

SENATE BILL NO. 388

BY SENATORS HEWITT, ABRAHAM, ALLAIN, BARROW, CATHEY, CLOUD, CONNICK, CORTEZ, FESI, JACKSON, MCMATH, MILLIGAN, FRED MILLS, ROBERT MILLS, MORRIS, PEACOCK, POPE, REESE, STINE, TALBOT, TARVER, WARD AND WOMACK AND REPRESENTATIVES CREWS, EDMONDS, EDMONSTON, FIRMENT, GAROFALO, HORTON, MOORE, CHARLES OWEN, SCHLEGEL, SEABAUGH AND THOMPSON

1 AN ACT

2 To amend and reenact R.S. 51:1402(10) and R.S. 40:1061(A), to enact R.S. 14:87.9 and R.S.  
3 40:962.2, to repeal R.S. 14:88, and to amend and reenact certain provisions if and as  
4 enacted by the Act which originated as Senate Bill No. 104 of this 2022 Regular  
5 Session of the Legislature, relative to abortion-inducing drugs and abortion; to define  
6 criminal abortion; to prohibit criminal abortion by means of the use of an abortion-  
7 inducing drug without the prescribing physician being physically present during the  
8 administration of the drug; to provide criminal penalties; to provide for defenses; to  
9 prohibit the selling, prescribing, distributing, dispensing, or delivering of certain  
10 abortion-inducing drugs under certain circumstances; to define abortion-inducing  
11 drugs; to provide for exceptions; to provide for the promulgation of rules; to provide  
12 for unfair trade practices; to provide for the interpretation of multiple abortion  
13 statutes; and to provide for related matters.

14 Be it enacted by the Legislature of Louisiana:

15 Section 1. R.S. 14:87.9 is hereby enacted to read as follows:

16 **§87.9. Criminal abortion by means of abortion-inducing drugs**

17 **A. Criminal abortion by means of an abortion-inducing drug is**  
18 **committed when a person knowingly causes an abortion to occur by means of**  
19 **delivering, dispensing, distributing, or providing a pregnant woman with an**  
20 **abortion-inducing drug.**

21 **B.(1) Except as provided in Paragraph (2) of this Subsection, the terms**  
22 **used in this Section, unless a different meaning clearly appears in the context,**  
23 **whether singular or plural, have the same meaning as the definitions provided**  
24 **in R.S. 14:32.9.**

1                   **(2) For purposes of this Section, the following definitions apply:**

2                   **(a)(i) "Abortion-inducing drug" means any drug or chemical, or any**  
3                   **combination of drugs or chemicals, or any other substance when used with the**  
4                   **intent to cause an abortion, including but not limited to RU-486, the Mifeprex**  
5                   **regimen, misoprostol (Cytotec), or methotrexate.**

6                   **(ii) Abortion-inducing drug shall not mean a contraceptive, an**  
7                   **emergency contraceptive, or the use of methotrexate to treat an ectopic**  
8                   **pregnancy.**

9                   **(b) "Contraceptive" means any device, measure, drug, chemical, or**  
10                   **product, including single-ingredient levonorgestrel, that has been approved by**  
11                   **the United States Food and Drug Administration for the purpose of preventing**  
12                   **pregnancy and is intended to be administered prior to the time when a clinically**  
13                   **diagnosable pregnancy can be determined, provided that the contraceptive is**  
14                   **sold, prescribed, or administered in accordance with manufacturer's**  
15                   **instructions.**

16                   **(c) "Emergency contraceptive" means a drug, chemical, or product,**  
17                   **including single-ingredient levonorgestrel, that has been approved by the United**  
18                   **States Food and Drug Administration designed or intended to be taken after**  
19                   **sexual intercourse but prior to the time when a clinically diagnosable pregnancy**  
20                   **can be determined, provided that the emergency contraceptive is sold,**  
21                   **prescribed, or administered in accordance with manufacturer's instructions.**

22                   **C.(1) Any person who knowingly performs an abortion by means of an**  
23                   **abortion-inducing drug in violation of this Section shall be imprisoned at hard**  
24                   **labor for not less than one nor more than five years, fined not less than five**  
25                   **thousand nor more than fifty thousand dollars, or both.**

26                   **(2) Any person who knowingly performs an abortion by means of**  
27                   **abortion-inducing drug in violation of this Section that results in the death or**  
28                   **serious bodily injury of the pregnant woman shall be imprisoned at hard labor**  
29                   **for not less than five nor more than ten years, fined not less than ten thousand**  
30                   **nor more than seventy-five thousand dollars, or both.**

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

6           D. Statutory Construction. None of the following shall be construed to  
7           create the crime of criminal abortion by means of an abortion-inducing drug:

8           (1) Any action taken when a physician or other licensed medical  
9           professional is acting in the course of administering lawful medical care.

