

2022 Regular Session

SENATE BILL NO. 388

BY SENATOR HEWITT AND REPRESENTATIVE MOORE

ABORTION. Prohibits the sale of certain abortion inducing drugs without a prescription and creates the crime of criminal induced chemical abortion. (8/1/22)

1 AN ACT  
2 To amend and reenact R.S. 14:32.9 and R.S. 51:1402(10) and to enact R.S. 40:962.2,  
3 relative to chemical abortion drugs and the crime of criminal abortion; to define  
4 criminal induced chemical abortion; to prohibit the inducing of a criminal abortion  
5 by means of the use of a chemical abortion drug without the prescribing physician  
6 being physically present during the administration of the drug; to provide for  
7 criminal penalties; to provide for defenses; to prohibit the sale, marketing,  
8 advertising, labeling, distributing, or importing of certain chemical abortion drugs;  
9 to define chemical abortion drugs; to provide for exceptions; to provide for the  
10 promulgation of rules; to provide for unfair trade practices; and to provide for related  
11 matters.

12 Be it enacted by the Legislature of Louisiana:  
13 Section 1. R.S. 14:32.9 is hereby amended and reenacted to read as follows:  
14 §32.9. Criminal abortion  
15 A. Criminal abortion is an abortion that is performed **or induced**, with or  
16 without the consent of the pregnant woman or her legal guardian, that results in the  
17 death of an unborn child when the abortion is performed **or induced** by any

1 individual who is not a physician licensed by the state of Louisiana.

2 B. As used in this Section:

3 (1) "Abortion" means the act of using or prescribing any instrument,  
4 medicine, drug, or any other substance, device, or means with the intent to terminate  
5 the clinically diagnosable pregnancy of a woman with knowledge that the  
6 termination by those means will, with reasonable likelihood, cause the death of the  
7 unborn child, **including an induced chemical abortion**. Such use, prescription, or  
8 means is not an abortion if done with the intent to:

9 (a) Save the life or preserve the health of an unborn child.

10 (b) Remove a dead unborn child or induce delivery of the uterine contents in  
11 case of a positive diagnosis, certified in writing in the woman's medical record along  
12 with the results of an obstetric ultrasound test, that the pregnancy has ended or is in  
13 the unavoidable and untreatable process of ending due to spontaneous miscarriage,  
14 also known in medical terminology as spontaneous abortion, missed abortion,  
15 inevitable abortion, incomplete abortion, or septic abortion.

16 (c) Remove an ectopic pregnancy.

17 **(2) "Induced chemical abortion" means an abortion that is a**  
18 **non-surgical abortion of a pregnancy that is caused by the delivery, sale, or**  
19 **distribution of mifepristone or misoprostol as the abortifacient when dispensed**  
20 **or distributed by anyone other than a physician who is physically present in the**  
21 **room with the pregnant woman when the drug is administered. "Induced**  
22 **chemical abortion" shall also mean giving instructions over the telephone, the**  
23 **internet, or other medium of communications regarding the self-administered**  
24 **inducement of an induced chemical abortion when a physician is not physically**  
25 **present in the room with the pregnant woman when she ingests the abortifacient**  
26 **drug.**

27 ~~(2)~~**(3)** "Physician" means a natural person who is the holder of an allopathic  
28 (M.D.) degree or an osteopathic (D.O.) degree from a medical college in good  
29 standing with the Louisiana State Board of Medical Examiners who holds a license,

1 permit, certification, or registration issued by the Louisiana State Board of Medical  
2 Examiners to engage in the practice of medicine in this state.

3 (4) "Serious bodily injury" means bodily injury which involves  
4 unconsciousness; extreme physical pain; protracted and obvious disfigurement;  
5 protracted loss or impairment of the function of a bodily member, organ, or  
6 mental faculty; loss or damage to reproductive capacity; or a substantial risk  
7 of death.

8 ~~(3)~~(5) "Unborn child" means the unborn offspring of human beings from the  
9 moment of conception through pregnancy and until live birth.

10 C.(1) Any person who knowingly performs or induces an abortion in  
11 violation of this Section commits the crime of performing a criminal abortion  
12 and shall be imprisoned at hard labor for not less than one nor more than five years,  
13 fined not less than five thousand nor more than fifty thousand dollars, or both.

14 (2) Any person who knowingly performs an abortion in violation of this  
15 Section that results in the death or serious bodily injury of the pregnant woman  
16 shall be imprisoned at hard labor for not less than five nor more than ten years,  
17 fined not less than ten thousand nor more than seventy-five thousand dollars,  
18 or both.

19 (3) Any person who knowingly performs or induces an abortion that  
20 results in the death or serious bodily injury of a pregnant woman under the age  
21 of eighteen in violation of this Section shall be imprisoned at hard labor for not  
22 less than fifteen nor more than fifty years, fined not less than fifteen thousand  
23 nor more than one hundred thousand dollars, or both.

24 D. Statutory Construction. None of the following shall be construed to create  
25 the crime of criminal abortion and shall be defenses against prosecution:

26 (1) Any action taken when a physician or other licensed medical professional  
27 is acting in the course of administering lawful medical care ~~and an unborn child dies.~~

28 (2) Any lawful act taken or omission by a pregnant woman with regard to her  
29 own unborn child.

