

Regular Session, 2006

SENATE BILL NO. 33

BY SENATORS NEVERS, N. GAUTREAUX, ROMERO AND SCHEDLER

ABORTION. Prohibits abortion, except when necessary to save the life of the mother.

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AN ACT

To amend and reenact R.S. 14:87, to enact R.S. 40:1299.30 and to repeal R.S. 40:1299.31 through R.S. 40:1299.35.18, relative to abortion; to prohibit abortion of a human being, except when necessary to save the life of the mother; to provide for criminal consequences for violations; to provide for the act to only become effective upon the occurrence of certain events; to provide for severability; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 40:1299.30 is hereby enacted to read as follows:

§1299.30. Abortion; prohibition

A. Except as provided in Subsection B, the provisions of this Section shall become effective immediately upon, and to the extent permitted, by the occurrence of any of the following circumstances:

(1) Any decision of the United States Supreme Court which reverses, 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 Louisiana the authority to prohibit abortion.

(2) Adoption of an amendment to the United States Constitution which,

1 in whole or in part, restores to the state of Louisiana the authority to prohibit
2 abortion.

3 B. The provisions of this Section shall not become effective until the
4 promulgation of an executive order by the President of the United States, or the
5 enactment of a federal statute or appropriation rider, or the adoption of a
6 federal regulation, that authorizes the state to receive federal medicaid funds,
7 pursuant to 42 U.S.C. 1396, et seq., even if the state prohibits the expenditure
8 of medicaid funds for abortion, except when necessary to save the life of the
9 mother.

10 C. No person may knowingly administer to, prescribe for, or procure
11 for, or sell to any pregnant woman any medicine, drug, or other substance with
12 the specific intent of causing or abetting the termination of the life of an unborn
13 human being. No person may knowingly use or employ any instrument or
14 procedure upon a pregnant woman with the specific intent of causing or
15 abetting the termination of the life of an unborn human being.

16 D. Any violation of this Section shall be prosecuted pursuant to R.S.
17 14:87.

18 E. Nothing in this Section may be construed to prohibit the sale, use,
19 prescription, or administration of a contraceptive measure, drug or chemical,
20 if it is administered prior to the time when a pregnancy could be determined
21 through conventional medical testing and if the contraceptive measure is sold,
22 used, prescribed, or administered in accordance with manufacturer
23 instructions.

24 F. No licensed physician who performs a medical procedure designed or
25 intended to prevent the death of a pregnant mother shall be guilty of violating
26 Subsection A of this Section. However, the physician shall make reasonable
27 medical efforts under the circumstances to preserve both the life of the mother
28 and the life of her unborn child in a manner consistent with conventional
29 medical practice.

1 **G. Medical treatment provided to the mother by a licensed physician**
2 **which results in the accidental or unintentional injury or death to the unborn**
3 **child is not a violation of Subsection C of this Section.**

4 **H. Nothing in this Section may be construed to subject the pregnant**
5 **mother upon whom any abortion is performed or attempted to any criminal**
6 **conviction and penalty.**

7 **I. The following terms as used in this Section shall have the following**
8 **meanings:**

9 **(1) "Pregnant" means the human female reproductive condition, of**
10 **having a living unborn human being within her body throughout the entire**
11 **embryonic and fetal ages of the unborn child from fertilization to full gestation**
12 **and childbirth.**

13 **(2) "Unborn human being" means an individual living member of the**
14 **species, homo sapiens, throughout the entire embryonic and fetal ages of the**
15 **unborn child from fertilization to full gestation and childbirth.**

16 **(3) "Fertilization" means that point in time when a male human sperm**
17 **penetrates the zona pellucida of a female human ovum.**

18 **J. If any court of law finds any provision of this Section to be**
19 **unconstitutional, the other provisions of this Section are severable. If any court**
20 **of law declares the provisions of this Section to be entirely or substantially**
21 **unconstitutional, the provisions of R.S. 40:1299.31 through R.S. 40:1299.35.18**
22 **as they existed prior to the effective date of this Section shall be immediately re-**
23 **instituted to the extent they are not in conflict with the declarations of the court.**

24 **K. This Section shall be known, and may be cited, as the Human Life**
25 **Protection Act.**

26 Section 2. R.S. 14:87 is hereby amended and reenacted to read as follows:

27 §87. Abortion

28 A.(1) Abortion is the performance of any of the following acts, with the
29 specific intent of terminating a pregnancy:

1 (a) Administering or prescribing any drug, potion, medicine, or any other
2 substance to a female; or

3 (b) Using any instrument or external force whatsoever on a female.

4 (2) This Section shall not apply to the female who has an abortion.

5 B. It shall not be unlawful for a physician to perform any of the acts
6 described in Subsection A of this Section if performed under the following
7 circumstances:

8 (1) The physician terminates the pregnancy in order to preserve the life or
9 health of the unborn child or to remove a dead unborn child.

10 (2) The physician terminates a pregnancy for the express purpose of saving
11 the life of the mother.

