

Regular Session, 2011

HOUSE BILL NO. 636(Substitute for House Bill No. 586 by Representative Hoffmann)

BY REPRESENTATIVE HOFFMANN

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

ABORTION: Provides requirements for content and delivery of information regarding abortion in certain medical settings and revises criteria for voluntary and informed consent to an abortion

1 AN ACT

2 To amend and reenact R.S. 40:1299.35.6, 1299.35.9(A)(1) and (B)(2), and 1299.35.19 and
3 to enact R.S. 40:1299.35.1(11) and 1299.35.5.1, relative to abortion; to require
4 certain signage in abortion facilities; to provide for certain requirements of the
5 Department of Health and Hospitals relative to abortion; to provide for voluntary and
6 informed consent criteria; to provide for delivery of certain information under the
7 Woman's Right to Know law; to provide relative to conscience in health care
8 protection, including provisions relative to living human embryos; to provide for
9 penalties; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 40:1299.35.6, 1299.35.9(A)(1) and (B)(2), and 1299.35.19 are
12 hereby amended and reenacted and R.S. 40:1299.35.1(11) and 1299.35.5.1 are hereby
13 enacted to read as follows:

14 §1299.35.1. Definitions

15 As used in R.S. 40:1299.35.0 through ~~1299.35.18~~ 1299.35.19, the following
16 words have the following meanings:

17 * * *

18 (11) "Department" means the Department of Health and Hospitals.

19 * * *

1 §1299.35.5.1. Prevention of forced abortion; signage in abortion facilities

2 A. This Section shall be known and may be cited as the "Forced Abortion
3 Prevention Sign Act".

4 B. Any outpatient abortion facility licensed by the department shall
5 conspicuously post a sign in a location defined in Subsection D of this Section which
6 is clearly visible to patients, and which features the text contained in Paragraph (1)
7 of this Subsection and the information contained in Paragraph (2) of this Subsection.

8 (1) The sign shall feature the following text:

9 "Notice: Women's Rights and Pregnancy Resources

10 You can't be forced.

11 * It is unlawful for an abortion to be forced on you without your voluntary
12 and informed consent, regardless of your age.

13 You and the father.

14 * The father of your child is liable to assist in the support of the child, even
15 if he has offered to pay for an abortion.

16 You and adoption.

17 * The law permits adoptive parents to pay costs of prenatal care, childbirth
18 and newborn care.

19 You are not alone.

20 * Many public and private agencies are willing to help you to carry your child
21 to term, and to assist after your child's birth."

22 (2) The sign shall feature the web address of the pregnancy resources
23 website maintained by the department pursuant to R.S. 40:1299.35.6, which shall be
24 shown on the sign in a large, bold font designed to be clearly visible to patients,
25 along with any additional information which is deemed necessary by the department
26 and is in accordance with the provisions of R.S. 40:1299.35.6.

27 C. The department shall cause the sign provided for in this Section to be
28 designed and produced. All signs produced shall incorporate color graphics and
29 shall be printed on durable signage material measuring at least sixteen inches by

1 twenty inches with lettering presented in a size and style of font designed to be
2 clearly visible to the patient.

3 D. The sign provided for in this Section shall be posted in each patient
4 admission area, waiting room, and patient consultation room used by patients on
5 whom abortions are performed, induced, prescribed for, or who are provided with
6 the means for an abortion.

7 §1299.35.6. Woman's Right To Know

8 A. Legislative findings and purposes. The Legislature of Louisiana finds
9 that:

10 (1) Act No. 435 of the 1978 Regular Session of the Legislature required the
11 obtaining of the informed consent of a pregnant woman to the performance of an
12 abortion. This law was declared unconstitutional in the cases of Margaret S. v.
13 Edwards, and in Margaret S. v. Treen.

14 (2) By Act No. 435 of the 1978 Regular Session of the Legislature (R.S.
15 40:1299.35.7) a twenty-four-hour waiting period was required between the signing
16 of an informed consent and the performance of an abortion. This law was repealed
17 by Act No. 418 of the 1980 Regular Session of the Legislature because of the
18 decision of the federal court in Margaret S. v. Edwards.

19 (3) Subsequent to the above-referenced court decisions and legislative
20 enactments, the United States Supreme Court has rendered a decision in the case of
21 Planned Parenthood of Pennsylvania v. Casey, which upheld the constitutionality of
22 the Pennsylvania law which required informed consent, parental consent, and a
23 twenty-four-hour waiting period prior to an abortion, and which decision has
24 therefore impliedly overruled the decisions in the Margaret S. cases.

25 (4) The judicial obstacles to such legislation now having been removed by
26 virtue of the Casey decision, the legislature finds that it is in the public interest and
27 in furtherance of the general health and welfare of the citizens of this state to reenact
28 provisions of law similar to those heretofore either declared unconstitutional or
29 repealed for the following reasons:

1 (a) It is essential to the psychological and physical well-being of a woman
2 considering an abortion that she receive complete and accurate information on her
3 alternatives.

