

SENATE BILL NO. 342

BY SENATORS JACKSON, CLOUD, ROBERT MILLS, MIZELL, PEACOCK AND STINE AND REPRESENTATIVES AMEDEE, BAGLEY, BEAULLIEU, BISHOP, BUTLER, CARRIER, COUSSAN, CREWS, DAVIS, DESHOTEL, DEVILLIER, ECHOLS, EDMONDS, EDMONSTON, EMERSON, FARNUM, FIRMENT, FRIEMAN, GADBERRY, GAROFALO, GOUDEAU, HARRIS, HODGES, HORTON, HUVAL, TRAVIS JOHNSON, MCFARLAND, MCKNIGHT, MIGUEZ, CHARLES OWEN, ROMERO, SCHAMERHORN, SCHEXNAYDER, SCHLEGEL, SEABAUGH, STEFANSKI, THOMAS, THOMPSON, WHITE, WRIGHT AND ZERINGUE

1 AN ACT

2 To amend and reenact the heading of R.S. 14:32.9 and (A) and the introductory paragraph
3 of (D), the heading of 32.9.1 and (A) and the introductory paragraph of (D), 87.1,
4 87.2, and 87.5, R.S. 40:1061(A), (D), and (I), 1061.1(D) and (E), 1061.1.3(C),
5 1061.8, 1061.11(A), 1061.12, 1061.22, 1061.23, 1061.24, 1061.26, 1061.28,
6 1061.30, 2175.1, 2175.2, and 2175.3, to enact R.S. 1:18, R.S. 14:32.9(E), 87.1.1,
7 87.7, and 87.8, and R.S. 40:1061.1(H), 1061.1.1(I), 1061.10(F), 1061.11(G),
8 1061.11.1(G), 1061.13(D) and (E), 1061.14(E), 1061.14.1(C), 1061.15(E),
9 1061.16(F), 1061.17(J)(3), 1061.19(H), 1061.20(D), 1061.21(F), 1061.25(F),
10 2175.4(F), 2175.6(J), 2175.7(C), 2175.8, and 2175.9, and to repeal R.S. 14:32.9(B),
11 32.9.1(B), 32.10, 32.11(B), 87, 87.3(B) and R.S. 40:1061.1.1(B), 1061.1.2(A),
12 1061.1.3(B), 1061.9(1) through (11), 1061.12(A), 1061.27, and 1061.28(B), relative
13 to abortion; to provide for legislative intent; to provide for the interpretation of
14 multiple abortion statutes; to provide for the independent construction of each
15 separate enactment of law related to abortion; to provide for the severability; to
16 restrict certain ordinances enacted by local governing authorities; to provide with
17 respect to the crime of abortion; to provide relative to a late term abortion; to provide
18 with respect to partial birth abortion; to provide for penalties; to provide for
19 definitions; to provide for effective dates; and to provide for related matters.

20 Be it enacted by the Legislature of Louisiana:

21 Section 1. R.S. 1:18 is hereby enacted to read as follows:

1 **§18. Construction of laws relative to abortion**

2 **A. It is the intention of the Legislature of Louisiana to prohibit and**
 3 **restrict abortion and to thereby preserve the life of each unborn child to the**
 4 **fullest extent permitted by law.**

5 **B.(1) All laws or parts of laws prohibiting or restricting abortion shall**
 6 **not be negated or superseded by the laws regulating outpatient abortion**
 7 **facilities or regulating the practice of abortion, as provided in R.S. 40:1061.8.**

8 **(2) Laws regulating or prohibiting an abortion at a certain gestational**
 9 **age of the unborn child shall not be in considered to be in conflict with other**
 10 **laws that regulate or prohibit abortion at a different gestational age of the**
 11 **unborn child.**

12 **C. No governing authority of a political subdivision shall enact any**
 13 **ordinance or regulation that authorizes or regulates abortion.**

14 **D. Unless otherwise specifically provided therein, the provisions of each**
 15 **act of the legislature prohibiting or regulating abortion are severable, whether**
 16 **or not a provision to that effect is included in the act. If any provision or item**
 17 **of an act prohibiting or regulating abortion, or the application thereof, is held**
 18 **invalid, such invalidity shall not affect other provisions, items, or applications**
 19 **of the act which can be given effect without the invalid provision, item, or**
 20 **application.**

21 **E. This Section shall apply to acts of the legislature affecting general**
 22 **laws, and local and special laws, and statutes of the state, including the**
 23 **Louisiana Revised Statutes of 1950, the Civil Code, the Code of Civil Procedure,**
 24 **the Code of Criminal Procedure, the Code of Evidence, and the Children's**
 25 **Code.**

26 Section 2. The heading of R.S. 14:32.9 and (A) and the introductory paragraph of
 27 (D), the heading of 32.9.1 and (A) and the introductory paragraph of (D), 87.1, 87.2, and
 28 87.5 are hereby amended and reenacted and R.S. 14:32.9(E), 87.1.1, 87.7, and 87.8 are
 29 hereby enacted to read as follows:

30 §32.9. ~~Criminal abortion~~ **Abortion by an unlicensed physician**

1 A. ~~Criminal abortion~~ **The crime of abortion by an unlicensed physician** is
 2 an abortion performed, with or without the consent of the pregnant woman or her
 3 legal guardian, that results in the death of an unborn child when the abortion is
 4 performed by any individual who is not a physician licensed by the state of
 5 Louisiana.

* * *

7 D. Statutory Construction. None of the following shall be construed to create
 8 the crime of ~~criminal abortion~~ **by an unlicensed physician**:

* * *

E. The provisions of R.S. 40:1061.8 shall apply to this Section.

* * *

§32.9.1. Aggravated ~~criminal~~ abortion by dismemberment

13 A. Aggravated ~~criminal~~ abortion by dismemberment is the commission of a
 14 ~~criminal~~ **an** abortion, ~~as defined in R.S. 14:32.9(A)~~, when the unborn child is
 15 intentionally dismembered, whether the act of dismemberment was in the course of
 16 or following the death of the unborn child.

