

2022 Regular Session

SENATE BILL NO. 342

BY SENATORS JACKSON, CLOUD, ROBERT MILLS, PEACOCK AND STINE

ABORTION. Provides relative to the application of abortion statutes. (gov sig)

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AN ACT

To amend and reenact R.S. 40:1061(D) and 1061.1.3(C) and to enact R.S. 1:18 and R.S. 14:87.7 and 87.8 and to repeal R.S. 14:87, relative to abortion; to provide for the interpretation of multiple abortion statutes; to provide for the independent construction of each separate enactment of law related to abortion; to provide for the severability; to restrict certain ordinances enacted by local governing authorities; to provide with respect to the crime of abortion; to provide relative to a late term abortion; to provide for penalties; to provide for definitions; to provide for effective dates; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 1:18 is hereby enacted to read as follows:

**§18. Construction of laws relative to abortion**

**A. Notwithstanding any other provision of law to the contrary, all laws or parts of laws prohibiting or regulating abortion in conflict with a provision of law subsequently enacted by the legislature prohibiting or regulating abortion are not repealed by the law subsequently enacted. However, a subsequently enacted law may expressly repeal other laws.**

1           **B. All laws or parts of laws prohibiting or regulating abortion may not**  
2           **be construed to restrict a local governing authority from prohibiting or**  
3           **regulating abortion to the extent that the local ordinance is at least as stringent**  
4           **as the laws of this state unless the law explicitly provides that local governing**  
5           **authorities are prohibited from prohibiting or regulating abortion in the**  
6           **manner described by the law.**

7           **C. Unless otherwise specifically provided therein, the provisions of each**  
8           **act of the legislature prohibiting or regulating abortion are severable, whether**  
9           **or not a provision to that effect is included in the act. If any provision or item**  
10           **of an act prohibiting or regulating abortion, or the application thereof, is held**  
11           **invalid, such invalidity shall not affect other provisions, items, or applications**  
12           **of the act which can be given effect without the invalid provision, item, or**  
13           **application.**

14           **D. This Section shall apply to acts of the legislature affecting general**  
15           **laws, and local and special laws, and statutes of the state, including the**  
16           **Louisiana Revised Statutes of 1950, the Civil Code, the Code of Civil Procedure,**  
17           **the Code of Criminal Procedure, the Code of Evidence, and the Children's**  
18           **Code.**

19           Section 2. R.S. 14:87.7 and 87.8 are hereby enacted to read as follows:

20           **§87.7. Abortion**

21           **A. It shall be unlawful for a physician or other person to perform an**  
22           **abortion, with or without the consent of the pregnant female.**

23           **B. As used in this Section, the following terms shall have the following**  
24           **meanings:**

25           **(1) "Abortion" means the act of using or prescribing any instrument,**  
26           **medicine, drug, or any other substance, device, or means with the intent to**  
27           **terminate the clinically diagnosable pregnancy of a pregnant female with**  
28           **knowledge that the death of the unborn child is reasonably likely to occur. Such**  
29           **use, prescription, or means is not an abortion if done with the intent to do any**

1 of the following:

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

3 (b) Remove a dead unborn child or induce delivery of the uterine  
4 contents in case of a positive diagnosis, certified in writing in the female's  
5 medical record along with the results of an obstetric ultrasound test, that the  
6 pregnancy has ended or is in the unavoidable and untreatable process of ending  
7 due to spontaneous miscarriage, also known in medical terminology as  
8 spontaneous abortion, missed abortion, inevitable abortion, incomplete  
9 abortion, or septic abortion.

10 (c) Remove an ectopic pregnancy.

11 (d) Terminate a pregnancy for the express purpose of saving the life,  
12 preventing the permanent impairment of a life-sustaining organ or organs, or  
13 preventing a substantial risk of death of the pregnant female.

14 (2) "Physician" means any person licensed or authorized to practice  
15 medicine in this state.

16 (3) "Unborn child" means the unborn offspring of human beings from  
17 the moment of fertilization until birth.