4 (b) The knowledgeable exercise of a woman's decision to have an abortion
5 depends on the extent to which the woman receives sufficient information to make
6 an informed choice between two alternatives, giving birth or having an abortion.

7 (c) The vast majority of all abortions are performed in clinics devoted solely
8 to providing abortions and family planning services. Most women who seek
9 abortions at these facilities do not have any relationship with the physician who
10 performs the abortion, before or after the procedure. They do not return to the
11 facility for postsurgical care. In most instances, the woman's only actual contact
12 with the physician occurs simultaneously with the abortion procedure, with little
13 opportunity to receive counseling concerning her decision.

14 (d) The decision to abort "is an important, and often a stressful one, and it
15 is desirable and imperative that it be made with full knowledge of its nature and
16 consequences", Planned Parenthood v. Danforth.

17 (e) "The medical, emotional, and psychological consequences of an abortion
18 are serious and can be lasting...", H. L. v. Matheson.

19 (f) Abortion facilities or providers offer only limited and/or impersonal
20 counseling opportunities.

21 (g) Many abortion facilities or providers hire untrained and unprofessional
22 "counselors" whose primary goal is to sell abortion services.

23 (5) Based on the above findings, it is the purpose of this Act to:

24 (a) Ensure that every woman considering an abortion receive complete
25 information on her alternatives and that every woman submitting to an abortion do
26 so only after giving her voluntary and informed consent to the abortion procedure.

27 (b) Protect unborn children from a woman's uninformed decision to have an
28 abortion.

1 (c) Reduce "the risk that a woman may elect an abortion only to discover
2 later, with devastating psychological consequences, that her decision was not fully
3 informed", Planned Parenthood v. Casey.

4 (d) Ensure that every woman considering an abortion receive complete
5 information regarding the availability of anesthesia or analgesics that would
6 eliminate or alleviate organic pain to the unborn child that could be caused by the
7 particular method of abortion to be employed.

8 B. Informed consent; requirements. After a woman is determined to be
9 pregnant, no abortion shall be performed or induced without the voluntary and
10 informed consent of the woman upon whom the abortion is to be performed or
11 induced. Except in the case of a medical emergency, consent to an abortion is
12 voluntary and informed if and only if:

13 ~~(1) the~~ The provisions of R.S. 40:1299.35.2 requiring an ultrasound test and
14 determination of viability are met, ~~and~~.

15 (2) The information required by this Section to be communicated orally and
16 in person to the woman is provided to her individually and in a private room to
17 protect her privacy, for the purpose of ensuring that the information focuses on her
18 individual circumstances and that she has an adequate opportunity to ask questions.

19 ~~(+)~~ (3) Oral information from the physician. At least twenty-four hours
20 before the abortion, the physician who is to perform the abortion or the referring
21 physician has informed the woman, orally and in person, of:

22 (a) The name of the physician who will perform the abortion.

23 (b) A description of the proposed abortion method and of those risks
24 (including risks to the woman's reproductive health) and alternatives to the abortion
25 that a reasonable patient would consider material to the decision of whether or not
26 to undergo the abortion.

27 (c) The probable gestational age of the unborn child at the time the abortion
28 is to be performed; and, if the unborn child is viable or has reached the gestational

1 age of twenty-four weeks and the abortion may be otherwise lawfully performed
2 under existing law, that:

3 (i) The unborn child may be able to survive outside the womb.

4 (ii) The woman has the right to request the physician to use the method of
5 abortion that is most likely to preserve the life of the unborn child.

6 (iii) If the unborn child is born alive, that attending physicians have the legal
7 obligation to take all reasonable steps necessary to maintain the life and health of the
8 child.

9 (d) The probable anatomical and physiological characteristics of the unborn
10 child at the time the abortion is to be performed.

11 (e) The medical risks associated with carrying her child to term.

12 (f) Any need for anti-Rh immune globulin therapy, if she is Rh negative, the
13 likely consequences of refusing such therapy, and a good faith estimate of the cost
14 of the therapy.

15 (g) The availability of anesthesia or analgesics to alleviate or eliminate
16 organic pain to the unborn child that could be caused by the method of abortion to
17 be employed.

18 (h) The requirement that at least two hours prior to the woman having any
19 part of an abortion performed or induced, the physician, referring physician, or
20 qualified person working in conjunction with either physician must perform an
21 obstetric ultrasound under the provisions of R.S. 40:1299.35.2 for the purpose of
22 preserving the woman's health and determining the viability of the unborn child, and
23 that neither the physician nor the woman shall be penalized should the woman
24 choose not to view the obstetric ultrasound images or not to accept the photographic
25 print that shall be provided offered to her in a sealed envelope.