* * *

18 D. Exceptions. None of the following shall be construed to create the crime
 19 of ~~criminal~~ **aggravated** abortion **by dismemberment**:

* * *

§87.1. **Definitions**

22 **Wherever used in this Subpart, unless a different meaning clearly**
 23 **appears in the context, the following terms, whether used in the singular or**
 24 **plural, shall have the following meanings:**

25 **(1)(a) "Abortion" or "induced abortion" means the performance of any**
 26 **act with the intent to terminate a clinically diagnosable pregnancy with**
 27 **knowledge that the termination by those means will, with reasonable likelihood,**
 28 **cause the death of the unborn child by one or more of the following means:**

29 **(i) Administering, prescribing, or providing any abortion-inducing drug,**
 30 **potion, medicine, or any other substance, device, or means to a pregnant female.**

1 (ii) Using an instrument or external force on a pregnant female.

2 (b) Abortion shall not mean any one or more of the following acts, if
3 performed by a physician:

4 (i) A medical procedure performed with the intention to save the life or
5 preserve the health of an unborn child.

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

13 (iii) The removal of an ectopic pregnancy.

14 (iv) The use of methotrexate to treat an ectopic pregnancy.

15 (v) The performance of a medical procedure necessary in good faith
16 medical judgment or reasonable medical judgment to prevent the death or
17 substantial risk of death to the pregnant woman due to a physical condition, or
18 to prevent the serious, permanent impairment of a life-sustaining organ of a
19 pregnant woman. However, the physician shall make reasonable medical efforts
20 under the circumstances to preserve both the life of the mother and the life of
21 her unborn child in a manner consistent with reasonable medical practice.

22 (vi) The removal of an unborn child who is deemed to be medically futile.
23 The diagnosis shall be a medical judgment certified by two qualified physicians
24 and recorded in the woman's medical record. The medical procedure shall be
25 performed in a licensed ambulatory surgical center or hospital. Upon the
26 completion of the procedure, the physician shall submit an individual abortion
27 report consistent with R.S. 40:1061.21 that includes appropriate evidence of the
28 certified diagnosis.

29 (2)(a) "Abortion-inducing drug" means any drug or chemical, or any
30 combination of drugs or chemicals, or any other substance when used with the

1 intent to cause an abortion, including but not limited to RU-486, the Mifeprex
2 regimen, misoprostol (Cytotec), or methotrexate.

3 (b) Abortion-inducing drug shall not mean a contraceptive, an
4 emergency contraceptive, or the use of methotrexate to treat an ectopic
5 pregnancy.

6 (3) "Bona fide medical reason" means a medical condition which is
7 recognized by any medical licensing board as a standard of care, except that
8 "bona fide medical reason" shall not include abortion, as defined in Paragraph
9 (1) of this Section.

10 (4) "Clinically diagnosable pregnancy" means a pregnancy that is
11 capable of being verified by one of the following conventional medical testing
12 methods, whether or not any testing was in fact performed by any person:

13 (a) A blood or urine test, whether used at-home or in a medical setting,
14 that tests for the human pregnancy hormone known as human chorionic
15 gonadotropin (hCG) that medically indicates that implantation has occurred.

16 (b) An ultrasound examination.

17 (5) "Conception" or "fertilization" means the fusion of a human
18 spermatozoon with a human ovum.

19 (6) "Contraceptive" means any device, measure, drug, chemical, or
20 product, including single-ingredient levonorgestrel, that has been approved by
21 the United States Food and Drug Administration for the purpose of preventing
22 pregnancy and is intended to be administered prior to the time when a clinically
23 diagnosable pregnancy can be determined, provided that the contraceptive is
24 sold, prescribed, or administered in accordance with manufacturer's
25 instructions.

26 (7) "Dismembered" or "dismemberment" means the use of a clamp,
27 forceps, curette, suction cannula, or any other surgical tool or instrument with
28 the intent to disarticulate the head or limbs from the body of the unborn child
29 during an abortion, including but not limited to the common abortion methods
30 known as suction curettage and dilation and evacuation.

1 (8) "Emergency contraceptive" means a drug, chemical, or product,
2 including but not limited to single-ingredient levonorgestrel or ulipristal, that
3 has been approved by the United States Food and Drug Administration
4 designed or intended to be taken after sexual intercourse but prior to the time
5 when a clinically diagnosable pregnancy can be determined, provided that the
6 emergency contraceptive is sold, prescribed, or administered in accordance with
7 manufacturer's instructions or is prescribed in accordance with the standard
8 of care that generally accepted by the American College of Obstetricians and
9 Gynecologists.

10 (9) "Fetal body part" means a cell, tissue, organ, or other part of an
11 unborn child who is aborted by an induced abortion.

12 (10) "Fetal heartbeat" means cardiac activity or the steady and
13 repetitive rhythmic contraction of the fetal heart within the gestational sac.

14 (11) "Fertilization" means the fusion of a human spermatozoon with a
15 human ovum.

16 (12) "Gestational age" means the age of the unborn child as measured
17 by the time elapsed since the first day of the last menstrual period as
18 determined by a physician and confirmed through the use of an ultrasound test
19 of a quality generally used in existing medical practice.

20 (13) "Genetic abnormality" means any defect, disease, or disorder that
21 is inherited genetically. The term includes, without limitation, any physical
22 disfigurement, scoliosis, dwarfism, Down syndrome, albinism, amelia, and any
23 other type of physical, mental, or intellectual disability, abnormality, or disease.

24 (14) "Good faith medical judgment" or "reasonable medical judgment"
25 means a physician's use of reasonable care and diligence, along with his best
26 judgment, in the application of his skill. The standard of care required of every
27 healthcare provider, in rendering professional services or health care to a
28 patient, shall be to exercise that degree of skill ordinarily employed, under
29 similar circumstances, by the members of his profession in good standing in the
30 same community or locality.

