

Regular Session, 2001

HOUSE BILL NO. 1909

BY REPRESENTATIVES DONELON AND RIDDLE

ABORTION: Provides for regulation of late-term abortions

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

AN ACT

To amend and reenact R.S. 40:1299.35.1, 1299.35.2, 1299.35.4, 1299.35.10(A)(18), and 1299.35.12 and to enact R.S. 40:1299.35.3, relative to abortions; to provide for definitions; to require a determination of viability in certain circumstances; to enact the Born-Alive Infant Protection Act; to require a second attendant physician for abortions performed after viability; to prescribe the duties of that second attendant physician; to provide relative to ultrasound prints in the abortion report; to provide for emergency procedures; to provide for an emergency effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 40:1299.35.1, 1299.35.2, 1299.35.4, 1299.35.10(A)(18), and 1299.35.12 are hereby amended and reenacted and R.S. 40:1299.35.3 is hereby enacted to read as follows:

§1299.35.1. Definitions

As used in R.S. 40:1299.35.0 through 1299.35.18, the following words have the following meanings:

(1) "Abortion" or "induced abortion" means the ~~deliberate termination of a human pregnancy after fertilization of a female ovum, by any person, including the pregnant woman herself, with an intention~~

1 ~~other than to produce a live birth, remove an ectopic pregnancy, or to~~
2 ~~remove a dead unborn child caused by a spontaneous abortion, missed~~
3 ~~abortion, or inevitable abortion. act of using or prescribing any~~
4 ~~instrument, medicine, drug or any other substance, device or means~~
5 ~~with the intent to terminate the clinically diagnosable pregnancy of a~~
6 ~~woman with knowledge that the termination by those means will, with~~
7 ~~reasonable likelihood, cause the death of the unborn child. Such use,~~
8 ~~prescription, or means is not an abortion if done with the intent to:~~

9 ~~(a) Save the life or preserve the health of an unborn child.~~

10 ~~(b) Remove a dead unborn child caused by spontaneous~~
11 ~~abortion, missed abortion, or inevitable abortion.~~

12 ~~(c) Remove an ectopic pregnancy.~~

13 ~~(2) "Unborn child" means the unborn offspring of human beings~~
14 ~~from the moment of conception through pregnancy and until~~
15 ~~termination of the pregnancy.~~

16 ~~(3) "Viable" and "viability" and "the precise point of viability"~~
17 ~~each mean that point at which there is a realistic possibility of~~
18 ~~maintaining and nourishing the life of the unborn child or fetus outside~~
19 ~~the womb. On the basis of the best medical data available, it shall be~~
20 ~~presumed that an unborn child has reached viability when it is~~
21 ~~determined, by the use of an ultrasound of a quality generally used in~~
22 ~~existing medical practice, to have a gestational age of greater than or~~
23 ~~equal to twenty-two weeks.~~

24 ~~(4) (2) "Conception" and "fertilization" each mean the fusion of~~
25 ~~a human spermatozoon with a human ovum.~~

26 ~~(5) "Physician" means a person licensed to practice medicine in~~
27 ~~the state of Louisiana.~~

1 ~~(6) "Pregnant" means that female reproductive condition of~~
2 ~~having a developing embryo or fetus in the uterus which commences at~~
3 ~~fertilization and implantation.~~

4 ~~(7)~~ (3) "Gestational age" means the age of the unborn child as
5 measured by the time elapsed since the first day of the last menstrual
6 period as determined by a physician and confirmed through the use of
7 an ultrasound test of a quality generally used in existing medical
8 practice.

9 ~~(8)~~ (4) "Good faith medical judgment" means a physician's use
10 of reasonable care and diligence, along with his best judgment, in the
11 application of his skill. The standard of care required of every health
12 care provider, except a hospital, in rendering professional services or
13 health care to a patient, shall be to exercise that degree of skill
14 ordinarily employed, under similar circumstances, by the members of
15 his profession in good standing in the same community or locality, but
16 if the physician was performing abortion procedures that are considered
17 to be included in the areas of a medical specialty, then the standard
18 shall be that of the degree of skill ordinarily employed, under similar
19 circumstances, by one practicing in good standing in that specialty.

