

Regular Session, 2011

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

BY REPRESENTATIVES HOFFMANN, ANDERS, ARNOLD, AUSTIN BADON, BOBBY BADON, BALDONE, BARRAS, BARROW, BILLIOT, BURFORD, HENRY BURNS, BURRELL, CARTER, CHAMPAGNE, CHANDLER, CHANEY, CONNICK, CROMER, DANAHAY, DOVE, DOWNS, EDWARDS, ELLINGTON, FANNIN, GEYMAN, GISCLAIR, GREENE, GUILLORY, GUINN, HARDY, HAZEL, HENDERSON, HENRY, HENSGENS, HILL, HINES, HONORE, HOWARD, HUTTER, JOHNSON, SAM JONES, KATZ, KLECKLEY, LABRUZZO, LAMBERT, LANDRY, LEBAS, LIGI, LITTLE, LOPINTO, LORUSSO, MCVEA, MONICA, NOWLIN, PEARSON, PONTI, POPE, PUGH, RICHARD, RICHARDSON, RITCHIE, ROBIDEAUX, ROY, SCHRODER, SEABAUGH, SMILEY, GARY SMITH, JANE SMITH, TALBOT, TEMPLET, THIBAUT, THIERRY, WHITE, WILLIAMS, AND WILLMOTT AND SENATORS AMEDEE, APPEL, BROOME, CHEEK, CROWE, DONAHUE, ERDEY, KOSTELKA, LAFLEUR, LONG, MARTINY, MICHOT, MILLS, MORRISH, MOUNT, NEVERS, PERRY, QUINN, RISER, SHAW, SMITH, THOMPSON, AND WALSWORTH

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

1 AN ACT

2 To amend and reenact R.S. 40:1299.35.1(introductory paragraph) and (1)(b), 1299.35.2(A),  
3 1299.35.6, and 1299.35.19 and to enact R.S. 40:1299.35.1(11) and 1299.35.5.1,  
4 relative to abortion; to require certain signage in abortion facilities; to provide for  
5 certain requirements of the Department of Health and Hospitals relative to abortion;  
6 to provide for voluntary and informed consent criteria; to provide for delivery of  
7 certain information under the Woman's Right to Know law; to provide relative to  
8 conscience in health care protection, including provisions relative to living human  
9 embryos; to provide for penalties; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 40:1299.35.1(introductory paragraph) and(1)(b), 1299.35.2(A),  
12 1299.35.6, and 1299.35.19 are hereby amended and reenacted and R.S. 40:1299.35.1(11) and  
13 1299.35.5.1 are hereby 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:

1 (1) "Abortion" or "induced abortion" means the act of using or prescribing  
 2 any instrument, medicine, drug, or any other substance, device, or means with the  
 3 intent to terminate the clinically diagnosable pregnancy of a woman with knowledge  
 4 that the termination by those means will, with reasonable likelihood, cause the death  
 5 of the unborn child. Such use, prescription, or means is not an abortion if done with  
 6 the intent to:

7 \* \* \*

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

14 \* \* \*

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

16 \* \* \*

17 §1299.35.2. Abortion by physician; determination of viability; ultrasound test  
 18 required; exceptions; penalties

19 A. Physician requirement. No person shall perform or induce an abortion  
 20 unless that person is a physician licensed to practice medicine in the state of  
 21 Louisiana. Any outpatient abortion facility that knowingly employs, contracts with,  
 22 or provides any valuable consideration for the performance of an abortion to any  
 23 person who is not a physician licensed to practice medicine in the state of Louisiana,  
 24 is subject to having its license denied, non-renewed, or revoked by the Department  
 25 of Health and Hospitals in accord with R.S. 40:2175.6.

26 \* \* \*

27 §1299.35.5.1. Prevention of forced abortion; signage in abortion facilities

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

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1                    B. Any licensed Outpatient Abortion Facility as defined by R.S. 40:2175.3  
 2                    shall conspicuously post a sign in a location defined in Subsection D of this Section  
 3                    which is clearly visible to patients, and which features the text contained in  
 4                    Paragraph (1) of this Subsection and the information contained in Paragraph (2) of  
 5                    this Subsection.

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

7                    "Notice: Women's Rights and Pregnancy Resources

8                    You can't be forced.

9                    \* It is unlawful for anyone to make you have an abortion against your will,  
 10                    even if you are a minor.

11                    You and the father.

12                    \* The father of your child must provide support of the child, even if he has  
 13                    offered to pay for an abortion.

14                    You and adoption.

15                    \* The law allows adoptive parents to pay costs of prenatal care, childbirth  
 16                    and newborn care.

17                    You are not alone.

18                    \* Many agencies are willing to help you to carry your child to term, and to  
 19                    assist after your child's birth."

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

25                    C. The department shall cause the sign provided for in this Section to be  
 26                    designed and produced. All signs produced shall incorporate color graphics and  
 27                    shall be printed on durable signage material measuring sixteen inches by twenty  
 28                    inches with lettering presented in a size and style of font designed to be clearly  
 29                    visible to the patient.