26 (i) The inclusion in her printed materials of a comprehensive list, compiled
27 by the ~~Department of Health and Hospitals~~ department, of facilities that offer
28 obstetric ultrasounds free of charge, ~~along with an oral explanation of the provision~~
29 ~~that shall be included on the department's list that if the woman voluntarily chooses~~

1 to obtain free ultrasound services, that ultrasound would likely be in addition to the
2 ultrasound required by law for purposes of determining viability and preserving the
3 woman's health, unless the free ultrasound is performed by the physician performing
4 the abortion, the referring physician, or a qualified person working in conjunction
5 with either physician. The list shall be arranged geographically and shall include the
6 name, address, hours of operation, and telephone number of each entity.

7 ~~(2)(a)~~ (4) Oral information from a physician or qualified person.

8 (a) In the initial contact with an abortion provider by any person seeking to
9 schedule an abortion for a minor or adult woman or for herself, whether such initial
10 contact is by telephone, by internet communication, in person, or by any other
11 means, the physician who is to perform the abortion or any person acting on behalf
12 of the physician informs the person of the internet address of the department's
13 abortion alternatives and informed consent website provided for in this Section.

14 (b) At least twenty-four hours before ~~the~~ a scheduled abortion, the physician
15 who is to perform the abortion, the referring physician, or a qualified person has
16 informed the woman, orally and in person, that:

17 (i) Medical assistance benefits may be available for prenatal care, childbirth,
18 and neonatal care, and that more detailed information on the availability of such
19 assistance is contained on the department's website and in the printed materials
20 which shall be given to her ~~and described~~ as provided in this Section.

21 (ii) The department's website and printed materials describe the unborn child
22 and list agencies which offer alternatives to abortion.

23 (iii) The father of the unborn child is liable to assist in the support of her
24 child, even in instances where he has offered to pay for the abortion. In the case of
25 rape, this information may be omitted.

26 (iv) She is free to withhold or withdraw her consent to the abortion at any
27 time before or during the abortion without affecting her right to future care or
28 treatment and without the loss of any state or federally funded benefits to which she
29 might otherwise be entitled.

1 ~~(b)~~ (c) For purposes of this Paragraph, "qualified person" shall mean an
2 agent of the physician who is a psychologist, licensed social worker, licensed
3 professional counselor, registered nurse, or physician.

4 ~~(3) The information required by this Section is provided to the woman~~
5 ~~individually and in a private room to protect her privacy and maintain the~~
6 ~~confidentiality of her decision, to ensure that the information focuses on her~~
7 ~~individual circumstances, and that she has an adequate opportunity to ask questions.~~

8 ~~(4)~~ (5) Provision of printed materials. At least twenty-four hours before the
9 abortion, the woman is given a copy of the printed materials described in this Section
10 by the physician who is to perform the abortion, the referring physician, or a
11 qualified person as defined in Subparagraph ~~(2)(b)~~ (4)(c) of this Subsection. If the
12 woman is unable to read the materials, they shall be read to her. If the woman asks
13 questions concerning any of the information or materials, answers shall be provided
14 to her in her own language. ~~If an interpreter is necessary, the cost of such interpreter~~
15 ~~shall be borne by the state of Louisiana.~~

16 ~~(5)~~ (6) Certification and reporting. The woman certifies in writing on a form
17 provided by the ~~Department of Health and Hospitals~~ department, prior to the
18 abortion, that the information and materials required to be provided under this
19 Section have been provided at least twenty-four hours prior to the abortion. All
20 physicians who perform abortions shall report the total number of certifications
21 received monthly to the department. The department shall make the number of
22 certifications received available to the public on an annual basis.

23 ~~(6)~~ (7) Prior to the performance of the abortion, the physician who is to
24 perform the abortion or his agent receives a copy of the written certification required
25 by this Section.

26 ~~(7)~~ (8) The woman is not required to pay any amount for the abortion
27 procedures until the twenty-four-hour period has expired.

28 C.~~(1)~~ Publication of materials abortion alternatives and informed consent
29 website.

1 (1) ~~The Department of Health and Hospitals~~ department shall cause to be
2 published in English, within ~~ninety one hundred twenty~~ ninety one hundred twenty days after ~~June 20, 1995~~
3 enactment of this Act, and shall update on an annual basis, or as needed, the
4 following easily comprehensible ~~printed materials~~: information on a stable internet
5 website that shall be developed and maintained by the department

6 ~~(a) Geographically indexed materials designed to~~ inform the public of the
7 ~~inform the woman of~~ public and private agencies and services available to assist a
8 woman through pregnancy, upon childbirth, and while her child is dependent,
9 including but not limited to ~~adoption agencies~~. ~~The materials shall include a~~
10 ~~comprehensive list of the agencies, a description of the services they offer, and the~~
11 ~~telephone number and addresses of the agencies, and inform the woman about~~
12 ~~available~~ the following information that shall indicate the agency's or service's
13 physical address, telephone number, and web address if available:

14 ~~(a) Information about public and private agencies which provide~~ medical
15 assistance benefits that may be available for prenatal care, childbirth, and neonatal
16 care, and easily comprehensible information on how to apply for such benefits.