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

12          (3) Possessing for her own consumption or consuming an  
13          abortion-inducing drug by a pregnant woman in violation of this Section.

14          (4) Lawfully prescribing, dispensing, or distributing a drug, medicine,  
15          or other substance for a bona fide medical reason that is not intended to cause  
16          an abortion in violation of this Section.

17          (5) Any act by a licensed pharmacist or pharmacy related to filling a  
18          prescription for a drug, medicine, or other substance prescribed for a bona fide  
19          medical reason shall not subject the pharmacist or the pharmacy to the criminal  
20          consequences of this Section. A diagnosis or a diagnosis code shall be written on  
21          the prescription by the prescriber indicating that the drug, medicine, or other  
22          substance is intended for a purpose other than to cause an abortion in violation  
23          of this Section.

24          (6)(a) The act of administering an abortion-inducing drug when the  
25          drug is administered by a physician licensed by the state of Louisiana who  
26          administers the abortion-inducing drug in person to the pregnant woman.

27          (b) The provisions of Subparagraph (a) of this Paragraph shall not be  
28          a defense against prosecution under any other provision of law that makes the  
29          abortion unlawful, whether the other provision of law is in effect on the effective  
30          date of this Act or becomes unlawful at a later date.

1           (7) Any act by a licensed pharmacist or pharmacy related to filling a  
2           prescription for a drug, medicine, or other substance prescribed for a bona fide  
3           medical reason shall not subject the pharmacist or the pharmacy to the criminal  
4           consequences of this Section. A diagnosis or a diagnosis code shall be written on  
5           the prescription by the prescriber indicating that the drug, medicine, or other  
6           substance is intended for a purpose other than to cause an abortion in violation  
7           of this Section.

8           Section 2. R.S. 40:1061(A) is hereby amended and reenacted and R.S. 40:962.2 is  
9 hereby enacted to read as follows:

10           §962.2. Abortion-inducing drugs; restrictions of sales; exceptions; penalties

11           A. Except as provided in R.S. 40:1061.11, no abortion-inducing drug may  
12           be sold, prescribed, dispensed, distributed, or delivered in this state in violation  
13           of this Section.

14           B. As used in this Section, "abortion-inducing drug" shall have the same  
15           meaning and exclusions as provided in R.S. 14:87.9.

16           C. Notwithstanding any other provision of law to the contrary, delivery  
17           to a person in Louisiana by mail-order, courier, or as a result of a sale made via  
18           the internet in violation of this Section is strictly prohibited.

19           D.(1) The Louisiana Department of Health may promulgate rules  
20           pursuant to the Administrative Procedure Act to provide for exemptions from  
21           this Section for products using an abortion-inducing drug which are distributed  
22           for other purposes that do not include causing an abortion.

23           (2) A physician or other healthcare provider who is licensed to prescribe  
24           medications or drugs that are subject to the provisions of Paragraph (1) of this  
25           Subsection shall write a diagnosis or a diagnosis code on the prescription that  
26           clearly indicates that the prescription is not intended to cause an abortion in  
27           violation of this Section.

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

1                   (2) Each instance of a sale or distribution of an abortion-inducing drug  
2                   shall be considered a separate offense for purposes of the penalties provided in  
3                   Paragraph (1) of this Subsection.

4                   F. Possessing for her own consumption or consuming an abortion-  
5                   inducing drug by a pregnant woman in violation of this Section shall not subject  
6                   the pregnant woman to the criminal consequences.

7                   G. Any act by a licensed pharmacist or pharmacy related to filling a  
8                   prescription for a drug, medicine, or other substance prescribed for a bona fide  
9                   medical reason shall not subject the pharmacist or the pharmacy to the criminal  
10                  consequences of this Section. A diagnosis or a diagnosis code shall be written on  
11                  the prescription by the prescriber indicating that the drug, medicine, or other  
12                  substance is intended for a purpose other than to cause an abortion in violation  
13                  of this Section.