18 C. Whoever commits the crime of abortion shall be imprisoned at hard  
19 labor for not less than one year nor more than ten years and shall be fined not  
20 less than ten thousand dollars nor more than one hundred thousand dollars.

21 D. This Section does not apply to a pregnant female upon whom an  
22 abortion is committed or performed in violation of this Section and the  
23 pregnant female shall not be held responsible for the criminal consequences of  
24 any violation of this Section.

25 E. This Section shall not apply to the sale, use, prescription, or  
26 administration of a contraceptive measure, drug or chemical, if it is  
27 administered prior to the time when a pregnancy could be determined through  
28 conventional medical testing and if the contraceptive measure is sold, used,  
29 prescribed, or administered in accordance with manufacturer instructions.

1           **F. This Section shall take effect and become operative immediately upon**  
2           **and to the extent that the United States Supreme Court upholds the authority**  
3           **of the states to prohibit abortions or by the adoption of an amendment to the**  
4           **Constitution of the United States of America that would restore to the state of**  
5           **Louisiana the authority to prohibit abortions.**

6           **§87.8. Late term abortion**

7           **A. It shall be unlawful for a physician or other person to perform a late**  
8           **term abortion, with or without the consent of the pregnant female.**

9           **B. As used in this Section, the following terms shall have the following**  
10           **meanings:**

11           **(1) "Abortion" shall have the same meaning as provided in R.S. 14:87.7.**

12           **(2) "Gestational age" means the age of an unborn child as calculated**  
13           **from the first day of the last menstrual period of the pregnant female, as**  
14           **determined by the use of standard medical practices and techniques.**

15           **(3) "Late term abortion" means the performance of an abortion when**  
16           **the gestational age of the unborn child is fifteen weeks or more.**

17           **(4) "Physician" shall have the same meaning as provided in R.S. 14:87.7.**

18           **(5) "Unborn child" shall have the same meaning as provided in R.S.**  
19           **14:87.7.**

20           **C. Whoever commits the crime of late term abortion shall be imprisoned**  
21           **at hard labor for not less than one year nor more than fifteen years and shall be**  
22           **fined not less than twenty thousand dollars nor more than two hundred**  
23           **thousand dollars.**

24           **D. This Section does not apply to a pregnant female upon whom an**  
25           **abortion is committed or performed in violation of this Section and the**  
26           **pregnant female shall not be held responsible for the criminal consequences of**  
27           **any violation of this Section.**

28           **E. This Section shall not apply to the sale, use, prescription, or**  
29           **administration of a contraceptive measure, drug or chemical, if it is**

1       administered prior to the time when a pregnancy could be determined through  
 2       conventional medical testing and if the contraceptive measure is sold, used,  
 3       prescribed, or administered in accordance with manufacturer instructions.

4               F. This Section shall take effect and become operative immediately upon  
 5       and to the extent that the United States Supreme Court upholds the authority  
 6       of the states to prohibit abortions or by the adoption of an amendment to the  
 7       Constitution of the United States of America that would restore to the state of  
 8       Louisiana the authority to prohibit abortions.

9       Section 3. R.S. 40:1061(D) and 1061.1.3(C) are hereby amended and reenacted to  
 10       read as follows:

11               §1061. Abortion; prohibition

12   \*       \*       \*

13               D. Any person in violation of this Section shall be prosecuted pursuant to the  
 14       effective provisions of ~~R.S. 14:87~~ **R.S. 14:87.7**, and shall be subject to the penalties  
 15       provided in R.S. 40:1061.29.

16   \*       \*       \*

17               §1061.1.3. Abortion prohibited; detectable fetal heartbeat; ultrasound required

18   \*       \*       \*

19               C. Whoever violates this Section shall be prosecuted pursuant to the effective  
 20       provisions of ~~R.S. 14:87~~ **R.S. 14:87.7** and shall be subject to the penalties provided  
 21       in R.S. 40:1061.29.