17 ~~(b) Public and private pregnancy resource centers that provide information~~
18 and services such as free abortion alternatives counseling, prenatal care, pantry
19 services and parenting skills, and that do not refer, counsel, perform, induce,
20 prescribe, or provide any means for abortion.

21 ~~(c) and~~ Information about the support obligations of the father of a child who
22 is born alive and information about the judicial enforcement of child support.

23 ~~(d) Information on a separate and featured subpage of the department's~~
24 website that lists facilities that provide free obstetric ultrasound services under the
25 provisions of R.S. 40: 1299.35.2 and this Section.

26 ~~(e) Information on public and private adoption agencies.~~

27 ~~(f) Information on the anatomical and physiological characteristics of the~~
28 unborn child pursuant to the provisions of this Section, including color photographs

1 or images consistent with the most current technology depicting the unborn child at
2 two-week gestational increments or closer.

3 (g) Information describing the various methods of abortion procedures, the
4 short-term and long-term medical risks associated with abortion, and the medical
5 risks associated with carrying a child to term.

6 (h) Information on the unborn child's ability to experience pain.

7 (i) Video clips that convey objective and medically accurate information
8 about abortion procedures, abortion risks, abortion alternative resources, and
9 medically accurate information on the development of an unborn child. Video clips
10 may be produced with the in-house resources of the department, or acquired for no
11 cost to the state from third parties if the video is approved by the secretary as
12 providing objective and medically accurate information.

13 (j) Information that helps women identify unlawful abortion coercion,
14 including but not limited to resources or hotlines that a minor or adult woman may
15 call if she is experiencing actual or threatened physical abuse or violence, loss of
16 employment or employment privileges, loss of eligible social assistance, loss of
17 educational scholarship, or loss of legally protected financial support or housing.

18 (k) Information to assist minors who are considering abortion, including
19 parental consent information, and resources to help minors seek the protection of
20 state child welfare services, temporary guardianship, or law enforcement authorities
21 to report abuse as defined in Article 603 of the Children's Code. The information
22 designed to assist minors shall also include a link to pregnancy resource centers as
23 defined in Paragraph (1)(b) of this Subsection.

24 (2) The home page of the department's main website shall feature a button
25 or other link which accesses the department's abortion alternatives and informed
26 consent website, and the home page of such website shall feature user-friendly
27 buttons that link to the information required in this Section. The department shall
28 ensure that the ~~materials~~ resources described in this Section are comprehensive and

1 user-friendly, and that they do not directly or indirectly promote, exclude, or
2 discourage the use of any agency or service described in this Section.

3 (3) No information regarding who uses the website shall be collected or
4 maintained. The department shall monitor the website to prevent and correct
5 tampering and shall immediately notify abortion providers of any change of the
6 website address.

7 (4) The search capabilities on the department's main website shall ensure that
8 entering the term "abortion" yields the website and information required by this
9 Section, regardless of how the information is labeled.

10 (5) The information on the department's abortion alternatives and informed
11 consent website shall be printable. The printed materials required in Subsection D
12 of this Section shall be available to download from the website in a portable
13 document format without cost. The download of such information shall not be
14 deemed to satisfy the requirements of Subsection B of this Section.

15 (6) The department's abortion alternatives and informed consent website
16 shall be accessible to the public without requiring registration or use of a user name,
17 a password, or any user identification.

18 (7) The department's abortion alternatives and informed consent website
19 shall have the capability of detecting when it is being accessed by a mobile device
20 and shall have the capability of converting to a platform designed to be easily
21 viewable on mobile devices.

22 (8) If an abortion provider has a website, the abortion provider's Internet
23 website home page shall include a prominent link to the department's abortion
24 alternatives and informed consent website.

25 D. Publication of printed materials. The department shall cause to be
26 published, within one-hundred twenty days after enactment of this Act and shall
27 update on an annual basis or as needed, the following printed materials:

28 (1) The signs provided for in the Forced Abortion Prevention Sign Act.

1 (2) A list arranged geographically, including the name, address, hours of
2 operation, website address if available, and telephone number of each entity which
3 offers obstetric ultrasounds free of charge. The list shall not include any facility that
4 counsels, refers, performs, induces, prescribes, or provides any means for abortion.

