

2016 Regular Session

HOUSE BILL NO. 815

BY REPRESENTATIVES STOKES, BAGLEY, COX, EDMONDS, HENSGENS,
HOFFMANN, HORTON, ROBERT JOHNSON, MAGEE, DUSTIN MILLER,
POPE, AND WILLMOTT AND SENATOR BARROW

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.

20 B. ~~The provisions of this Section shall not apply to, and shall not preclude,~~
21 ~~instances in which the remains of the child are provided for in accordance with the~~
22 ~~provisions of R.S. 8:651 et seq.~~ With respect to post-abortion harvesting of fetal
23 organs, tissues, and cells, the legislature hereby finds the following:

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

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

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

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

19 (c) The human being whose fetal organs are procured does not have the
20 capacity to consent to organ donation, and proxy consent for donation by the unborn
21 child's mother is invalid given that the unborn child is alive at the time the consent
22 forms are signed.

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

27 (4) Regardless of whether prior proxy consent obtained from the mother is
28 ethical and proper for an unborn child whose death is imminent due to natural
29 miscarriage, it is a gross violation of ethical norms to unduly coerce a mother who
30 is considering pregnancy options to directly participate in the decision to cause the

1 death of her living unborn child for the speculative and attenuated benefit that may
2 come from scientific experimentation.

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

7 C.(1) Except as provided in Subsection D of this Section, it shall be unlawful
8 for any person or entity to buy, sell, donate, accept, distribute, or otherwise transfer
9 or use for any purpose the intact body of a human embryo or fetus whose death was
10 knowingly caused by an induced abortion, or the human organs, tissues, or cells
11 obtained from a human embryo or fetus whose death was knowingly caused by an
12 induced abortion.

13 (2) Whoever violates the provisions of this Subsection shall be subject to
14 civil penalties relative to abortion, generally, provided in R.S. 40:1061.29.

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

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

21 (b) The purpose of providing knowledge solely to law enforcement officers,
22 such as the case of an autopsy following a feticide.

23 (2) Nothing in this Section shall be construed to prohibit any transaction
24 related to the donation of bodily remains from a human embryo or fetus whose death
25 was caused by a natural miscarriage or stillbirth, in accordance with the guidelines
26 and prohibitions provided in applicable state and federal law.

27 E. Nothing in this Section shall be construed to alter generally accepted
28 medical standards, affect existing federal or state law regarding the practice of
29 abortion, or to create or recognize a right to abortion.

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____