

2016 Regular Session

HOUSE BILL NO. 815

BY REPRESENTATIVE STOKES

HUMAN REMAINS: Prohibits post-abortion harvesting of fetal remains and requires burial or cremation of such remains

1 AN ACT

2 To amend and reenact R.S. 40:1061.25, relative to human remains resulting from certain
3 abortion procedures; to require burial or cremation of remains resulting from
4 abortion; to prohibit the buying, selling, and any other transfer of the intact body of
5 a human embryo or fetus whose death was caused by an induced abortion; to prohibit
6 the buying, selling, and any other transfer of organs, tissues, or cells obtained from
7 a human embryo or fetus whose death was caused by an induced abortion; to
8 establish penalties for violation of such prohibitions; to provide relative to disposal
9 of remains resulting from abortion procedures; to provide findings; to provide for
10 construction; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 40:1061.25 is hereby amended and reenacted to read as follows:

13 §1061.25. ~~Disposal of remains~~ Remains; disposal in accordance with applicable
14 regulations; post-abortion harvesting of fetal organs prohibited; penalties

15 A. Each physician who performs or induces an abortion which does not
16 result in a live birth shall insure that the remains of the child are disposed of in
17 ~~accordance with rules and regulations which shall be adopted by the Department of~~
18 ~~Health and Hospitals~~ by interment or cremation, in accordance with the provisions
19 of R.S. 8:651 et seq.

1 B. ~~The provisions of this Section shall not apply to, and shall not preclude,~~
2 ~~instances in which the remains of the child are provided for in accordance with the~~
3 ~~provisions of R.S. 8:651 et seq.~~

4 ~~C.~~ The attending physician shall inform each woman upon whom he
5 performs or induces an abortion of the provisions of this Section within twenty-four
6 hours after the abortion is performed or induced.

7 C. With respect to post-abortion harvesting of fetal organs, tissues, and cells,
8 the legislature hereby finds the following:

9 (1) The United States Supreme Court decision of *Roe v. Wade*, 410 U.S. 113,
10 93 S.Ct. 705, 35 L.Ed. 2d 147 (1973), and its progeny establish a constitutionalized
11 right of a woman to choose to terminate her pregnancy. However, the court has
12 never endorsed a right to harvest the body parts of unborn human beings, whether
13 for profit or donation.

14 (2) The protocol known commonly as the "dead donor rule" is a longstanding
15 ethical norm that protects the integrity of human organ donation by providing that
16 organ donors must be dead before procurement of organs begins, and that organ
17 procurement itself must not cause the death of the donor. The harvesting of organs,
18 tissues, and cells from unborn children whose deaths are directly caused by induced
19 abortion, as defined in R.S. 40:1061.9, violate the dead donor rule in both respects
20 due to the following conditions:

21 (a) The unborn children are alive when the fetal repositioning and crushing
22 point decisions are made by the abortion provider with the goal of procuring intact
23 fetal hearts, lungs, livers, brains, and other organs and tissues.

24 (b) The repositioning of the fetus and crushing above and below the thorax
25 to procure intact fetal organs, tissues, and cells is itself the cause of death of the
26 human being from whom the organs are then harvested.

27 (c) The human being whose fetal organs are procured does not have the
28 capacity to consent to organ donation, and proxy consent for donation by the unborn

1 child's mother is invalid given that the unborn child is alive at the time the consent
2 forms are signed.

3 (3) The practice of presenting fetal organ donation forms to pregnant women
4 considering their options constitutes unethical undue influence and coercion, and
5 amounts to an incentive to actively participate in the killing of a living human being
6 for the speculative and attenuated benefit of helping researchers.

7 (4) Regardless of whether prior proxy consent obtained from the mother is
8 ethical and proper for an unborn child whose death is imminent due to natural
9 miscarriage, it is a gross violation of ethical norms to unduly coerce a mother who
10 is considering pregnancy options to directly participate in the decision to cause the
11 death of her living unborn child for the speculative and attenuated benefit that may
12 come from scientific experimentation.

13 (5) States are free to ban the practice of selling or donating the bodies of
14 human beings killed by abortion because federal law does not preempt that area of
15 law. Particularly, 42 U.S.C. 289g-1(e) allows for the conduct of fetal tissue
16 transplantation only in accordance with applicable state and local law.