12 ~~(3) The physician terminates a pregnancy which is the result of rape as~~
13 ~~defined in either R.S. 14:42, R.S. 14:42.1, or R.S. 14:43 and in which all of the~~
14 ~~following requirements are met prior to the pregnancy termination:~~

15 ~~(a) The rape victim obtains a physical examination and/or treatment from a~~
16 ~~physician other than the physician who is to terminate the pregnancy within five days~~
17 ~~of the rape to determine whether she was pregnant prior to the rape and to prevent~~
18 ~~pregnancy and venereal disease, unless the rape victim is incapacitated to such a~~
19 ~~degree that she is unable to obtain this examination. If the victim is unable to obtain~~
20 ~~the examination due to such incapacity, then an examination shall be performed~~
21 ~~within five days after the incapacity is removed, and~~

22 ~~(b) The rape victim reports the rape to law enforcement officials within~~
23 ~~seven days of the rape unless the victim is incapacitated to such a degree that she is~~
24 ~~unable to report the rape. If the victim is unable to report the rape due to such~~
25 ~~incapacity, then a report shall be made within seven days after the incapacity is~~
26 ~~removed, and~~

27 ~~(c) The abortion is performed within thirteen weeks of conception.~~

28 ~~(4) The physician terminates a pregnancy which is the result of incest as~~
29 ~~defined in R.S. 14:78, provided the crime is reported to law enforcement officials~~

1 and the abortion is performed within thirteen weeks of conception.

2 ~~C.(1) Prior to the performance of any abortion under Subsection (B)(3) or~~
3 ~~(B)(4) of this Section, the physician who is to perform the abortion shall obtain from~~
4 ~~the victim a statement in writing verifying that she has obtained the physical~~
5 ~~examination and shall obtain written verification by a law enforcement official that~~
6 ~~the victim reported the rape to law enforcement officials as required under this~~
7 ~~Section:~~

8 ~~(2) Every physician who conducts a physical examination of a rape victim~~
9 ~~within five days of the rape shall immediately, upon written request of either the~~
10 ~~victim or the physician who is to perform the abortion on the victim, provide to the~~
11 ~~victim or the requesting physician written verification of his examination:~~

12 ~~(3) Every law enforcement official who receives a report of a rape victim~~
13 ~~within seven days of the rape or receives a report of incest shall immediately, upon~~
14 ~~written request of either the victim or the physician who is to perform the abortion,~~
15 ~~provide to the victim or requesting physician written verification of the report which~~
16 ~~was made to the official:~~

17 DC. As used in this Section, the following words and phrases are defined as
18 follows:

19 ~~(1) "Law enforcement official or officer" means any peace officer or agency~~
20 ~~empowered to enforce the law in criminal matters within his or its respective~~
21 ~~jurisdiction, including but not limited to a state police officer, sheriff, constable,~~
22 ~~local police officer, and district attorney:~~

23 ~~(2)~~(1) "Physician" means any person licensed to practice medicine in this
24 state.

25 ~~(3)~~(2) "Unborn child" means the unborn offspring of human beings from the
26 moment of conception until birth.

27 ~~(4) "Conception" means the contact of spermatozoan with the ovum:~~

28 E.D.(1) Whoever commits the crime of abortion shall be imprisoned at hard
29 labor for not less than one nor more than ten years and shall be fined not less than ten

1 thousand dollars nor more than one hundred thousand dollars.

2 (2) This penalty shall not apply to the female who has an abortion.

3 Section 3. R.S. 40:1299.31 through R.S. 40:1299.35.18 are hereby repealed.

4 Section 4. The provisions of this Act are severable. If any provision, item, sentence,
5 or word of this Act, or application thereof, is held invalid, such invalidity shall not effect
6 other provisions, items, sentences, or words of this Act which are to be given effect without
7 the invalid provision, item, sentence, or word of the Act.

The original instrument was prepared by Dennis C. Weber. The following digest, which does not constitute a part of the legislative instrument, was prepared by Alan Miller.

DIGEST

Nevers (SB 33)

Present law (R.S. 40:1299.31 through R.S. 40:1299.35.18) permits abortion for any reason, protects a person who performs an abortion from liability or criminal responsibility.

Proposed law provides that this Act will only become effective upon a U.S. Supreme Court decision overturning Roe v. Wade, in whole or in part, or the adoption of a U.S. Constitutional amendment that allows states to prohibit abortions.

Proposed law (R.S. 40:1299.30), protects the life of the unborn child from the instant of conception to the instant of birth. Abortion is permitted only to protect the life of the birth mother.

Proposed law (R.S. 40:1299.31 through R.S. 40:1299.35.18), repeals present law.

Present law (R.S. 14:87) permits abortion for a pregnancy that results from rape or incest when the mothers' health is not in danger.

Proposed law permits abortion only when the life of the birth mother is in danger.

Proposed law provides for severability.

(Amends R.S. 14:87; adds R.S. 40:1299.30; repeals R.S. 40:1299.31-1299.35.18)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Health and Welfare to the original bill.

1. Makes the effective date of this Act contingent on either a U.S. Supreme Court decision overturning Roe v. Wade, in whole or in part, or the adoption of a U.S. Constitutional amendment that allows states to prohibit abortions.
2. Inserts a severability clause.