

2018 Regular Session

SENATE BILL NO. 73

BY SENATOR GATTI

CRIMINAL PROCEDURE. Provides relative to the sale and transport of fetal organs. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 40:1061.29 and to enact R.S. 14:87.3(F) and (G), relative to  
3 abortion; to provide relative to the sale and transport of fetal organs; to provide  
4 relative to prosecutions of the unlawful sale and transport of fetal organs; to create  
5 and provide relative to the Fetal Organ Whistleblower Fund; to provide relative to  
6 the jurisdiction of the attorney general; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 14:87.3(F) and (G) are hereby enacted to read as follows:

9 §87.3. Prohibited cutting, resection, excision, harvesting, removal, sale, receipt,  
10 research, commerce, or transport of fetal organs, tissues, and body  
11 parts; **whistleblower fund**

12 \* \* \*

13 **F. The district attorney of the parish where a violation of this Section**  
14 **occurs and the attorney general shall have concurrent authority to collect**  
15 **evidence, investigate, and institute criminal proceedings for any violation of this**  
16 **Section.**

17 **G. The Fetal Organ Whistleblower Fund, hereinafter referred to as "the**

1 fund", is hereby created in the state treasury.

2 (1) The fund shall be composed of any monies derived from  
3 appropriations by the legislature and any gift, grant, devise, donation, or  
4 bequest of monies or properties of any nature or description.

5 (2) An award of one thousand dollars shall be paid out of the fund to any  
6 person who provides evidence that results in the arrest and indictment of any  
7 other person for a violation of this Section. Eligibility for an award pursuant to  
8 this Subsection shall be determined by the district attorney or the attorney  
9 general, as appropriate.

10 (3) All monies deposited in the fund shall be used solely to pay awards  
11 to persons as provided by Paragraph (2) of this Subsection and shall be paid by  
12 the state treasurer upon written order signed by the district attorney or the  
13 attorney general, as appropriate, except that monies deposited in the fund may  
14 be used to pay reasonable costs of administering the fund.

15 (4) The name and other identifying information of any person who is  
16 paid an award pursuant to this Subsection shall remain confidential.

17 Section 2. R.S. 40:1061.29 is hereby amended and reenacted to read as follows:

18 §1061.29. Penalties; **jurisdiction**

19 **A.** Whoever violates the provisions of this Chapter shall be fined not more  
20 than one thousand dollars per incidence or occurrence, or imprisoned for not more  
21 than two years, or both. In addition to whatever remedies are otherwise available  
22 under the law of this state, failure to comply with the provisions of this Chapter  
23 shall:

24 (1) Provide a basis for a civil malpractice action. Such an action may be  
25 brought by the woman upon whom the abortion was performed. Any intentional  
26 violation of this Chapter shall be admissible in a civil suit as prima facie evidence  
27 of a failure to comply with the requirements of this Chapter. When requested, the  
28 court shall allow a woman to proceed using solely her initials or a pseudonym and  
29 may close any proceedings in the case and enter other protective orders to preserve

1 the privacy of the woman upon whom the abortion was performed.

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

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

7 **B. The attorney general shall have jurisdiction throughout the state,**  
8 **separate from each district attorney within his respective jurisdiction, to**  
9 **commence an action for a violation of any provision of this Chapter, or for a**  
10 **violation of any state statute or regulation regarding abortion or the use of**  
11 **public funds for an abortion if the district attorney declines a prosecution under**  
12 **this Chapter.**

13 **C. The attorney general, and each district attorney within his respective**  
14 **jurisdiction, may seek injunctive or other relief against any person or entity that**  
15 **is in violation of any provision of this Chapter, misuses public funds for an**  
16 **abortion, or violates any state statute or regulation regarding abortion.**

17 Section 3. This Act shall become effective upon signature by the governor or, if not  
18 signed by the governor, upon expiration of the time for bills to become law without signature  
19 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
20 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
21 effective on the day following such approval.

---

The original instrument and the following digest, which constitutes no part  
of the legislative instrument, were prepared by Alden A. Clement Jr.

---

SB 73 Engrossed DIGEST 2018 Regular Session Gatti

Present law prohibits the cutting, resection, excision, harvesting, removal, sale, receipt, research, commerce, or transport of fetal organs, tissues, and body parts under circumstances defined by present law. Present law provides penalties for violations of present law.

Proposed law retains present law.

Proposed law provides that the district attorney of the parish where a violation of present law occurs and the attorney general have concurrent authority to collect evidence, investigate, and institute criminal proceedings for any violation of present law.

Proposed law creates the Fetal Organ Whistleblower Fund in the state treasury. Proposed law further provides that this fund is to be composed of any monies derived from appropriations by the legislature and any gift, grant, devise, donation, or bequest of monies or properties of any nature or description.

Proposed law provides that an award of \$1,000 is to be paid out of the Fetal Organ Whistleblower Fund to any person who provides evidence that results in the arrest and indictment of any other person for a violation of present law relative to fetal organs, tissues, and body parts. Proposed law further provides that eligibility for an award pursuant to proposed law is to be determined by the district attorney or the attorney general, as appropriate.

Proposed law provides that all monies deposited in the Fetal Organ Whistleblower Fund are to be used solely to pay awards to persons as provided by proposed law and are to be paid by the state treasurer upon written order signed by the district attorney or the attorney general, as appropriate. However, proposed law provides that monies deposited in the Fetal Organ Whistleblower Fund may be used to pay reasonable costs of administering the fund.

Proposed law provides that the name and other identifying information of any person who is paid an award pursuant to proposed law must remain confidential.

Present law provides that whoever violates the provisions of present law relative to abortion is to be fined up to \$1,000 per incidence or occurrence, or imprisoned for up to two years, or both. Present law further provides that in addition, failure to comply with the present law relative to abortion can:

- (1) Provide a basis for a civil malpractice action brought by the woman upon whom the abortion was performed.
- (2) Provide a basis for professional disciplinary action under present law.
- (3) Provide a basis for recovery for the woman for the death of her unborn child under present law, whether or not the unborn child was viable at the time the abortion was performed or was born alive.

Proposed law retains present law.

Proposed law provides that the attorney general has jurisdiction throughout the state, separate from each district attorney within his respective jurisdiction, to commence an action for a violation of any provision of present law relative to abortion or the use of public funds for an abortion should the district attorney decline a prosecution under present law and proposed law.

Proposed law provides that the attorney general, and each district attorney within his respective jurisdiction, may seek injunctive or other relief against any person or entity that is in violation of any provision of present law relative to abortion or misuses public funds for an abortion.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 40:1061.29; adds R.S. 14:87.3(F) and (G))

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Judiciary C to the original bill

1. Add provision relative to the jurisdiction of the attorney general.