5 (3) A printed booklet that features the web address of the department's
6 dedicated pregnancy resource website printed in a bold large typeface. The booklet
7 shall contain an outline of the various topics on the website as provided in
8 Subsection C of this Section along with an explanation that more detailed
9 information can be found at the department's website. ~~The materials shall also~~
10 ~~contain a separate printed listing of facilities that provide obstetric ultrasound~~
11 ~~services free of charge, as described in Subparagraph (B)(1)(i) of this Section. All~~
12 ~~materials shall include a website address where the required materials can be~~
13 ~~accessed on the Internet. Such website shall be maintained by the Department of~~
14 ~~Health and Hospitals. The printed booklet materials shall state that it is unlawful for~~
15 any individual to coerce a minor or adult woman to undergo an abortion, that any
16 physician who performs an abortion upon a woman without her informed consent
17 may be liable to her for damages in a civil action at law, and that the law permits
18 adoptive parents to pay costs of prenatal care, childbirth, and neonatal care.

19 (a) The department's website and printed booklet materials shall include the
20 following statements:

21 (i) "There are many public and private agencies willing and able to help you
22 to carry your child to term, and to assist you and your child after your child is born,
23 whether you choose to keep your child or to place her or him for adoption. The state
24 of Louisiana strongly urges you to consult an independent physician about the risks
25 of abortion to your physical and psychological well-being and to contact them the
26 resources provided on our website before making a final decision about abortion.
27 The law requires that ~~your physician or his agent~~ the abortion provider give you the
28 opportunity to ~~call~~ contact agencies like these before you undergo an abortion."

1 (ii) "By twenty weeks gestation, the unborn child has the physical structures
2 necessary to experience pain. There is evidence that by twenty weeks gestation
3 unborn children seek to evade certain stimuli in a manner which in an infant or an
4 adult would be interpreted to be a response to pain. Anesthesia is routinely
5 administered to unborn children who are twenty weeks gestational age or older who
6 undergo prenatal surgery."

7 (b) The printed booklet shall include Materials materials that inform the
8 pregnant woman of the probable anatomical and physiological characteristics of the
9 unborn child at a minimum of two-week gestational increments from fertilization to
10 full term, including color ~~pictures or drawings representing~~ photographs or medical
11 images consistent with the most current technology depicting the development of
12 unborn children ~~at two-week gestational increments~~, and any relevant information
13 on the possibility of the unborn child's survival; provided that any such color ~~pictures~~
14 ~~or drawings~~ photographs or images shall contain the dimensions of the unborn child
15 and shall be ~~realistic~~ medically accurate. The materials shall be objective,
16 nonjudgmental, and designed to convey only accurate scientific information about
17 the unborn child at the various gestational ages. The material shall also contain
18 objective information describing the methods of abortion procedures ~~commonly~~
19 ~~employed~~, the short-term and long-term medical risks ~~commonly~~
20 ~~each such procedure~~ abortion, including the possible increased risk of breast cancer
21 associated with the loss of protective effect of a first full-term pregnancy and any
22 independent risk as supported by peer-reviewed medical journals, and the medical
23 risks ~~commonly~~ associated with carrying a child to term.

24 (4) A certification form to be used by physicians or their agents as provided
25 in ~~Paragraph B(5)~~ of this Section, which will list all the items of information which
26 are to be given to women by physicians or their agents as required by this Section.

27 (2) E. The materials provided for in Subsection D of this Section shall be
28 printed in a typeface large enough to be clearly legible.

1 ~~(3) The materials required under this Section and~~ shall be available at no cost
2 from the department upon request and in appropriate number to any person, facility,
3 or hospital. The department's abortion alternatives and informed consent website
4 shall contain information on ordering printed materials.

5 ~~(4) The department shall promulgate rules and regulations relative to the~~
6 ~~appropriate number and methods of reporting at no cost~~ methods of distribution of
7 printed materials.

8 ~~D. F.~~ Medical emergency. Where a medical emergency compels the
9 performance of an abortion, the physician shall orally inform the woman, before the
10 abortion, if possible, of the medical indications supporting his judgment that an
11 abortion is necessary to avert her death or to avert substantial and irreversible
12 impairment of a major bodily function. If the informed consent requirements of this
13 Section have not been met due to medical emergency, the physician shall employ a
14 method of terminating the pregnancy that gives the unborn child the greatest chance
15 of survival consistent with protecting the life and physical health of the mother. The
16 physician shall record the medical indications supporting the necessity for an
17 abortion without informed consent in the patient's medical record, which shall be
18 maintained for seven years.

19 ~~E. G.~~ Reporting requirements. Any physician who has provided the
20 information and materials to any woman in accordance with the requirements of this
21 Section shall provide to the department:

22 (1) With respect to a woman upon whom an abortion is performed, all
23 information as required by R.S. 40:1299.35.10 as well as the date upon which the
24 information and materials required to be provided under this Section were provided,
25 as well as an executed copy of the certification form required by ~~Paragraph B(5) of~~
26 this Section.

