

RÉSUMÉ DIGEST

ACT 545 (SB 342)

2022 Regular Session

Jackson

New law provides that it is the intention of the legislature to prohibit and restrict abortion in order to preserve the life of each unborn child to the fullest extent permitted by law.

New law provides that laws prohibiting or restricting abortion are not to be negated or superseded by the laws regulating outpatient abortion facilities. New law provides that prior law that regulates outpatient abortion clinics are enacted for the purpose of ensuring the health, safety, and welfare of women seeking abortions until the state no longer regulates outpatient abortion clinics. New law provides for procedures for closing outpatient abortion facilities if abortion is illegal because the U.S. Supreme Court has issued an opinion which restores to the state the ability to prohibit or restrict abortion.

New law provides that laws prohibiting or restricting abortion at a certain gestational age of the unborn child are not to be considered to be in conflict with other laws that regulate or prohibit abortion at a different gestational age.

New law provides that no governing authority of a political subdivision are permitted to enact any ordinance or regulation that authorizes or regulates abortion.

New law 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 is not to affect other provisions, items, or applications of the act which can be given effect without the invalid provision, item, or application; further provides that new law is to apply to acts of the legislature affecting prior law.

New 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.

New law provides definitions for "abortion", "abortion-inducing drug", "clinically diagnosable pregnancy", "conception", "contraceptive", "dismemberment", "emergency contraceptive", "fetal body part", "fetal heartbeat", "gestational age", "good faith medical judgment", "infant", "late term abortion", "live birth", "medical emergency", "medically futile", "miscarriage", "partial birth abortion", "pregnant", "receive a fetal organ", "serious health risk to the unborn child's mother", "unborn child", "viable", and "woman" or "mother".

New law provides exceptions to the definition of "abortion" as follows:

- (1) To save the life or preserve the health of an unborn child.
- (2) The removal of a dead unborn child or to empty the contents of the uterus after a miscarriage.
- (3) The removal of an ectopic pregnancy.
- (4) The use of methotrexate to treat an ectopic pregnancy.
- (5) A medical procedure necessary to prevent the death or substantial risk of death to the pregnant woman due to a physical condition or the loss of a life-sustaining organ of a pregnant woman.
- (6) The removal of an unborn child who is deemed to be medically futile.

New 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.

New 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.

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

New law does not apply to the sale, use, prescription, or administration of a contraceptive measure or an emergency contraceptive measure if sold, prescribed, or administered in accordance with manufacturer instructions.

New law takes effect and becomes operative immediately upon, and to the extent permitted by, the occurrence of any of the following circumstances:

- (1) Any decision of the U.S. Supreme Court which overrules, in whole or in part, *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed. 2d 147 (1973), thereby restoring to the state of La. the authority to prohibit or limit abortion.
- (2) Adoption of an amendment to the U.S. Constitution which, in whole or in part, restores to the state of La. the authority to prohibit or limit abortion.
- (3) A decision of the U.S. Supreme Court in the case of *Dobbs v. Jackson Women's Health Organization*, Docket No. 19-1392, (*Dobbs' decision*) which overrules, in whole or in part, *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed. 2d 147 (1973), thereby restoring to the state of La. the authority to prohibit or limit abortion.

New law provides that the La. Dept. of Health (LDH) is to promulgate administrative rules establishing an exclusive list of anomalies, diseases, disorders, and other conditions which are to be considered "medically futile" for purposes of new law.

Prior law defines "criminal abortion" as an abortion performed by an unlicensed physician and provides for criminal penalties. New law retains prior law but changes the terminology to "abortion by an unlicensed physician".

Prior law defines "human experimentation in the use of any live born human being" as a crime and provides for criminal penalties. New law retains prior law but changes the terminology to "human experimentation on an infant born alive".

New law revises the "Human Life Protection Act" in prior law (R.S. 40:1061) to provide that any person in violation of prior law be prosecuted pursuant to the effective provisions of new law (R.S. 14:87.7) and are subject to the penalties provided in prior law (R.S. 40:1061.29).

New law provides that the secretary of LDH is empowered to issue a written cease and desist order to prevent or terminate an unsafe condition or an illegal practice in an outpatient abortion facility. New law further provides for due process rights for an aggrieved party to appeal the order of the secretary. New law provides that, if the violator subsequently engages in activities that violate a final cease and desist order, the secretary may seek the enforcement of such order by civil action filed in the 19th Jud. Dist. Court for East Baton Rouge Parish. New law provides that the court may issue a fine of not less than \$500 nor more than \$5,000 for each subsequent violation of a cease and desist order.

New law provides for a procedure for closing outpatient abortion clinics in the event abortion is declared illegal in the state. New law further requires the secretary of LDH to apply the legislative intent to prohibit abortion with the final opinion of the U.S. Supreme Court in the *Dobbs' decision* and is to issue whichever one of the applicable cease and desist orders apply, as follows:

- (1) The outpatient abortion facility is to be ordered closed and the facility shall immediately cease and desist performing abortions because the Human Life Protection Act (R.S. 40:1061) or new law has been enacted and the practice of abortion in Louisiana has been prohibited by law.
- (2) The outpatient abortion facility shall be ordered to cease and desist performing late term abortions because the S. Ct. of the U.S. has provided for the states to prohibit abortions when the gestational age of the unborn child is 15 weeks or more.

New law provides that whoever violates an order of the secretary to close an outpatient abortion facility or limit abortions to no more than 15 weeks, is subject to a fine of not less than \$10,000 nor more than \$50,000 dollars per violation. New law provides that each

abortion performed in violation of the cease and desist order issued after the clinic has been closed or limited to abortions at 15 weeks constitute a separate violation.

New law provides that new law related to an order to close outpatient abortion clinics will not apply if the *Dobbs' decision* does not restore to the states the authority to prohibit or limit abortion.

New law provides that monetary fines levied by the court against the outpatient abortion facility for violations of an order of the secretary are to be paid to the attorney general.

New law repeals duplicative, varying, and contradictory definitions in Title 14 (Criminal Laws) and Title 40 (Public Health and Safety) related to abortion.

The Section of the Act that relates to the interpretation of various abortion statutes became effective upon the signature of governor June 17, 2022. All other Sections of the Act become effective on August 1, 2022.

(Amends R.S. 14:32.9 (heading), (A) and (D)(intro para), 32.9.1(heading), (A) and (D)(intro para), 87.1, 87.2, and 87.5, R.S. 40:1061(A), (D), and (I), 1061.1(D) and (E), 1061.1.3(C), 1061.8, 1061.11(A), 1061.12, 1061.22, 1061.23, 1061.24, 1061.26, 1061.28, 1061.30, 2175.1, 2175.2, and 2175.3; adds R.S. 1:18, R.S. 14:32.9(E), 87.1.1, 87.7, and 87.8, and R.S. 40:1061.1(H), 1061.1.1(I), 1061.10(F), 1061.11(G), 1061.11.1(G), 1061.13(D) and (E), 1061.14(E), 1061.14.1(C), 1061.15(E), 1061.16(F), 1061.17(J)(3), 1061.19(H), 1061.20(D), 1061.21(F), 1061.25(F), 2175.4(F), 2175.6(J), 2175.7(C), 2175.8, and 2175.9; repeals R.S. 14:32.9(B), 32.9.1(B), 32.10, 32.11(B), 87, 87.3(B) and R.S. 40:1061.1.1(B), 1061.1.2(A), 1061.1.3(B), 1061.9(1) - (11), 1061.12(A), 1061.27, and 1061.28(B))