1 Section 2. R.S. 40:962.2 is hereby enacted to read as follows:

2 **§962.2. Chemical abortion drugs; restrictions of sales; exceptions; penalties**

3 **A. Except as provided in Subsection B of this Section, any product that**  
4 **contains any chemical abortion drugs which contain mifepristone or misoprostol**  
5 **may be dispensed or distributed only upon the prescription of a duly licensed**  
6 **physician who is physically present in the room with the pregnant woman when**  
7 **the chemical abortion drug is administered to the pregnant woman.**

8 **B. As used in this Section, chemical abortion drugs shall not include any**  
9 **of the following:**

10 **(1) Contraceptive drugs or devices.**

11 **(2) Plan B or the morning after-pill.**

12 **(3) Other emergency contraception.**

13 **C. The marketing, advertising, labeling, or distributing or importing**  
14 **any product containing mifepristone or misoprostol for the indication to cause**  
15 **a chemical abortion in violation of this Section is prohibited.**

16 **D. The Department of Health may promulgate rules pursuant to the**  
17 **Administrative Procedures Act to provide for exemptions from this Section for**  
18 **products using mifepristone or misoprostol which are distributed for other**  
19 **purposes that do not include chemical abortions.**

20 **E.(1) Whoever violates any provision of this Section shall be fined not**  
21 **more than one thousand dollars or imprisoned for not more than six months,**  
22 **or both.**

23 **(2) Each instance of a sale or distribution of mifepristone or misoprostol**  
24 **shall be considered a separate offense for purposes of the penalties provided in**  
25 **Paragraph (1) of this Subsection.**

26 Section 3. R.S. 51:1402(10) is hereby amended and reenacted to read as follows:

27 §1402. Definitions

28 As used in this Chapter, the following words and phrases shall have the  
29 meanings hereinafter ascribed to them:

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(10)(a) "Trade" or "commerce" means the advertising, offering for sale, sale, or distribution of any services and any property, corporeal or incorporeal, immovable or movable, and any other article, commodity, or thing of value wherever situated, and includes any trade or commerce directly or indirectly affecting the people of the state.

**(b) "Trade" or "commerce" shall include the advertising, offering for sale, sale, or distribution of a chemical abortion drug in violation of R.S. 40:962.2.**

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The original instrument was prepared by Carla S. Roberts. The following digest, which does not constitute a part of the legislative instrument, was prepared by Whitney Kauffeld.

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## DIGEST

SB 388 Engrossed

2022 Regular Session

Hewitt

Present law provides for the crime of criminal abortion. Present law defines "criminal abortion" as the performance of an abortion where the abortionist is not a La. licensed physician. Present law provides that any person who is guilty of criminal abortion will be imprisoned at hard labor for not less than one nor more than five years, fined not less than \$5,000 nor more than \$50,000, or both.

Proposed law retains present law but expands the definition of crime of criminal abortion to include the distribution or delivery of certain abortion-causing pharmaceutical drugs when dispensed or distributed by anyone other than a physician who is physically present in the room with the pregnant woman when the drug is administered. Proposed law further defines "induced chemical abortion" to mean giving instructions over the telephone, the internet, or other medium of communications regarding the self-administered inducement of a chemical abortion when a physician is not physically present in the room with the pregnant woman when she ingests the abortifacient drug.

Proposed law defines "serious bodily injury" as bodily injury involving unconsciousness, extreme physical pain, protracted and obvious disfigurement, protracted loss or impairment of the function of a bodily member, organ, or mental faculty, loss or damage to reproductive capacity, or a substantial risk of death.

Proposed law increases the criminal penalties when a person knowingly performs a criminal abortion that results in the death or serious bodily injury of the pregnant woman to a prison term of not less than five nor more than 10 years, fined not less than \$10,000 nor more than \$75,000, or both. Proposed law further provides that, if the recipient of the criminal abortion is under the age of 18, the criminal penalty increases to imprisonment at hard labor for not less than 15 years nor more than 50 years, fined not less than \$15,000 nor more than \$100,000, or both.

Present law provides that the following are not criminal abortion:

1. Any action when a physician or other licensed medical professional is acting in the course of administering lawful medical care and an unborn child dies.

2. Any act taken or omission by a pregnant woman with regard to her own unborn child.

Proposed law provides that Item (1) does not require the death of the unborn child and Item (2) requires that the act or omission be lawful.

Proposed law otherwise retains present law.

Proposed law prohibits the sale or distribution of any chemical abortion drugs which contain mifepristone or misoprostol without a prescription of a duly licensed physician who is physically present with the pregnant woman when the chemical abortion drug is administered. Proposed law further provides an exception for contraceptive drugs or devices, Plan B, the morning after-pill, or other emergency contraception which may continue to be sold without a doctor's prescription. Proposed law provides that the Dept. of Health may promulgate rules to allow other products that use mifepristone or misoprostol for uses other than chemical abortions to be marketed and sold without a doctor's prescription. Proposed law further provide that whoever sells or distributes chemical abortion drugs without a prescription is subject to criminal penalties of not more than \$1,000 or imprisoned for not more than six months, or both, and each instance of a sale or distribution of a chemical abortion drug is considered a separate offense for purposes of the criminal penalties.

Present law provides that unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

Proposed law provides that the advertising, offering for sale, sale, or distribution of chemical abortion drugs without a prescription is an unfair trade practice.

Effective August 1, 2022.

(Amends R.S. 14:32.9 and R.S. 51:1402(10); adds R.S. 40:962.2)

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Judiciary C to the original bill

1. Add provision that "induced chemical abortion" means abortion caused by certain drugs dispensed or distributed by anyone other than a physician who is in the physical presence of the pregnant woman when the drug is administered.
2. Define "induced chemical abortion" to also mean giving instructions via certain media regarding the self-administered inducement of a chemical abortion when a physician is not physically present.
3. Provide that certain proposed law penalties apply when the unlawful act results in serious bodily injury of the pregnant woman.
4. Add provision that a lawful dispensing of a chemical abortion drug requires the physician to be in the physical presence of the pregnant woman when the drug is administered.