27 (2) With respect to any woman to whom the printed and oral information and
28 materials have been provided in accordance with this Section, but upon whom the
29 physician has not performed an abortion, the name and address of the facility where

1 the required information was provided and ~~the information as required by R.S.~~
2 ~~40:1299.35.10(A)(1) and (4) through (18) inclusive, and if executed by the woman,~~
3 a copy of the certification form required by ~~Paragraph B(5) of this Section.~~

4 F. H. Criminal penalties.

5 ~~(1)~~ Any person who intentionally, knowingly, or recklessly fails to comply
6 with all the requirements of this Section shall be subject to the penalties provided in
7 ~~R.S. 40:1299.35.18~~ R.S. 40:1299.35.19.

8 ~~(2) No physician shall be guilty of violating this Section if he or she can~~
9 ~~demonstrate, by a preponderance of the evidence, that he or she reasonably believed~~
10 ~~that furnishing the required information would have resulted in a severely adverse~~
11 ~~effect on the physical or mental health of the pregnant woman.~~

12 G. I. Civil penalties. In addition to whatever remedies are otherwise
13 available under the law of this state, failure to comply with the requirements of this
14 Section shall:

15 (1) Provide a basis for a civil malpractice action. Any intentional violation
16 of this Section shall be admissible in a civil suit as prima facie evidence of a failure
17 to obtain an informed consent. When requested, the court shall allow a woman to
18 proceed using solely her initials or a pseudonym and may close any proceedings in
19 the case and enter other protective orders to preserve the privacy of the woman upon
20 whom the abortion was performed.

21 (2) Provide a basis for professional disciplinary action under R.S. 37:1261
22 et seq.

23 (3) Provide a basis for recovery for the woman for the death of her unborn
24 child under Louisiana Civil Code Article 2315.2, whether or not the unborn child
25 was viable at the time the abortion was performed, or was born alive.

26 H. J. Limitation on civil liability. Any physician who complies with the
27 provisions of this Section may not be held civilly liable to his patient for failure to
28 obtain informed consent to the abortion under this Section. Any and all other rights
29 and remedies are preserved to the patient.

1 ~~I. Severability. The provisions of the Act which originated as House Bill~~
2 ~~No. 2246 of the 1995 Regular Session of the Legislature are declared to be severable,~~
3 ~~and if any provision, word, phrase, or clause of the Act or the application thereof to~~
4 ~~any person shall be held invalid, such invalidity shall not affect the validity of the~~
5 ~~remaining portions of the Act.~~

6 J. K. Construction.

7 (1) Nothing in this Section shall be construed as creating or recognizing a
8 right to abortion.

9 (2) It is not the intention of this Section to make lawful an abortion that is
10 unlawful ~~on June 20, 1995~~ upon the effective date of this Act, or which later
11 becomes unlawful.

12 ~~K. Right of intervention. The author and coauthors who sponsored or~~
13 ~~cosponsored the Act which originated as House Bill No. 2246 of the 1995 Regular~~
14 ~~Session of the Legislature in his or her official standing and capacity shall intervene~~
15 ~~as a matter of right in any case in which the constitutionality of this Section is~~
16 ~~challenged.~~

17 * * *

18 §1299.35.9. Conscience in health care protection; definitions

19 A.(1) Any person has the right not to participate in, and no person shall be
20 required to participate in any health care service that violates his conscience ~~to the~~
21 ~~extent that patient access to health care is not compromised.~~ No person shall be held
22 civilly or criminally liable, discriminated against, dismissed, demoted, or in any way
23 prejudiced or damaged for declining to participate in any health care service that
24 violates his conscience.

25 * * *

26 B. For purposes of this Section:

27 * * *

1 (2) "Health care service" is limited to abortion, dispensation of abortifacient
2 drugs, human embryonic stem cell research, including destruction of any living
3 human embryo, human embryo cloning, euthanasia, or physician-assisted suicide.

4 * * *

5 §1299.35.19. Penalties

6 Whoever violates the provisions of this Part shall be fined not ~~more~~ less than
7 ~~one thousand~~ ten thousand dollars per violation, or imprisoned for not more than two
8 years, or both.

9 Section 2. If any provision or item of this Act, or the application thereof, is held
10 invalid, such invalidity shall not affect other provisions, items, or applications of the Act
11 which can be given effect without the invalid provision, item, or application and to this end
12 the provisions of this Act are hereby declared severable.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Hoffmann

HB No. 636

Abstract: Provides requirements for content and delivery of information regarding abortion in certain medical settings and revises criteria for voluntary and informed consent to an abortion.

Proposed law provides for the Forced Abortion Prevention Sign Act.

Proposed law provides that the Forced Abortion Prevention Sign Act applies to any outpatient abortion facility licensed by the Dept. of Health and Hospitals (DHH).

Proposed law requires such facilities to display signage which provides messages as specified in proposed law regarding women's rights, forced abortion, fatherhood, and adoptive parents; and provides the web address for the pregnancy resources website maintained by the Department of Health and Hospitals (DHH).

Proposed law assigns the duty of designing and producing such signs to DHH.