1 (15) "Infant" means the offspring of human parents from the moment
2 of live birth, regardless of the duration of gestation in the womb prior to live
3 birth.

4 (16) "Late term abortion" means the performance of an abortion when
5 the gestational age of the unborn child is fifteen weeks or more.

6 (17) "Live birth", "born alive", or "live born human being", means a
7 member of the species homo sapiens that is expelled or extracted from its
8 mother, at any stage of development, who after that expulsion or extraction
9 breathes or shows signs of life such as beating of the heart, pulsation of the
10 umbilical cord, or definite movement of voluntary muscles, whether or not the
11 umbilical cord has been cut or the placenta is attached, and regardless of
12 whether the expulsion or extraction occurs as a result of natural or induced
13 labor, cesarean section, or induced abortion.

14 (18) "Medical emergency" means the existence of any physical condition,
15 not including any emotional, psychological, or mental condition, within the
16 reasonable medical judgment of a reasonably prudent physician, with
17 knowledge of the case and treatment possibilities with respect to the medical
18 conditions involved, would determine necessitates the immediate abortion of the
19 pregnancy to avert the pregnant woman's death or to avert substantial and
20 irreversible impairment of a major bodily function arising from continued
21 pregnancy.

22 (19)(a) "Medically futile" means that, in reasonable medical judgment
23 as certified by two physicians, the unborn child has a profound and
24 irremediable congenital or chromosomal anomaly that is incompatible with
25 sustaining life after birth.

26 (b) The Louisiana Department of Health shall promulgate, in accordance
27 with the Administrative Procedure Act, administrative rules establishing an
28 exclusive list of anomalies, diseases, disorders, and other conditions which shall
29 be deemed "medically futile" for purposes of this Subpart. The rules may also
30 encompass diagnostic methods and standards by which a medically futile

1 condition may be diagnosed, including but not limited to tests that are
2 appropriate to the developmental stage and the condition of the unborn child.

3 (20) "Miscarriage" or "stillbirth" means the spontaneous or accidental
4 death of an unborn child, whether the death occurred in the womb or in the
5 process of birth. Death of the unborn child is indicated by the lack of signs of
6 breathing or any other evidence of life, such as beating of the heart, pulsation
7 of the umbilical cord, or definite movement of voluntary muscles.

8 (21) "Partial birth abortion" means an abortion in which:

9 (a) The person performing the abortion deliberately and intentionally
10 vaginally delivers a living fetus until, in the case of a head-first presentation, the
11 entire fetal head is outside the body of the mother, or, in the case of breech
12 presentation, any part of the fetal trunk past the navel is outside the body of the
13 mother, for the purpose of performing an overt act that the person knows will
14 kill the partially delivered living fetus.

15 (b) The person performing the abortion performs the overt act, other
16 than completion of delivery, that kills the partially delivered living fetus.

17 (22) "Physician" means a person licensed to practice medicine in the
18 state of Louisiana.

19 (23) "Pregnant" means that female reproductive condition of having a
20 developing embryo or fetus in the uterus which commences at fertilization and
21 implantation.

22 (24) "Receive a fetal organ" means acquiring any fetal organ or fetal
23 body part, or the rights to any fetal organ or fetal body part, through an act of
24 donation or sale via any transaction prohibited by this Subpart.

25 (25) "Serious bodily injury" shall have the same meaning as defined in
26 R.S. 14:2. For the purposes of this Section, "serious bodily injury" that includes
27 the loss of an organ shall include a hysterectomy.

28 (26) "Serious health risk to the unborn child's mother" means that in
29 reasonable medical judgment the mother has a condition that so complicates
30 her medical condition that it necessitates the abortion of her pregnancy to avert

1 her death or to avert serious risk of substantial and irreversible physical
 2 impairment of a major bodily function, not including psychological or
 3 emotional conditions.

4 (27) "Unborn child", "unborn human being", or "fetus" shall have the
 5 same meaning as "unborn child" as defined in R.S. 14:2.

6 (28) "Viable" or "viability" means that stage of fetal development when,
 7 in the judgment of the physician based upon the particular facts of the case
 8 before the physician, and in light of the most advanced medical technology and
 9 information available to the physician, there is a reasonable likelihood of
 10 sustained survival of the unborn child outside the body of his mother, with or
 11 without artificial support.

12 (29) "Woman" or "mother" means a female human being, whether or
 13 not she has reached the age of majority.

14 §87.1.1. Killing a child during delivery; penalties

15 A. Killing a child during delivery is the intentional destruction, during
 16 parturition of the mother, of the vitality or life of a child in a state of being born and
 17 before actual birth, which child would otherwise have been born alive; provided,
 18 however, that the crime of killing a child during delivery shall not be construed to
 19 include any case in which the death of a child results from the use by a physician of
 20 a procedure during delivery which is necessary to save the life of the child or of the
 21 mother and is used for the express purpose of and with the specific intent of saving
 22 the life of the child or of the mother.

23 B. Whoever commits the crime of killing a child during delivery shall be
 24 imprisoned at hard labor in the penitentiary for life.

25 §87.2. Human experimentation **on an infant born alive**

26 A. Human experimentation is the use of any ~~live born human being~~ **infant**
 27 **who is born alive**, without consent of that live born human being, ~~as hereinafter~~
 28 ~~defined~~, for any scientific or laboratory research or any other kind of
 29 experimentation or study except to protect or preserve the life and health of the live
 30 born human being, or the conduct, on a human embryo or fetus in utero, of any

1 experimentation or study except to preserve the life or to improve the health of the
 2 human embryo or fetus.

3 ~~B. A human being is live born, or there is a live birth, whenever there is the~~
 4 ~~complete expulsion or extraction from its mother of a human embryo or fetus,~~
 5 ~~irrespective of the duration of pregnancy, which after such separation, breathes or~~
 6 ~~shows any other evidence of life such as beating of the heart, pulsation of the~~
 7 ~~umbilical cord, or movement of voluntary muscles, whether or not the umbilical cord~~
 8 ~~has been cut or the placenta is attached.~~

9 ~~€.~~ Whoever commits the crime of human experimentation on an infant born
 10 alive shall be imprisoned at hard labor for not less than five nor more than twenty
 11 years, or fined not more than ten thousand dollars, or both.

