
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.

SB 388 Engrossed

DIGEST
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.