Proposed law requires that information delivered personally to women per the provisions of the Woman's Right to Know law be offered in a manner that ensures the woman's privacy, considers the woman's individual circumstances, and allows the woman to ask questions. Also provides that except in the case of a medical emergency, this requirement is a condition for consent to an abortion being voluntary and informed.

Present law provides that at least 24 hours before an abortion, the physician who is to perform the abortion or the referring physician shall provide, among other printed materials specified in present law, a list of facilities which offer obstetric ultrasounds free of charge.

Proposed law requires that such list of facilities offering obstetric ultrasounds free of charge not include any facility that counsels, refers, performs, induces, prescribes, or provides any means for abortion.

Proposed law requires that in the initial contact with an abortion provider by any person seeking to schedule an abortion for a minor or adult woman or for herself, whether such initial contact is by telephone, by internet communication, in person, or by any other means, the physician who is to perform the abortion or any person acting on behalf of the physician shall inform the person of the address of DHH abortion alternatives and informed consent website provided for in proposed law. Also provides that except in the case of a medical emergency, this requirement is a condition for consent to an abortion being voluntary and informed.

Proposed law requires that at least 24 hours prior to a scheduled abortion, the physician who is to perform the abortion, the referring physician, or a qualified person inform the woman, orally and in person, that the DHH website:

- (1) May indicate medical assistance benefits available for prenatal care, childbirth, and neonatal care.
- (2) Describes the unborn child and lists agencies which offer alternatives to abortion

Proposed law provides that except in the case of a medical emergency, the above requirement concerning indication of information on the DHH website is a condition for consent to an abortion being voluntary and informed.

Proposed law deletes present law which provides that if an interpreter is necessary to communicate certain required information to a woman, the cost of such interpreter shall be borne by the state of Louisiana.

Present law requires that for consent to an abortion to be voluntary and informed, the woman shall certify in writing prior to the abortion on a form provided by DHH that the information and materials required to be provided under present law have been provided.

Proposed law adds requirement that such certification also indicate that information and materials required to be provided under proposed law was provided at least 24 hours prior to the abortion.

Present law requires DHH to publish certain printed materials providing information on abortion, alternatives to abortion, and the physiology of the unborn child.

Proposed law requires that in addition to printed materials provided for in proposed law, DHH also publish an abortion alternatives and informed consent website. Also provides that such website shall:

- (1) Be published within 120 days of enactment of proposed law.
- (2) Provide the informed consent information required by proposed law.
- (3) Provide information about public and private agencies that provide medical assistance benefits that may be available for prenatal care, childbirth, and neonatal care, and easily comprehensible information on how to apply for such benefits.
- (4) Provide information about public and private pregnancy resource centers that provide information and services that may include free abortion alternatives counseling, prenatal care, pantry services and parenting skills, and that do not refer, counsel, perform, induce, prescribe, or provide any means for abortion.

- (5) Provide information about the support obligations of the father of a child who is born alive and information about judicial enforcement of child support.
- (6) Provide information on a separate and featured subpage of the DHH website that lists facilities that provide free obstetric ultrasound services under the provisions of present law and proposed law.
- (7) Provide information on public and private adoption agencies.
- (8) Provide information on the anatomical and physiological characteristics of the unborn child, including color photographs or images consistent with the most current technology depicting the unborn child at two-week gestational increments or closer.
- (9) Provide information describing the various methods of abortion procedures, the short-term and long-term medical risks associated with abortion, and the medical risks associated with carrying a child to term.
- (10) Provide information on the unborn child's ability to experience pain.
- (11) Provide video clips that convey objective and medically accurate information about abortion procedures, abortion risks, abortion alternative resources, and the development of an unborn child. Also provides that such video clips may be produced with the in-house resources of DHH, or acquired for no cost to the state from third parties if the video is approved by the secretary as providing objective and medically accurate information.
- (12) Provide information that helps women identify unlawful abortion coercion, including but not limited to resources or hotlines that a minor or adult woman may call if she is experiencing actual or threatened physical abuse or violence, loss of employment or employment privileges, loss of eligible social assistance, loss of educational scholarship, or loss of legally protected financial support or housing.
- (13) Provide information to assist minors who are considering abortion, including parental consent information, and resources to help minors seek the protection of state child welfare services, temporary guardianship, or law enforcement authorities to report abuse as defined in Article 603 of the Children's Code. The information designed to assist minors shall also include a link to pregnancy resource centers as defined in proposed law.
- (14) Provide information on ordering printed materials provided for in proposed law.

Proposed law provides that no information regarding who uses the DHH website required to be published under proposed law shall be collected or maintained, and that DHH shall monitor the website to prevent and correct tampering and shall immediately notify abortion providers of any change of the website address.

Proposed law provides that the search capabilities on the DHH main website shall ensure that entering the term "abortion" yields the website and information required to be published under proposed law regardless of how the information is labeled.

Proposed law provides that the information on the DHH website required to be published under proposed law shall be printable, and must be available to download from the website in a portable document format without cost.