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

5   \*         \*         \*

6                 §1299.35.6. Woman's Right To Know

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

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

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

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

24                       (4) The judicial obstacles to such legislation now having been removed by  
 25                        virtue of the Casey decision, the legislature finds that it is in the public interest and  
 26                        in furtherance of the general health and welfare of the citizens of this state to reenact  
 27                        provisions of law similar to those heretofore either declared unconstitutional or  
 28                        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~~  
3 regarding her alternatives.

4 (b) The knowledgable 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 meets the requirements of R.S.  
 23 46:1299.35.2(A) and who will perform the abortion.

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

28 (c) The probable gestational age of the unborn child at the time the abortion  
 29 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~~  
30 ~~to obtain free ultrasound services, that ultrasound would likely be in addition to the~~

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

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

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

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

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

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

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

25 (iv) She is free to withhold or withdraw her consent to the abortion at any  
 26 time before or during the abortion without affecting her right to future care or  
 27 treatment and without the loss of any state or federally funded benefits to which she  
 28 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 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  
29 or images consistent with the most current technology depicting the unborn child at  
30 two-week gestational increments or closer.

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

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

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

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

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

22          (2) The home page of the department's main website shall feature a button  
23          or other link which accesses the department's abortion alternatives and informed  
24          consent website, and the home page of such website shall feature user-friendly  
25          buttons that link to the information required in this Section. The department shall  
26          ensure that the ~~materials~~ resources described in this Section are comprehensive and  
27          user-friendly, and that they do not directly or indirectly promote, exclude, or  
28          discourage the use of any agency or service described in this Section.

29          (3) No information regarding who uses the website shall be collected or  
30          maintained. The department shall monitor the website to prevent and correct

1 tampering and shall immediately notify abortion providers of any change of the  
2 website address.

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

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

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

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

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

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

24 (1) The signs provided for in the Forced Abortion Prevention Sign Act, R.S.  
25 40:1299.35.5.1.

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

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

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

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

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

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

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

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

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

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

28           ~~D.~~ F. Medical emergency. Where a medical emergency compels the  
 29 performance of an abortion, the physician shall orally inform the woman, before the  
 30 abortion, if possible, of the medical indications supporting his judgment that an

1           abortion is necessary to avert her death or to avert substantial and irreversible  
2           impairment of a major bodily function.

3           E. G. Reporting requirements. Any physician who has provided the  
4           information and materials to any woman in accordance with the requirements of this  
5           Section shall provide to the department:

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

11          (2) With respect to any woman to whom the printed and oral information and  
12          materials have been provided in accordance with this Section, but upon whom the  
13          physician has not performed an abortion, the name and address of the facility where  
14          the required information was provided and ~~the information as required by R.S.~~  
15          ~~40:1299.35.10(A)(1) and (4) through (18) inclusive, and if executed by the woman,~~  
16          a copy of the certification form required by ~~Paragraph B(5) of~~ this Section.

17          F. H. Criminal penalties.

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

21          (2) No physician shall be guilty of violating this Section if he or she can  
22          demonstrate, by a preponderance of the evidence, that he or she reasonably believed  
23          that furnishing the required information would have resulted in a severely adverse  
24          effect on the physical or mental health of the pregnant woman, provided that the  
25          pregnancy is terminated in a licensed hospital and that it is necessary, as certified  
26          with supporting medical reasons by the physician in the woman's medical record, to  
27          avert the woman's death or avoid serious risk of substantial and irreversible  
28          impairment of a major bodily function, or to induce the premature delivery of an  
29          unborn child who is eighteen weeks gestational age or greater when the physician  
30          has made a good faith medical judgment that the unborn child's medical condition

1 is such that there is no realistic possibility of maintaining the life of the unborn child  
 2 outside the womb even if the unborn child were to be delivered after a full term  
 3 pregnancy.

4 ~~G. Civil penalties. In addition to whatever remedies are otherwise available~~  
 5 ~~under the law of this state, failure to comply with the requirements of this Section~~  
 6 ~~shall:~~

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

13 ~~(2) Provide a basis for professional disciplinary action under R.S. 37:1261~~  
 14 ~~et seq.~~

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

18 ~~H. I. Limitation on civil liability. Any physician who complies with the~~  
 19 ~~provisions of this Section may not be held civilly liable to his patient for failure to~~  
 20 ~~obtain informed consent to the abortion under this Section. Any and all other rights~~  
 21 ~~and remedies are preserved to the patient.~~

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

27 J. Construction.

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



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

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

9 \* \* \*

10 §1299.35.19. Penalties

11 Whoever violates the provisions of this Part shall be fined not more than one  
 12 thousand dollars, or imprisoned for not more than two years, or both. In addition to  
 13 whatever remedies are otherwise available under the law of this state, failure to  
 14 comply with the provisions of this Part shall:

15 (1) Provide a basis for a civil malpractice action. Any intentional violation  
 16 of this Part shall be admissible in a civil suit as prima facie evidence of a failure to  
 17 comply with the requirements of this Part. When requested, the court shall allow a  
 18 woman to proceed using solely her initials or a pseudonym and may close any  
 19 proceedings in the case and enter other protective orders to preserve the privacy of  
 20 the woman upon 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 Section 2. If any provision or item of this Act, or the application thereof, is held  
 27 invalid, such invalidity shall not affect other provisions, items, or applications of the Act

1 which can be given effect without the invalid provision, item, or application and to this end  
2 the provisions of this Act are hereby declared severable.

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

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

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

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