20 (5) "Infant" means the offspring of human parents from the
21 moment of live birth, regardless of the duration of gestation in the
22 womb prior to live birth.

23 (6) "Live birth" or "born alive", with respect to a member of the
24 species homo sapiens, means the complete expulsion or extraction from
25 its mother of that member, at any stage of development, who after that
26 expulsion or extraction breathes or shows signs of life such as beating
27 of the heart, pulsation of the umbilical cord, or definite movement of

1 voluntary muscles, whether or not the umbilical cord has been cut or
2 the placenta is attached, and regardless of whether the expulsion or
3 extraction occurs as a result of natural or induced labor, cesarean
4 section, or induced abortion.

5 (7) "Physician" means a person licensed to practice medicine in
6 the state of Louisiana.

7 (8) "Pregnant" means that female reproductive condition of
8 having a developing embryo or fetus in the uterus which commences at
9 fertilization and implantation.

10 (9) "Unborn child" or "fetus" means the unborn offspring of
11 human beings from the moment of conception through pregnancy and
12 until live birth.

13 (10) "Viable" and "viability" each mean that stage of fetal
14 development when, in the judgment of the physician based upon the
15 particular facts of the case before him, and in light of the most
16 advanced medical technology and information available to him, there
17 is a reasonable likelihood of sustained survival of the unborn child
18 outside the body of his mother, with or without artificial support.

19 ~~(9) "Termination of pregnancy after viability" means the~~
20 ~~deliberate and artificial termination of pregnancy after the unborn child~~
21 ~~has reached the point of viability and prior to the spontaneous onset of~~
22 ~~labor in order to preserve the life or health of the mother.~~

23 §1299.35.2. Abortion by physician; determination of viability;

24 ultrasound test required; exceptions

25 A. No person shall perform or induce an abortion unless that
26 person is a physician licensed to practice medicine in the state of
27 Louisiana.

1 ~~B. In order to preserve the health of the mother by insuring the~~
2 ~~use of the methods of abortion or termination of pregnancy after~~
3 ~~viability most likely to preserve the health of the mother, to determine~~
4 ~~the gestational age of the unborn child, and to enable the physician to~~
5 ~~exercise his best medical judgment, each physician who performs or~~
6 ~~induces any abortion or termination of pregnancy after viability shall~~
7 ~~first perform an ultrasound test of a quality generally used in existing~~
8 ~~medical practice, unless an immediate threat and grave risk to the life~~
9 ~~or permanent physical health of the pregnant woman or the unborn~~
10 ~~child precludes the taking of an ultrasound test. In such emergency~~
11 ~~situations, the attending physician shall certify to the emergency need~~
12 ~~for performing the abortion or termination of pregnancy after viability~~
13 ~~without first performing an ultrasound test.~~

14 B. Before a physician performs an abortion on a woman he has
15 reason to believe is carrying an unborn child of twenty or more weeks
16 gestational age, the physician, by use of his good faith medical
17 judgment, shall first determine if the unborn child is viable.

18 C. In order to preserve the health of the woman, and in order to
19 make a finding of the gestational age, weight, and lung maturity of the
20 unborn child, the physician intending to terminate a pregnancy of
21 twenty or more weeks gestational age shall first perform or cause to be
22 performed an ultrasound examination of the unborn child of a quality
23 commonly used by the ordinary skillful, careful, and prudent physician
24 engaged in similar practice under the same or similar conditions. The
25 physician shall provide the option of viewing the ultrasound images to
26 the pregnant woman as the test is being performed. The physician shall
27 enter such findings and determination of viability in the medical record

1 of the pregnant woman, along with photographs or prints of the
2 ultrasound evidencing the findings.

3 §1299.35.3. Born-Alive Infant Protection Act

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

9 B. An infant at any stage of development who has survived an
10 abortion procedure resulting in his or her live birth shall be given
11 reasonable and immediate medical care as provided in R.S.
12 40:1299.35.4(C).

