

Regular Session, 2013

SENATE BILL NO. 90

BY SENATOR MILLS

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

HEALTH CARE. Provides for certain requirements which must be met by a physician who performs an abortion. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 40:1299.35.1(7), 1299.35.2(A), and 1299.35.19(introductory

3 paragraph) and (1) and to enact R.S. 40:1299.35.2.1, relative to abortions; to amend

4 the definition of "physician"; to provide for certain requirements which must be met

5 by a physician who performs an abortion; to provide for drugs or chemicals used; to

6 provide for penalties; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 40:1299.35.1(7), 1299.35.2(A), and 1299.35.19(introductory

9 paragraph) and (1) are hereby amended and reenacted and R.S. 40:1299.35.2.1 is hereby

10 enacted to read as follows:

11 §1299.35.1. Definitions

12 As used in R.S. 40:1299.35.0 through 1299.35.19, the following words have

13 the following meanings:

14 * * *

15 (7) "Physician" means a person licensed to practice medicine in the state of

16 Louisiana **who meets the requirements of R.S. 40:1299.35.2.**

17 * * *

1 §1299.35.2. Abortion by physician; determination of viability; ultrasound test
2 required; exceptions; penalties

3 A. Physician requirement. No person shall perform or induce an abortion
4 unless that person is a physician licensed to practice medicine in the state of
5 Louisiana **and is board certified or eligible in obstetrics and gynecology**. Any
6 outpatient abortion facility that knowingly **or negligently** employs, contracts with,
7 or provides any valuable consideration for the performance of an abortion to **in an**
8 **outpatient abortion facility by** any person who is ~~not a physician licensed to~~
9 ~~practice medicine in the state of Louisiana,~~ **does not meet the requirements of this**
10 **Section** is subject to having its license denied, non-renewed, or revoked by the
11 Department of Health and Hospitals in accord with R.S. 40:2175.6.

12 * * *

13 **§1299.35.2.1. Drugs or chemicals used; follow-up visit; written instructions**
14 **required; penalties**

15 **A. When any drug or chemical is used for the purpose of inducing an**
16 **abortion as defined in R.S. 40:1299.35.1(1), the drug or chemical shall be**
17 **administered in the same room and in the physical presence of the physician**
18 **who prescribed, dispensed, or otherwise provided the drug or chemical to the**
19 **pregnant woman.**

20 **B. The physician inducing the abortion, or a person acting on behalf of**
21 **the physician inducing the abortion as defined in R.S. 40:1299.35.1(1), shall give**
22 **the pregnant woman written instructions to return twelve to eighteen days after**
23 **the administration or use of any drug or chemical for the purpose of inducing**
24 **an abortion as defined in R.S. 40:1299.35.1(1) for a follow-up visit, so the**
25 **physician may confirm the pregnancy has been terminated and assess the**
26 **woman's medical condition. The woman's medical record shall include a brief**
27 **description of the reasonable efforts made by the physician or someone acting**
28 **on behalf of the physician to encourage the woman to attend the follow-up**
29 **appointment, including the date, time, and identification by name of the person**

1 making such efforts.

2 C. Any person who knowingly or negligently performs or attempts to
3 perform an abortion without complying with Subsection B of this Section shall
4 be subject to penalties pursuant to R.S. 40:1299.35.19. No penalty may be
5 assessed against the woman upon whom the abortion is performed or attempted
6 to be performed.

7 * * *

8 §1299.35.19. Penalties

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

13 (1) Provide a basis for a civil malpractice action. **Such action may be**
14 **brought by the woman on whom the abortion was performed, the natural or**
15 **biological father of the unborn child, or the maternal grandparents of the**
16 **unborn child.** Any intentional violation of this Part shall be admissible in a civil
17 suit as prima facie evidence of a failure to comply with the requirements of this Part.
18 When requested, the court shall allow a woman to proceed using solely her initials
19 or a pseudonym and may close any proceedings in the case and enter other protective
20 orders to preserve the privacy of the woman upon whom the abortion was performed.

21 * * *

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

26 Section 3. This Act shall become effective upon signature by the governor or, if not
27 signed by the governor, upon expiration of the time for bills to become law without signature
28 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
29 vetoed by the governor and subsequently approved by the legislature, this Act shall become

1 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 Christopher D. Adams.

DIGEST

Present law defines a "physician" to mean a person licensed to practice medicine in the state of Louisiana.

Proposed law amends present law to define a "physician" to mean a person licensed to practice medicine in the state of Louisiana and is board certified or eligible in obstetrics and gynecology.

Proposed law provides when any drug or chemical is used for the purpose of inducing an abortion as defined in present law, the drug or chemical shall be administered in the same room and in the physical presence of the physician who prescribed, dispensed, or otherwise provided the drug or chemical to the pregnant woman.

Proposed law provides the physician inducing the abortion, or a person acting on behalf of the physician inducing the abortion as defined in present law, shall give the pregnant woman written instructions to return 12 to 18 days after the administration or use of any drug or chemical for the purpose of inducing an abortion as defined in present law for a follow-up visit, so the physician may confirm the pregnancy has been terminated and assess the woman's medical condition. The woman's medical record shall include a brief description of the reasonable efforts made by the physician or someone acting on behalf of the physician to encourage the woman to attend the follow-up appointment, including the date, time, and identification by name of the person making such efforts.

Proposed law provides any person who knowingly or negligently performs or attempts to perform an abortion without complying with proposed law shall be subject to penalties pursuant to present law. No penalty may be assessed against the woman upon whom the abortion is performed or attempted to be performed.

Present law provides whoever violates the provisions of present law shall be fined not more than \$1,000, or imprisoned for not more than two years, or both. In addition to whatever remedies are otherwise available under the law of this state, failure to comply with the provisions of present law shall provide a basis for a civil malpractice action. Any intentional violation of present law shall be admissible in a civil suit as prima facie evidence of a failure to comply with the requirements of present law. When requested, the court shall allow a woman to proceed using solely her initials or a pseudonym and may close any proceedings in the case and enter other protective orders to preserve the privacy of the woman upon whom the abortion was performed.

Proposed law amends present law to whoever violates the provisions of present law shall be fined not more than \$1,000 per incidence or occurrence, or imprisoned for not more than two years, or both. In addition to whatever remedies are otherwise available under the law of this state, failure to comply with the provisions of present law shall provide a basis for a civil malpractice action. Such action may be brought by the woman on whom the abortion was performed, the natural or biological father of the unborn child, or the maternal grandparents of the unborn child. Any intentional violation of present law shall be admissible in a civil suit as prima facie evidence of a failure to comply with the requirements of present law. When requested, the court shall allow a woman to proceed using solely her initials or a pseudonym and may close any proceedings in the case and enter other protective orders to preserve the privacy of the woman upon whom the abortion was performed.

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

(Amends R.S. 40:1299.35.1(7), 1299.35.2(A), and 1299.35.19(intro para) and (1) and adds R.S. 40:1299.35.2.1)