions described in R.S. 40:1063.9.

§1063.16. Required documentation

A. If an abortion is performed or induced on a pregnant woman because of a medical emergency, the physician who performs or induces the abortion shall execute a written document that certifies the abortion is necessary due to a medical emergency, specify the woman's medical condition requiring the abortion, and do both of the following:

(1) Place the written document in the pregnant woman's medical record.

(2) Maintain a copy of the written document in the physician's practice records.

B.(1) If the abortion is performed or induced to preserve the health of the pregnant woman, the physician who performs or induces the abortion shall execute a written document that does both of the following:

(a) Specifies the medical condition the abortion is asserted to address.

(b) Provides the medical rationale for the physician's conclusion that the abortion is necessary to address the medical condition.
(2) For an abortion other than described in this Subsection, the physician shall specify in a written document that maternal health is not a purpose of the abortion and maintain a copy of the document in the physician's practice records.

§1063.17. Health and safety provisions; voluntary and informed consent

Consent to an abortion is voluntary and informed only if obtained in accordance with R.S. 40:1061.17 and any other applicable provisions of Part I of this Chapter.

Section 2. R.S. 40:1061.1.3 is hereby repealed in its entirety.

Section 3.(A) The Louisiana State Law Institute is hereby directed to designate R.S. 40:1061 through 1061.30 as Part I of Chapter 5 of Title 40 of the Louisiana Revised Statutes of 1950, and is further directed to apply to the Part the heading "Regulation of Abortion - General Provisions".

(B)(1) The Louisiana State Law Institute is hereby directed to designate R.S. 40:1063.1 through 1063.17, as enacted by Section 1 of this Act, as Part II of Chapter 5 of Title 40 of the Louisiana Revised Statutes of 1950, and as provided more specifically in this Subsection; and is further directed to apply to the Part the heading "The Louisiana Heartbeat Act".

(2) The Louisiana State Law Institute is hereby directed to designate R.S. 40:1063.1 through 1063.7, as enacted by Section 1 of this Act, as Subpart A of Part II of Chapter 5 of Title 40 of the Louisiana Revised Statutes of 1950, and is further directed to apply to the Subpart the heading "Prohibition on Abortion of Unborn Children With Detectable Heartbeat".

(3) The Louisiana State Law Institute is hereby directed to designate R.S. 40:1063.8 through 1063.17, as enacted by Section 1 of this Act, as Subpart B of Part II of Chapter 5 of Title 40 of the Louisiana Revised Statutes of 1950, and is further directed to apply to the Subpart the heading "Enforcement".
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 800 Original 2022 Regular Session Bagley

Abstract: Establishes the Louisiana Heartbeat Act.

Proposed law repeals and replaces present law prohibiting abortion when there is a detectable fetal heartbeat.

Proposed law provides legislative findings indicating that the fetal heartbeat is a predictor for the determination of whether an unborn child will reach live birth, when cardiac activity begins, and when the fetal heart is formed in the gestational sac.

Proposed law requires recordation of determinations of whether a fetal heartbeat is present in the fetus of a woman seeking an abortion.

Proposed law prohibits a physician from knowingly performing or inducing an abortion on a pregnant woman without determining whether the unborn child has a detectable heartbeat.

Proposed law establishes a test to make such a determination that is consistent with the physician's good faith and reasonable understanding of standard medical practice, appropriate for the estimated gestational age of the unborn child, and the condition of the pregnant woman and her pregnancy.

Proposed law requires the determining physician to record in the pregnant woman's medical record the following information:

1. The estimated gestational age of the unborn child.
2. The method used to estimate the gestational age.
3. The test used for detecting a fetal heartbeat, including the date, time, and results of the test.

Proposed law provides for exceptions to the provisions of proposed law if a medical emergency necessitates abortion or the medical condition of the pregnant woman prevents compliance with the requirements set forth in proposed law. Further requires certain information to be recorded if an abortion results from a medical emergency.

Proposed law stipulates that its provisions shall be enforced exclusively through private civil action.

Proposed law provides that any person, other than an officer or employee of a state or local governmental entity in this state, may bring a civil action against any person who does any of the following:

1. Performs or induces an abortion in violation of proposed law.
2. Knowingly engages in conduct that aids or abets the performance or inducement of an abortion.
3. Intends to engage in the conduct in violation of proposed law.

CODING: Words in struck through type are deletions from existing law; words underscored are additions.
Proposed law limits standing to assert abortion rights as a defense to liability unless certain circumstances occur, as provided by proposed law.

Proposed law provides for sovereign immunity for the state of La., its political subdivisions, state employees and officers in any action, claim, or counterclaim that challenges the validity of any provision or application set forth in proposed law.

Proposed law provides for the award of attorney fees in actions that challenge abortion provisions in proposed law.

Proposed law requires that certain documentation be reported if an abortion is performed or induced on a pregnant woman because of a medical emergency.

Proposed law requires the physician who performs or induces the abortion to execute a written document that certifies that an abortion is necessary due to a medical emergency and specifies the woman's medical condition requiring the abortion.

(Adds R.S. 40:1063.1-1063.17; Repeals R.S. 40:1061.1.3)