13 §1299.35.4. Abortion after viability; ~~prohibition; termination of~~
14 ~~pregnancy by reason of medical necessity; regulations~~ second
15 attendant physician required; duties

16 A. ~~Legislative findings and purpose. The Legislature of~~
17 Louisiana finds that:

18 (1) ~~The United States Supreme Court decision in *Planned*~~
19 ~~*Parenthood of Pennsylvania v. Casey*, which is now the controlling~~
20 ~~case in questions involving the states' rights to regulate abortion, upheld~~
21 ~~the central holding of the court's earlier rendered decision in *Roe v.*~~
22 ~~*Wade*, as follows:~~

23 "We reaffirm Roe's holding that subsequent to viability, the state
24 in promoting its interest in the potentiality of human life may, if it
25 chooses, regulate, and even proscribe, abortion except where it is
26 necessary, in appropriate medical judgment, for the preservation of life
27 or health of the mother."

1 ~~(2) Pursuant to those decisions, and in accordance with the state~~
2 ~~of Louisiana's long held and previously stated intent to regulate~~
3 ~~abortion and to promote its interest in the potentiality of human life to~~
4 ~~the extent permitted by the decisions of the United States Supreme~~
5 ~~Court, it is in the public interest and in furtherance of the general health~~
6 ~~and welfare of the citizens of this state to enact provisions of law that~~
7 ~~will fully utilize such authority.~~

8 ~~(3) It is the express purpose of the Act to ensure that abortion~~
9 ~~after viability shall be hereafter decisively prohibited in the state of~~
10 ~~Louisiana, and that all terminations of pregnancies after viability,~~
11 ~~pursuant to a medical necessity, shall, unless physically impossible, be~~
12 ~~performed in a manner and under such circumstances as will provide~~
13 ~~the greatest chance for the survival and health of the unborn child.~~

14 ~~B. Prohibition. No person shall intentionally, knowingly, or~~
15 ~~recklessly perform or induce an abortion when an unborn child is~~
16 ~~viable.~~

17 ~~C. Termination of pregnancy after viability.~~

18 ~~(1) The termination of pregnancy after viability may be~~
19 ~~performed only in the case of a medical necessity.~~

20 ~~(2) For purposes of this Section, "medical necessity" means a~~
21 ~~condition which, on the basis of the physician's good faith medical~~
22 ~~judgment, necessitates the termination of the pregnancy in order to~~
23 ~~preserve the life or health of the mother, or to induce the premature~~
24 ~~delivery of an unborn child with a gestational age of greater than or~~
25 ~~equal to twenty-two weeks when the physician has made a good faith~~
26 ~~medical judgment that the unborn child's medical condition is such that~~

1 ~~there is no realistic possibility of maintaining and nourishing the life of~~
2 ~~the unborn child outside the womb.~~

3 ~~(3) Such terminations of pregnancy after viability shall be~~
4 ~~performed only in a properly licensed hospital by a licensed physician~~
5 ~~who shall terminate the pregnancy in a manner which provides the best~~
6 ~~opportunity for the unborn child to survive and which is consistent with~~
7 ~~the primary objective of preserving the life and health of the mother.~~
8 ~~No person terminating a pregnancy after viability shall knowingly and~~
9 ~~intentionally harm or damage the brain, spinal cord, heart, lungs, or~~
10 ~~other vital organs of the unborn child nor knowingly or intentionally~~
11 ~~cause the unborn child to be dismembered or poisoned.~~

12 ~~(4) A child born alive as a result of a termination of pregnancy~~
13 ~~after viability shall be provided immediate medical care and evaluation~~
14 ~~and reasonable steps shall be taken to preserve the life and health of the~~
15 ~~child which are in keeping with good medical practice and using~~
16 ~~standard good faith medical judgment.~~

17 ~~(5) Each physician who performs or induces the termination of~~
18 ~~pregnancy after viability shall certify the medical reasons making~~
19 ~~performance of the pregnancy termination necessary and the probable~~
20 ~~health consequences to the pregnant woman that would reasonably~~
21 ~~follow if the pregnancy were not terminated. If applicable, the~~
22 ~~physician shall also certify the medical reasons supporting the~~
23 ~~conclusion that the medical condition of an unborn child with a~~
24 ~~gestational age of greater than or equal to twenty-two weeks is such~~
25 ~~that there is no realistic possibility of maintaining and nourishing life~~
26 ~~outside the womb. Such certification shall be signed by the physician~~
27 ~~performing the termination of pregnancy after viability and made part~~

1 ~~of the medical record of each pregnant woman upon whom a~~
2 ~~termination of pregnancy after viability is performed.~~

3 A. Before a physician may perform an abortion upon a pregnant
4 woman whose unborn child is viable, such physician shall first certify,
5 in writing, that the abortion is necessary to preserve the life or health
6 of the woman and shall further certify, in writing, the medical
7 indications for such abortion and the probable health consequences.