12 * * *

13 §87.5. Intentional failure to sustain life and health of aborted viable infant

14 A. The intentional failure to sustain the life and health of an aborted viable
 15 infant shall be a crime. The intentional failure to sustain the life and health of an
 16 aborted viable infant is the intentional failure, by any physician or person performing
 17 or inducing an abortion, to exercise that degree of professional care and diligence,
 18 and to perform such measures as constitute good medical practice, necessary to
 19 sustain the life and health of an aborted viable infant, when the death of the infant
 20 results.

21 ~~B.~~ For purposes of this Section, "viable" means that stage of fetal
 22 development when the life of the unborn child may be continued indefinitely outside
 23 the womb by natural or artificial life-supporting systems. Any person who commits
 24 the crime of intentional failure to sustain the life and health of an aborted viable
 25 infant shall be imprisoned at hard labor for not more than twenty-one years.

26 * * *

27 §87.7. Abortion

28 A. It shall be unlawful for a physician or other person to perform an
 29 abortion, with or without the consent of the pregnant female.

30 B. The terms used in this Section have the same meaning as the

1 definitions provided in R.S. 14:87.1.

2 C. Whoever commits the crime of abortion shall be imprisoned at hard
3 labor for not less than one year nor more than ten years and shall be fined not
4 less than ten thousand dollars nor more than one hundred thousand dollars.

5 D. This Section does not apply to a pregnant female upon whom an
6 abortion is committed or performed in violation of this Section and the
7 pregnant female shall not be held responsible for the criminal consequences of
8 any violation of this Section.

9 E. This Section shall not apply to the sale, use, prescription, or
10 administration of a contraceptive or an emergency contraceptive.

11 F. The provisions of this Section shall become effective immediately
12 upon, and to the extent permitted, by the occurrence of any of the following
13 circumstances:

14 (1) Any decision of the Supreme Court of the United States which
15 overrules, in whole or in part, Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.
16 2d 147 (1973), thereby restoring to the state of Louisiana the authority to
17 prohibit or limit abortion.

18 (2) Adoption of an amendment to the United States Constitution which,
19 in whole or in part, restores to the state of Louisiana the authority to prohibit
20 or limit abortion.

21 (3) A decision of the Supreme Court of the United States in the case of
22 Dobbs v. Jackson Women's Health Organization, Docket No. 19-1392, which
23 overrules, in whole or in part, Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.
24 2d 147 (1973), thereby restoring to the state of Louisiana the authority to
25 prohibit or limit abortion.

26 §87.8. Late term abortion

27 A. It shall be unlawful for a physician or other person to perform a late
28 term abortion, with or without the consent of the pregnant female.

29 B. Whoever commits the crime of late term abortion shall be imprisoned
30 at hard labor for not less than one year nor more than fifteen years and shall be

1 fined not less than twenty thousand dollars nor more than two hundred
 2 thousand dollars.

3 C. This Section does not apply to a pregnant female upon whom an
 4 abortion is committed or performed in violation of this Section and the
 5 pregnant female shall not be held responsible for the criminal consequences of
 6 any violation of this Section.

7 D. This Section shall not apply to the sale, use, prescription, or
 8 administration of a contraceptive or an emergency contraceptive.

9 F. The provisions of this Section shall become effective immediately
 10 upon, and to the extent permitted, by the occurrence of any of the following
 11 circumstances:

12 (1) Any decision of the Supreme Court of the United States which
 13 overrules, in whole or in part, Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.
 14 2d 147 (1973), thereby restoring to the state of Louisiana the authority to
 15 prohibit, limit, or regulate abortion.

16 (2) Adoption of an amendment to the United States Constitution which,
 17 in whole or in part, restores to the state of Louisiana the authority to prohibit
 18 or limit abortion.

19 (3) A decision of the Supreme Court of the United States in the case of
 20 Dobbs v. Jackson Women's Health Organization, Docket No. 19-1392, which
 21 overrules, in whole or in part, Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.
 22 2d 147 (1973), thereby restoring to the state of Louisiana the authority to
 23 prohibit or limit abortion.

24 Section 3. R.S. 40:1061(A), (D), and (I), 1061.1(D) and (E), 1061.1.3(C), 1061.8,
 25 1061.11(A), 1061.12, 1061.22, 1061.23, 1061.24, 1061.26, 1061.28, 1061.30, 2175.1,
 26 2175.2, and 2175.3 are hereby amended and reenacted and R.S. 40:1061.1(H), 1061.1.1(D),
 27 1061.10(F), 1061.11(G), 1061.11.1(G), 1061.13(D) and (E), 1061.14(E), 1061.14.1(C),
 28 1061.15(E), 1061.16(F), 1061.17(J)(3), 1061.19(H), 1061.20(D), 1061.21(F), 1061.25(F),
 29 2175.4(F), 2175.6(J), 2175.7(C), 2175.8, and 2175.9 are hereby enacted to read as follows:

30 §1061. Abortion; prohibition

1 A. The provisions of this Act shall become effective immediately upon, and
2 to the extent permitted, by the occurrence of any of the following circumstances:

3 (1) Any decision of the ~~United States Supreme Court~~ **Supreme Court of the**
4 **United States** which ~~reverses~~ **overrules**, in whole or in part, *Roe v. Wade*, 410 U.S.
5 113, 93 S.Ct. 705, 35 L.Ed. 2d 147 (1973), thereby; restoring to the state of
6 Louisiana the authority to prohibit **or limit** abortion.

7 (2) Adoption of an amendment to the United States Constitution which, in
8 whole or in part, restores to the state of Louisiana the authority to prohibit **or limit**
9 abortion.