Proposed law provides that the DHH website required to be published under proposed law shall be accessible to the public without requiring registration or use of a user name, a password, or any user identification.

Proposed law provides that the DHH website required to be published under proposed law shall have the capability of detecting when it is being accessed by a mobile device and shall have the capability of converting to a platform designed to be easily viewable on mobile devices.

Proposed law provides that if an abortion provider has a website, then the home page of such website must include a prominent link to the DHH website required to be published under proposed law.

Proposed law provides that within 120 days of enactment of proposed law, DHH shall cause to be published a printed booklet that features the web address of the DHH website required to be published under proposed law featured in a bold large typeface.

Proposed law requires that the printed booklet provided for in proposed law include the following:

- (1) Signs required in proposed law providing for the Forced Abortion Prevention Sign Act.
- (2) A list arranged geographically, including the name, address, hours of operation, website address if available, and telephone number of each entity which offers obstetric ultrasounds free of charge. Proposed law requires that this list not include any facility that counsels, refers, performs, induces, prescribes, or provides any means for abortion.
- (3) An outline of the various topics on the DHH website required to be published under proposed law along with an explanation that more detailed information can be found at such website.
- (4) Materials that inform the pregnant woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from fertilization to full term, including color photographs or medical images consistent with the most current technology depicting the development of unborn children at two-week gestational increments or closer, and any relevant information on the possibility of the unborn child's survival; however, any such color photographs or images must contain the dimensions of the unborn child and must be medically accurate.

Proposed law requires that the DHH website and printed booklet provided for in proposed law include the following statements:

- (1) "There are many public and private agencies willing and able to help you to carry your child to term, and to assist you and your child after your child is born, whether you choose to keep your child or to place her or him for adoption. The state of Louisiana strongly urges you to consult an independent physician about the risks of abortion to your physical and psychological well-being and to contact the resources provided on our website before making a final decision about abortion. The law requires that the abortion provider give you the opportunity to contact agencies like these before you undergo an abortion."
- (2) "By 20 weeks gestation, the unborn child has the physical structures necessary to experience pain. There is evidence that by 20 weeks gestation unborn children seek to evade certain stimuli in a manner which in an infant or an adult would be interpreted to be a response to pain. Anesthesia is routinely administered to unborn children who are twenty weeks gestational age or older who undergo prenatal surgery."

Proposed law requires that the printed materials provided for in proposed law be objective, nonjudgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages.

Proposed law requires that the printed materials provided for in proposed law contain objective information describing the methods of abortion procedures and the short-term and long-term medical risks associated with abortion, including the possible increased risk of breast cancer associated with the loss of protective effect of a first full-term pregnancy and any independent risk as supported by peer-reviewed medical journals, and the medical risks associated with carrying a child to term.

Proposed law requires that the printed materials provided for in proposed law be available at no cost from DHH upon request and in appropriate number to any person, facility, or hospital.

Proposed law provides that DHH shall promulgate rules and regulations relative to the methods of distribution of printed materials.

Proposed law provides that if the informed consent to abortion requirements of proposed law have not been met due to medical emergency, the physician shall employ a method of terminating the pregnancy that gives the unborn child the greatest chance of survival consistent with protecting the life and physical health of the mother. Also provides that in such cases the physician shall record the medical indications supporting the necessity for an abortion without informed consent in the patient's medical record, which shall be maintained for 7 years.

Proposed law deletes present law providing that no physician shall be guilty of violating informed consent to abortion requirements if he or she can demonstrate, by a preponderance of the evidence, that he or she reasonably believed that furnishing the required information would have resulted in a severely adverse effect on the physical or mental health of the pregnant woman.

Proposed law provides that it is not the intention of proposed law to make lawful an abortion that is unlawful upon the effective date of proposed law, or which later becomes unlawful.

Present law provides that no person shall be required to participate in any health care service that violates his conscience to the extent that patient access to health care is not compromised.

Proposed law changes present law providing for conscience in health care protection, deleting an exception relative to compromise of patient access to health care. Proposed law provides unconditionally that a person shall not be required to participate in any health care service that violates his conscience.

Proposed law provides that for the purposes of proposed law, "human embryonic stem cell research" includes destruction of any living human embryo.

Present law provides that whoever violates the provisions of the Part of present law relative to abortion shall be fined not more than \$1,000, or imprisoned for not more than 2 years, or both.

Proposed law retains imprisonment penalty provided in present law and changes fine from not more than \$1,000 to not less than \$10,000 per violation.

Proposed law provides that the sanctions and actions prescribed in proposed law shall not displace any other applicable sanction provided by law.

Proposed law provides that its provisions shall be severable.

(Amends R.S. 40:1299.35.6, 1299.35.9(A)(1) and (B)(2), and 1299.35.19; Adds R.S. 40:1299.35.1(11) and 1299.35.5.1)