22   \*       \*       \*

23       Section 4. R.S. 14:87 is hereby repealed.

24       Section 5. The provisions of Section 1 of this Act shall become effective upon  
 25       signature by the governor or, if not signed by the governor, upon expiration of the time for  
 26       bills to become law without signature by the governor, as provided by Article III, Section  
 27       18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved  
 28       by the legislature, this Act shall become effective on the day following such approval.

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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 Lebra Bias.

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## DIGEST

SB 342 Reengrossed

2022 Regular Session

Jackson

Proposed law provides that notwithstanding any other provision of law to the contrary, all laws or parts of laws prohibiting or regulating abortion in conflict with a provision of law subsequently enacted by the legislature prohibiting or regulating abortion are not repealed by the law subsequently enacted, and that a subsequently enacted law may expressly repeal other laws.

Proposed law further provides that all present law prohibiting or regulating abortion may not be construed to restrict a local governing authority from prohibiting or regulating abortion to the extent that the local ordinance is at least as stringent as present laws of this state unless present law explicitly provides that local governing authorities are prohibited from prohibiting or regulating abortion in the manner described by present law; further provides that unless otherwise specifically provided, the provisions of each act of the legislature prohibiting or regulating abortion are severable, whether or not a provision to that effect is included in the act, and if any provision or item of an act prohibiting or regulating abortion, or the application thereof, is held invalid, such invalidity shall not affect other provisions, items, or applications of the act which can be given effect without the invalid provision, item, or application; further provides that proposed law shall apply to acts of the legislature affecting present law.

Proposed law provides that it shall be unlawful for a physician or other person to perform an abortion, with or without the consent of the pregnant female.

Proposed law provides definitions for "abortion", "physician", "gestational age", "late term abortion", and "unborn child".

Proposed law provides that whoever commits the crime of abortion shall be imprisoned at hard labor for not less than one year nor more than 10 years and shall be fined not less than \$10,000 nor more than \$100,000.

Proposed law provides that it shall be unlawful for a physician or other person to perform a late term abortion, with or without the consent of the pregnant female, and that whoever commits the crime of late term abortion shall be imprisoned at hard labor for not less than one year nor more than 15 years and shall be fined not less than \$20,000 nor more than \$200,000.

Proposed law does not apply to a pregnant female upon whom an abortion is committed or performed in violation of proposed law and the pregnant female cannot be held responsible for the criminal consequences of any violation of proposed law.

Proposed law does not apply to the sale, use, prescription, or administration of a contraceptive measure, drug or chemical, if it is administered prior to the time when a pregnancy could be determined through conventional medical testing and if the contraceptive measure is sold, used, prescribed, or administered in accordance with manufacturer instructions.

Proposed law take effect and becomes operative immediately upon and to the extent that the U.S. Supreme Court upholds the authority of the states to prohibit abortions or by the adoption of an amendment to the U.S. Constitution that would restore to the state of Louisiana the authority to prohibit abortions.

Proposed law changes present law and provides that any person in violation of present law shall be prosecuted pursuant to the effective provisions of R.S. 14:87.7 and shall be subject to the penalties provided in R.S. 40:1061.29.

Present law provides that whoever violates present law shall be prosecuted pursuant to the effective provisions of R.S. 14:87 and shall be subject to the penalties provided in R.S. 40:1061.29.

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

(Adds R.S. 1:18, 14:87.7, and 87.8; amends R.S. 40:1061(D) and 1061.1.3(C); repeals R.S. 14:87)

#### Summary of Amendments Adopted by Senate

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

1. Amends and reenacts the crime of abortion.
2. Adds definition of "late-term abortion" and provides exceptions.
3. Adds 3 exceptions to late-term abortions.
4. Adds an effective date contingent upon action by the U.S. Supreme Court.
5. Makes technical changes.

##### Senate Floor Amendments to engrossed bill

1. Provides for penalties relative to crimes associated with abortion.
2. Creates the construction of laws relative to abortion.
3. Creates the crime of abortion.
4. Creates the crime of late term abortion.
5. Present law elements, definitions and penalties of the crime of abortion.
6. Makes technical changes.