10 **(3) A decision of the Supreme Court of the United States in the case of**
11 **Dobbs v. Jackson Women's Health Organization, Docket No. 19-1392, which**
12 **overrules, in whole or in part, Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.**
13 **2d 147 (1973), thereby restoring to the state of Louisiana the authority to**
14 **prohibit or limit abortion.**

15 * * *

16 D. Any person in violation of this Section shall be prosecuted pursuant to the
17 effective provisions of ~~R.S. 14:87~~ **R.S. 14:87.7**, and shall be subject to the penalties
18 provided in R.S. 40:1061.29.

19 * * *

20 I. The ~~following~~ terms as used in this Section ~~shall~~ have the ~~following~~
21 meanings: **same meaning as the definitions provided in R.S. 14:87.1.**

22 (1) ~~"Fertilization" means that point in time when a male human sperm~~
23 ~~penetrates the zona pellucida of a female human ovum.~~

24 (2) ~~"Pregnant" means the human female reproductive condition, of having a~~
25 ~~living unborn human being within her body throughout the entire embryonic and~~
26 ~~fetal stages of the unborn child from fertilization to full gestation and childbirth.~~

27 (3) ~~"Unborn human being" means an individual living member of the species,~~
28 ~~homo sapiens, throughout the entire embryonic and fetal stages of the unborn child~~
29 ~~from fertilization to full gestation and childbirth.~~

30 * * *

1 §1061.1. Pain-Capable Unborn Child Protection Act

2 * * *

3 D. Determination of ~~postfertilization~~ **post fertilization** age.

4 (1) Except in the case of a medical emergency or when a pregnancy is
5 diagnosed as medically futile, no abortion shall be performed or induced or be
6 attempted to be performed or induced unless the physician performing or inducing
7 it has first made a determination of the probable ~~postfertilization~~ **post fertilization**
8 age of the unborn child or relied upon such a determination made by another
9 physician. In making such a determination, the physician shall make such inquiries
10 of the woman and perform or cause to be performed such medical examinations and
11 tests as a reasonably prudent physician, knowledgeable about the case and the
12 medical conditions involved, would consider necessary to perform in making an
13 accurate diagnosis with respect to ~~postfertilization~~ **post fertilization** age.

14 (2) Failure by any physician to conform to any requirement of this Section
15 constitutes "unprofessional conduct" pursuant to R.S. 37:1261.

16 E. Abortion of unborn child of twenty or more weeks ~~postfertilization~~ **post**
17 **fertilization** age prohibited.

18 (1) No person shall perform or induce or attempt to perform or induce an
19 abortion upon a woman when it has been determined, by the physician performing
20 or inducing or attempting to perform or induce the abortion or by another physician
21 upon whose determination that physician relies, that the probable ~~postfertilization~~
22 **post fertilization** age of the woman's unborn child is twenty or more weeks, unless
23 the pregnancy is diagnosed as medically futile or, in reasonable medical judgment,
24 she has a condition which so complicates her medical condition as to necessitate the
25 abortion of her pregnancy to avert her death or to avert serious risk of substantial and
26 irreversible physical impairment of a major bodily function, not including
27 psychological or emotional conditions. ~~No such greater risk shall be deemed to exist~~
28 ~~if it is based on a claim or diagnosis that the woman will engage in conduct which~~
29 ~~she intends to result in her death or in substantial and irreversible physical~~
30 ~~impairment of a major bodily function.~~

1 (2) When an abortion upon a woman whose unborn child has been
 2 determined to have a probable ~~postfertilization~~ **post fertilization** of twenty or more
 3 weeks is not prohibited by Paragraph (1) of this Subsection, the physician shall
 4 terminate the pregnancy in the manner which, in reasonable medical judgment,
 5 provides the best opportunity for the unborn child to survive, unless, in reasonable
 6 medical judgment, termination of the pregnancy in that manner would pose a greater
 7 risk either of the death of the pregnant woman or of the substantial and irreversible
 8 physical impairment of a major bodily function, not including psychological or
 9 emotional conditions, of the woman than would other available methods. ~~No such~~
 10 ~~greater risk shall be deemed to exist if it is based on a claim or diagnosis that the~~
 11 ~~woman will engage in conduct which she intends to result in her death or in~~
 12 ~~substantial and irreversible physical impairment of a major bodily function.~~

13 * * *

14 **H. The provisions of R.S. 40:1061.8 shall apply to this Section.**

15 §1061.1.1. Louisiana Unborn Child Protection from Dismemberment Abortion Act

16 * * *

17 **I. The provisions of R.S. 40:1061.8 shall apply to this Section.**

18 * * *

19 §1061.1.3. Abortion prohibited; detectable fetal heartbeat; ultrasound required

20 * * *

21 C. Whoever violates this Section shall be prosecuted pursuant to the effective
 22 provisions of R.S. ~~14:87~~ **R.S. 14:87.7** and shall be subject to the penalties provided
 23 in R.S. 40:1061.29.

24 * * *

25 §1061.8. Legislative intent, **construction of abortion provisions law regulating**
 26 **abortion**

27 **A.(1)** It is the intention of the Legislature of ~~the State~~ of Louisiana to
 28 regulate, **prohibit, or restrict** abortion to the **fullest** extent permitted by the
 29 decisions of the ~~United States~~ Supreme Court **of the United States**. The ~~Legislature~~
 30 **legislature** does solemnly declare, ~~and find,~~ **and** in reaffirmation of **reaffirm** the

1 longstanding **public** policy of this State, ~~state~~ that ~~the~~ **every** unborn child is a human
 2 being from the ~~time~~ **moment** of conception and is, therefore, a legal person for
 3 purposes ~~of the unborn child's right to life and is entitled to the right to life from~~
 4 ~~conception~~ under the laws **of this state** and Constitution of ~~this State~~ **Louisiana**.
 5 Further, ~~the Legislature~~

6 **(2) The legislature further** finds and declares that the longstanding policy
 7 of this state is to protect the right to life of ~~the~~ **every** unborn child from conception
 8 by prohibiting abortion **is** impermissible only because of the decisions of the ~~United~~
 9 ~~States Supreme Court~~ **of the United States** and that, therefore, if those decisions of
 10 the United States Supreme Court are ever reversed or modified or the United States
 11 Constitution is amended to allow protection of the unborn then the ~~former~~ **public**
 12 policy of this State ~~state~~ to prohibit abortions shall be enforced.