17 E.(1) Notwithstanding any provision of law to the contrary, it shall be
18 unlawful for any person or entity to buy, sell, donate, accept, distribute, or otherwise
19 transfer or use for any purpose the intact body of a human embryo or fetus whose
20 death was knowingly caused by an induced abortion, or the human organs, tissues
21 or cells obtained from a human embryo or fetus whose death was knowingly caused
22 by an induced abortion.

23 (2) Whoever violates the provisions of this Subsection shall be subject to the
24 following penalties:

25 (a) Criminal penalties relative to the illegal purchase or sale of human organs
26 provided in R.S. 14:101.1.

27 (b) Civil penalties relative to abortion, generally, provided in R.S.
28 40:1061.29.

1 F.(1) Nothing in this Section shall be construed to prohibit final disposition
2 of the bodily remains of the aborted human being in accordance with state law, or to
3 prohibit any conduct permitted under state law that is undertaken with any of the
4 following purposes:

5 (a) The purpose of providing knowledge solely to the mother, such as for
6 pathological or diagnostic purposes.

7 (b) The purpose of providing knowledge solely to law enforcement officers,
8 such as the case of an autopsy following a fetal homicide.

9 (2) Nothing in this Section shall be construed to prohibit the donation of
10 bodily remains from a human embryo or fetus whose death was caused by a natural
11 miscarriage or stillbirth, in accordance with the guidelines and prohibitions provided
12 in applicable state and federal law.

13 G. Nothing in this Section shall be construed to alter generally accepted
14 medical standards, affect existing federal or state law regarding the practice of
15 abortion, or to create or recognize a right to abortion.

16 Section 2. Any provision of this Act held to be invalid or unenforceable by its terms,
17 or as applied to any person or circumstance, shall be construed so as to give it the maximum
18 effect permitted by law, unless such holding is one of utter invalidity or unenforceability,
19 in which event such provision shall be deemed severable in accordance with R.S. 24:175,
20 and shall not affect the remainder hereof or the application of such provision to other persons
21 not similarly situated or to other dissimilar circumstances.

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)]

HB 815 Original

2016 Regular Session

Stokes

Abstract: Prohibits buying, selling, and any other transfer of the intact body of a human embryo or fetus whose death was caused by an induced abortion; prohibits buying, selling, and any other transfer of organs, tissues, or cells obtained from a human embryo or fetus whose death was caused by an induced abortion; and requires burial or cremation of remains resulting from abortion.

Present law relative to regulation of abortion provides, in part, that each physician who performs or induces an abortion which does not result in a live birth shall insure that the remains of the child are disposed of in accordance with applicable rules and regulations of the Department of Health and Hospitals. Proposed law revises present law to provide that each such physician shall insure that the remains of the child are disposed of by interment or cremation as required by present law relative to human remains (R.S. 8:651 et seq.).

Proposed law provides legislative findings regarding post-abortion harvesting of fetal organs, tissues, and cells.

Proposed law provides that it shall be unlawful for any person or entity to buy, sell, donate, accept, distribute, or otherwise transfer or use for any purpose the intact body of a human embryo or fetus whose death was knowingly caused by an induced abortion, or the human organs, tissues or cells obtained from a human embryo or fetus whose death was knowingly caused by an induced abortion. Provides that whoever violates the provisions of proposed law shall be subject to the following penalties:

- (1) Criminal penalties relative to the illegal purchase or sale of human organs provided in present law (R.S. 14:101.1).
- (2) Civil penalties relative to abortion, generally, provided in present law (R.S. 40:1061.29).

Proposed law stipulates that nothing in proposed law shall be construed to prohibit any of the following:

- (1) Final disposition of the bodily remains of the aborted human being in accordance with present law.
- (2) Any conduct permitted under present law that is undertaken with any of the following purposes:
 - (a) The purpose of providing knowledge solely to the mother, such as for pathological or diagnostic purposes.
 - (b) The purpose of providing knowledge solely to law enforcement officers, such as the case of an autopsy following a fetal homicide.
- (3) The donation of bodily remains from a human embryo or fetus whose death was caused by a natural miscarriage or stillbirth, in accordance with the guidelines and prohibitions provided in applicable laws.

Proposed law stipulates that nothing in proposed law shall be construed to alter generally accepted medical standards, affect existing federal or state law regarding the practice of abortion, or to create or recognize a right to abortion.

Proposed law provides that any provision of proposed law held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding is one of utter invalidity or unenforceability, in which event such provision shall be deemed severable and shall not affect the remainder of proposed law or the application of such provision to other persons not similarly situated or to other dissimilar circumstances.

(Amends R.S. 40:1061.25)