14   \*       \*       \*

15                   §1061. Abortion; prohibition

16                   A. The provisions of this Act shall become effective immediately upon, and  
17                   to the extent permitted, by the occurrence of any of the following circumstances:

18                   (1) Any decision of the ~~United States~~ Supreme Court **of the United States**  
19                   which ~~reverses~~ **overrules**, in whole or in part, *Roe v. Wade*, 410 U.S. 113, 93 S.Ct.  
20                   705, 35 L.Ed. 2d 147 (1973), thereby; restoring to the state of Louisiana the authority  
21                   to prohibit **or limit** abortion.

22                   (2) Adoption of an amendment to the United States Constitution which, in  
23                   whole or in part, restores to the state of Louisiana the authority to prohibit **or limit**  
24                   abortion.

25                   **(3) A decision of the Supreme Court of the United States in the case of**  
26                   **Dobbs v. Jackson Women's Health Organization, Docket No. 19-1392, which**  
27                   **overrules, in whole or in part, Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.**  
28                   **2d 147 (1973), thereby restoring to the state of Louisiana the authority to**  
29                   **prohibit or limit abortion.**

30   \*       \*       \*

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

2 §1402. Definitions

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

5 \* \* \*

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

11 **(b) "Trade" or "commerce" shall include the advertising, offering for**  
12 **sale, sale, or distribution of an abortion-inducing drug in violation of R.S.**  
13 **40:962.2.**

14 Section 4. R.S. 14:88 is hereby repealed.

15 Section 5. If any provision or item of this Act, or the application thereof, is held  
16 invalid, such invalidity shall not affect other provisions, items, or applications of the Act  
17 which can be given effect without the invalid provision, item, or application and to this end  
18 the provisions of this Act are hereby declared severable in accordance with R.S. 24:175.

19 Section 6. If the bill that originated as Senate Bill No. 342 of this 2022 Regular  
20 Session of the legislature is enacted and becomes law, the provisions containing definitions  
21 in R.S. 14:87.9(B) in Section 1 of this Act and R.S. 40:962.2(B) in Section 2 of this Act shall  
22 be null and void.

23 Section 7. If Senate Bill No.104 of this 2022 Regular Session of the legislature is  
24 enacted, R.S. 40:2175.8 as enacted in Section 1 of Senate Bill No.104 is hereby amended  
25 and reenacted to read as follows:

26 §2175.8. Patient's right to unimpeded, private, and uncensored telephone  
27 communications; condition of facility licensing; penalties

28 \* \* \*

29 **C.(1) The provisions of this Section shall not be construed to provide a**  
30 **right to an abortion and are superseded by other provisions of law that restrict**

1 or prohibit abortion.

2 (2) The provisions of this Section are intended to regulate the practice  
3 of abortion to provide for the health, safety, and welfare of women in outpatient  
4 abortion facilities until such time and to the extent that the state of Louisiana  
5 no longer regulates outpatient abortion facilities.

6 Section 8. It is the intention of the legislature that all of the following apply to this  
7 Act:

8 (A) This Act shall not be construed to repeal any other provision of law that restricts  
9 or prohibits abortion.

10 (B) The legislature reaffirms its long-standing public policy that every unborn child  
11 is a human being and has the inalienable right to life.

12 (C) The provisions of this Act are enacted to provide for the health, safety, and  
13 welfare of women until such time and to the extent that the state of Louisiana no longer  
14 regulates the practice of abortion or because Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35  
15 L.Ed. 2d 147 (1973) and its progeny have been overturned or because an amendment to the  
16 Constitution of the United States of America has been enacted which restores to the state of  
17 Louisiana the authority to restrict abortion and prohibit abortions.

18 (D) A decision of the Supreme Court in the case of Dobbs v. Jackson Women's  
19 Health Organization, Docket No. 19-1392, which overrules, in whole or in part, Roe v.  
20 Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed. 2d 147 (1973), thereby restoring to the state of  
21 Louisiana the authority to prohibit or limit abortion shall apply to the provisions of R.S.  
22 40:1061 or Act No. 468 of the 2018 Regular Session or both, or whichever one is applicable.

\_\_\_\_\_  
PRESIDENT OF THE SENATE

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_