13 **B.(1) The provisions of this Chapter that regulate the practice of**
 14 **abortion shall not be construed to repeal any other provision of law that**
 15 **restricts or prohibits abortion.**

16 **(2) The provisions of this Chapter that regulate the practice of abortion**
 17 **are enacted to provide for the health, safety, and welfare of women in outpatient**
 18 **abortion facilities until such time and to the extent that the state of Louisiana**
 19 **no longer regulates outpatient abortion facilities.**

20 **C. The provisions of this Chapter that regulate the practice of abortion**
 21 **are subject to R.S. 40:2175.9.**

22 §1061.9. Definitions

23 ~~As used in R.S. 40:1061.8 through 1061.29, the following words have the~~
 24 ~~following meanings:~~ **Wherever used in this Chapter, unless a different meaning**
 25 **clearly appears in the context, the terms, whether singular or plural, have the**
 26 **same meaning as the definitions provided in R.S. 14:87.1.**

27 §1061.10. Abortion by physician; determination of viability; ultrasound test
 28 required; exceptions; penalties

29 * * *

30 **F. The provisions of R.S. 40:1061.8 shall apply to this Section.**

1 §1061.11. Drugs or chemicals used; penalties

2 A. When any drug or chemical is used for the purpose of inducing an
3 abortion ~~as defined in R.S. 40:1061.9~~, the physician who prescribed the drug or
4 chemical shall be in the same room and in the physical presence of the pregnant
5 woman when the drug or chemical is initially administered, dispensed, or otherwise
6 provided to the pregnant woman.

7 * * *

8 **G. The provisions of R.S. 40:1061.8 shall apply to this Section.**

9 §1061.11.1. Chemically-induced abortion; required disclosure

10 * * *

11 **G. The provisions of R.S. 40:1061.8 shall apply to this Section.**

12 §1061.12. Born-Alive Infant Protection Act

13 A. ~~In determining the meaning of any statute or of any rule, regulation, or~~
14 ~~interpretation of the various administrative agencies of this state, the words "person",~~
15 ~~"human being", "child", and "individual" include every infant member of the species~~
16 ~~homo sapiens who is born alive at any stage of development.~~

17 B. An infant at any stage of development who has survived an abortion
18 procedure resulting in his or her live birth shall be given reasonable and immediate
19 medical care as provided in R.S. 40:1061.13(C), **whether the abortion was**
20 **considered legal or illegal under the law at the time that the abortion was**
21 **performed.**

22 **B. The provisions of R.S. 40:1061.8 shall apply to this Section.**

23 §1061.13. Abortion after viability; second attendant physician required; duties

24 * * *

25 **D. The provisions of this Section shall apply to an infant born alive and**
26 **the infant born alive shall be given immediate medical care regardless of**
27 **whether the abortion was considered legal or illegal under the law at the time**
28 **the abortion was performed.**

29 **E. The provisions of R.S. 40:1061.8 shall apply to this Section.**

30 §1061.14. Minors

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E. The provisions of R.S. 40:1061.8 shall apply to this Section.

§1061.14.1. Fraudulent interference with parental consent

* * *

C. The provisions of R.S. 40:1061.8 shall apply to this Section.

§1061.15. Prevention of forced abortion; signage in abortion facilities

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E. The provisions of R.S. 40:1061.8 shall apply to this Section.

§1061.16. Information on psychological impacts, illegal coercion, abuse, and human trafficking required prior to abortion; task force on information resources

* * *

F. The provisions of R.S. 40:1061.8 shall apply to this Section.

* * *

§1061.17. Woman's right to know

* * *

J. Construction.

* * *

(3) The provisions of R.S. 40:1061.8 shall apply to this Section.

* * *

§1061.19. Records

* * *

H. The provisions of R.S. 40:1061.8 shall apply to this Section.

§1061.20. Conscience in health care protection; definitions

* * *

D. The provisions of R.S. 40:1061.8 shall apply to this Section.

§1061.21. Reports

* * *

F. The provisions of R.S. 40:1061.8 shall apply to this Section.

§1061.22. Forms

1 A. The Louisiana Department of Health shall make available to physicians
2 performing abortions in this state the forms for preparing the records and reports
3 required pursuant to the provisions of this Chapter.

4 **B. The provisions of R.S. 40:1061.8 shall apply to this Section.**

5 §1061.23. Emergency

6 The provisions of this Chapter shall not apply when a medical emergency
7 compels the immediate performance of an abortion because the continuation of the
8 pregnancy poses an immediate threat and grave risk to the life or ~~permanent physical~~
9 ~~health of the pregnant woman~~ serious health risk to the unborn child's mother.

10 Within twenty-four hours, the attending physician shall certify to the medical
11 emergency ~~need~~ for the abortion and shall enter such certification in the medical
12 record of the pregnant woman.

13 §1061.24. Experimentation

14 A. No person shall experiment on an unborn child or on a child born as the
15 result of an abortion, whether the unborn child or child is alive or dead, unless the
16 experimentation is therapeutic to the unborn child or child.

17 **B. The provisions of R.S. 40:1061.8 shall apply to this Section.**

18 §1061.25. Remains; disposal in accordance with applicable regulations;
19 post-abortion harvesting of fetal organs prohibited; penalties

20 * * *

21 **F. The provisions of R.S. 40:1061.8 shall apply to this Section.**

22 §1061.26. Instructions to be provided subsequent to abortion

23 A. Any physician who shall perform or induce an abortion, shall subsequent
24 to the abortion being performed or induced, provide his patient with specific oral and
25 written medical instructions to be followed by that patient in order to insure her safe
26 recovery from the abortion.

27 **B. The provisions of R.S. 40:1061.8 shall apply to this Section.**

28 §1061.28. Partial birth abortion, civil action against abortionist

29 A. No licensed physician or any other person shall perform a partial birth
30 abortion on a female unless the procedure performed is necessary because of a

1 ~~medical emergency or~~ to save the life of the female ~~mother.~~ because her life is
2 ~~endangered by a physical disorder, physical illness or physical injury, including a~~
3 ~~life-endangering physical condition caused by or arising from the pregnancy itself.~~

4 * * *

5 §1061.30. ~~Standing~~ **Suspension or revocation of license; grounds**; action to close
6 outpatient abortion clinic

7 A. In addition to any violation of this Chapter, the following acts shall subject
8 licensed outpatient abortion facilities to the provisions of R.S. 40:2175.6 regarding
9 license suspension or revocation:

10 (1) Systematically, intentionally, or deliberately falsifying or destroying
11 patient files or records in violation of R.S. 40:1061.17.

12 (2) Completing in advance of an appointment with a woman seeking abortion
13 any portion of patient records or forms required by R.S. 40:1061.17 to include
14 patient-specific data or a physician's signature.

15 **B. The provisions of R.S. 40:2175.8 and R.S. 40:2175.9 shall apply to this**
16 **Chapter.**

17 * * *

18 §2175.1. Short title

19 A. This Part may be cited as the "Outpatient Abortion Facility Licensing
20 Law".

21 **B. The provisions of R.S. 40:1061.8 shall apply to this Part.**

22 §2175.2. Purpose

23 The purpose of this Part is to authorize the Louisiana Department of Health
24 to promulgate and publish rules and regulations to provide for the health, safety, and
25 welfare of women in outpatient abortion facilities and for the safe operation of such
26 facilities. The rules shall be reasonably related to the purpose expressed in this
27 Section and shall not impose a legally significant burden on a woman's freedom to
28 decide whether to terminate her pregnancy, **except when the provisions of R.S.**
29 **40:1061.8 apply.**

30 §2175.3. Definitions

1 **A. Except as provided in Subsection B of this Section, the terms used in**
 2 **this Part, unless a different meaning clearly appears in the context, whether**
 3 **singular or plural, have the same meaning as the definitions provided in R.S.**
 4 **14:87.8.**

5 **B.** For purposes of this Part, the following definitions apply:

6 (1) ~~"Abortion" shall have the meaning set forth in R.S. 40:1061.9.~~

7 ~~(2)~~ **(2)** "Abortion facility professional" or "outpatient abortion facility
 8 professional" means an individual who is a physician, surgeon, resident, intern,
 9 licensed nurse, nursing aide, emergency medical technician, or a paramedic who
 10 diagnoses, examines, or treats a female patient at an outpatient abortion facility.

11 ~~(3)~~ **(2)** "Abortion facility staff member" or "outpatient abortion facility staff
 12 member" means an individual who is not an abortion facility professional but who
 13 is employed by or contracts with an outpatient abortion facility to provide services
 14 and who has any contact with patients at the facility.

15 ~~(4)~~ **(3)** "First trimester" means the time period up to fourteen weeks after the
 16 first day of the last menstrual period.

17 ~~(5)~~ **(4)** "Licensee" means the person, partnership, corporation, association,
 18 organization, or professional entity on whom rests the ultimate responsibility and
 19 authority for the conduct of the outpatient abortion facility.

20 ~~(6)~~ **(5)** "Licensing agency" means the Louisiana Department of Health.

21 ~~(7)~~ **(6)** "Mandatory reporter to law enforcement" means any abortion facility
 22 staff member or any abortion facility professional.

23 ~~(8)~~ **(7)** "Outpatient abortion facility" means any outpatient facility, other than
 24 a hospital as defined in R.S. 40:2102 or an ambulatory surgical center as defined in
 25 R.S. 40:2133, in which any second trimester or five or more first trimester abortions
 26 per calendar year are performed.

27 ~~(9)~~ **(8)** "Second trimester" means the time period from fourteen to twenty-
 28 three weeks after the first day of the last menstrual period.

29 ~~(10)~~ **(9)** "Secretary" means the secretary of the Louisiana Department of
 30 Health.

1 §2175.4. License required

2 * * *

3 **F. The provisions of R.S. 40:1061.8 shall apply to this Part.**

4 * * *

5 §2175.6. License issuance; application; on-site inspection

6 * * *

7 **J. The provisions of R.S. 40:1061.8 shall apply to this Part.**

8 §2175.7. Mandatory reports to law enforcement; human trafficking awareness and
9 prevention training

10 * * *

11 **C. The provisions of R.S. 40:1061.8 shall apply to this Part.**

12 **§2175.8. Cease and desist order; due process rights; penalty for violation**

13 **A. In addition to the provisions of R.S. 40:2175.6(H), the secretary is**
14 **empowered to issue a written cease and desist order to prevent or terminate an**
15 **unsafe condition or an illegal practice or for a violation of this Chapter or**
16 **Chapter 5 of this Title or a violation of any regulation or order of the**
17 **department issued pursuant thereto whenever the secretary knows or has**
18 **reasonable cause to believe that such unsafe condition or illegal practice exists**
19 **or is likely to occur related to an outpatient abortion facility.**

20 **B.(1) An aggrieved party, who is licensed by this Part and who is affected**
21 **by the secretary's decision or order, may seek an appeal in the same manner as**
22 **provided for in R.S. 40:2175.6(H).**

23 **(2) An aggrieved party, who is not licensed by this Part, may seek a de**
24 **novo review of the secretary's decision or order by filing a petition for review**
25 **in the Nineteenth Judicial District Court for the parish of East Baton Rouge.**

26 **C. Any order issued pursuant to this Section shall become effective upon**
27 **service thereof in person or by registered mail on the violator, and shall remain**
28 **effective except to the extent modified, stayed, terminated, or set aside by action**
29 **of the secretary or by Nineteenth Judicial District Court in parish of East Baton**
30 **Rouge.**

1 **D. If no timely appeal is demanded by the aggrieved party pursuant to**
 2 **Subsection B of this Section, the cease and desist order shall become final.**

3 **E. If the violator subsequently engages in activities that violate a final**
 4 **cease and desist order, the secretary may seek the enforcement of such order by**
 5 **civil action filed in the Nineteenth Judicial District Court for the parish of East**
 6 **Baton Rouge.**

7 **F. Except as provided in R.S. 40:2175.9, any person who violates a cease**
 8 **and desist order of the secretary after it has become final and while such order**
 9 **is in effect shall, upon proof thereof to the satisfaction of the court, be ordered**
 10 **by the court to forfeit and pay to the attorney general a sum not less than five**
 11 **hundred dollars nor more than five thousand dollars per violation.**

12 **§2175.9. Procedure for closing outpatient abortion clinics in the event abortion**
 13 **is declared illegal**

14 **A. Except as provided in Subsection C of this Section, the secretary shall**
 15 **apply the provisions of R.S. 40:1061.8 and R.S. 40:2175.8 and based upon the**
 16 **final decision of the Supreme Court of the United States in the case of Dobbs v.**
 17 **Jackson Women's Health Organization, Docket No. 19-1392, the secretary shall**
 18 **issue whichever one of the applicable cease and desist orders apply, as follows:**

19 **(1) The outpatient abortion facility shall be ordered closed and the**
 20 **facility shall immediately cease and desist performing abortions because the**
 21 **Human Life Protection Act, R.S. 40:1061, or R.S. 14:87.7 has been enacted and**
 22 **the practice of abortion in Louisiana has been prohibited by law.**

23 **(2) The outpatient abortion facility shall be ordered to cease and desist**
 24 **performing late term abortions, as is prohibited in R.S. 14:87.8, because the**
 25 **Supreme Court of the United States has provided for the states to prohibit**
 26 **abortions when the gestational age of the unborn child is fifteen weeks or more.**

27 **B.(1) Any person who violates a cease and desist order of the secretary**
 28 **after it has become final and while such order is in effect shall, upon proof**
 29 **thereof to the satisfaction of the court, be ordered by the court to forfeit and pay**
 30 **to the attorney general a sum not less than ten thousand dollars nor more than**

1 fifty thousand dollars per violation.

2 (2) Each abortion performed in violation of the cease and desist order
 3 issued pursuant to this Section shall constitute a separate violation.

4 C. The provisions of Subsection A and B of this Section shall not apply
 5 if the decision rendered by the United States Supreme Court in the case of
 6 Dobbs v. Jackson Women's Health Organization, Docket No. 19-1392, which
 7 overrules, in whole or in part, Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.
 8 2d 147 (1973), does not restore to the states the authority to prohibit or limit
 9 abortion.

10 Section 4. R.S. 14:32.9(B), 32.9.1(B), 32.10, 32.11(B), 87, 87.3(B), and R.S.
 11 40:1061.1.1(B), 1061.1.2(A), 1061.1.3(B), 1061.9(1) through (11), 1061.12(A), 1061.27, and
 12 1061.28(B) are hereby repealed.

13 Section 5. If the bill that originated as Senate Bill No. 388 of the 2022 Regular
 14 Session of the Legislature is enacted and becomes law, the provisions containing definitions
 15 in R.S. 14:87.9(B) in Section 1 of the Act which originated as Senate Bill No. 388 and R.S.
 16 40:962.2(B) of Section 2 of the Act which originated as Senate Bill No. 388 shall be null and
 17 void.

18 Section 6. The Louisiana State Law Institute, pursuant to its statutory authority, is
 19 hereby authorized and directed to make the following technical changes:

20 (A) Redesignate the provisions of R.S. 14:32.9, 32.9.1, 32.11 and relocate the
 21 provisions to Subpart A.3. Abortion. of Part V of Title 14 of the Louisiana Revised Statutes
 22 of 1950.

23 (B) Redesignate R.S. 40:1061.8 (Legislative intent) and 1061.9 (Definitions) and
 24 relocate those same provisions of law to follow directly after R.S. 40:1061.1.

25 (C) Redesignate R.S. 40:1061.1 (Pain-capable Unborn Child Protection Act) and
 26 1061.1.1 (Louisiana Unborn Child Protection from Dismemberment Abortion Act) and
 27 relocate those same provisions of law to follow directly after the provisions that have been
 28 redesignated and relocated pursuant to Subsection (B) of this Section.

29 (D) Make changes to any internal citation references in this Act to reflect the changes
 30 made pursuant to Subsections (B) and (C) of this Section.

1 (E) Arrange in alphabetical order and renumber the provisions of law, in particular
 2 arrange in alphabetical order and renumber those provisions of law to reflect that the
 3 provisions of law contained in Section 5 of this Act were repealed in favor of the
 4 consolidated "Definitions" provisions of law in R.S. 14:87.1 in Section 1 of this Act and R.S.
 5 40:1061.1 in Section 2 of this Act.

6 (F) Make changes to any references in the Codes or Louisiana Revised Statutes of
 7 1950 to reflect the citation changes contained in this Act.

8 (G) If the provisions of Section 5 of this Act are in effect because the bill that
 9 originated as Senate Bill No. 388 of the 2022 Regular Session of the Legislature is enacted
 10 and becomes law, arrange in alphabetical order and renumber the Subsections of R.S.
 11 14:87.9 and R.S. 40:962.2.

12 Section 7. The provisions of Section 1 of this Act shall become effective upon
 13 signature by the governor or, if not signed by the governor, upon expiration of the time for
 14 bills to become law without signature by the governor, as provided by Article III, Section
 15 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved
 16 by the legislature, this Act shall become effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____