8 B. Any physician who performs an abortion upon a woman
9 carrying a viable unborn child shall utilize the available method or
10 technique of abortion most likely to preserve the life and health of the
11 unborn child. In cases where the method or technique of abortion
12 which would most likely preserve the life and health of the unborn
13 child would present a greater risk to the life and health of the woman
14 than another available method or technique, the physician may utilize
15 such other method or technique. In all cases where the physician
16 performs an abortion upon a viable unborn child, the physician shall
17 certify, in writing, the available method or techniques considered and
18 the reasons for choosing the method or technique employed.

19 C. An abortion of a viable unborn child shall be performed or
20 induced only when there is in attendance a physician other than the
21 physician performing or inducing the abortion who shall take control
22 of and provide immediate medical care for an infant born alive as a
23 result of the abortion. During the performance of the abortion, the
24 physician performing it, and subsequent to the abortion, the physician
25 required by this Section to be in attendance, shall take all reasonable
26 steps in keeping with good medical practice, consistent with the
27 procedure used, to preserve the life and health of the viable unborn

1 child and born-alive infant, respectively, provided that it does not pose
2 an increased risk to the life or health of the woman.

3 * * *

4 §1299.35.10. Reports

5 A. An individual abortion report for each abortion performed or
6 induced shall be completed by the attending physician. The report shall
7 be confidential and shall not contain the name or address of the woman.

8 The report shall include:

9 * * *

10 (18) ~~An instamatic~~ A photographic print or image produced as
11 the result of the ultrasound test required ~~under R.S. 40:1299.35.2(B).~~
12 to inform the woman of the probable gestational age of the unborn
13 child in accordance with R.S. 40:1299.35.6(B)(1)(c) and R.S.
14 40:1299.35.1(3) to determine viability of the unborn child in
15 accordance with R.S. 40:1299.35.2(C).

16 * * *

17 §1299.35.12. Emergency

18 The provisions of R.S. 40:1299.35.2, 1299.35.4, 1299.35.5, and
19 1299.35.6 shall not apply when a medical emergency compels the
20 immediate performance of an abortion ~~or termination of pregnancy~~
21 ~~after viability~~ because the continuation of the pregnancy poses an
22 immediate threat and grave risk to the life or permanent physical health
23 of the pregnant woman. ~~The~~ Within twenty-four hours, the attending
24 physician shall certify to the emergency need for the abortion and shall
25 enter such certification in the medical record of the pregnant woman.
26 ~~or termination of pregnancy after viability.~~

1 Section 2. This Act shall become effective upon signature by the
 2 governor or, if not signed by the governor, upon expiration of the time for bills
 3 to become law without signature by the governor, as provided in Article III,
 4 Section 18 of the Constitution of Louisiana. If vetoed by the governor and
 5 subsequently approved by the legislature, this Act shall become effective on
 6 the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument.

Donelon, Riddle

HB No. 1909

Abstract: Provides for regulation of late term abortion, including presence of a second attending physician and requirement of an ultrasound; adds drugs to the methods by which abortion may be performed.

Present law defines "abortion" as the deliberate termination of a human pregnancy after fertilization of a female ovum, by any person, including the pregnant woman herself, with an intention other than to produce a live birth, remove an ectopic pregnancy, or to remove a dead unborn child caused by a spontaneous abortion, missed abortion, or inevitable abortion.

Proposed law deletes present law and instead defines "abortion" or "induced abortion" as the act of using or prescribing any instrument, medicine, drug or any other substance, device or means with the intent to terminate the clinically diagnosable pregnancy of a woman with the knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to (1) save the life or preserve the health of the unborn child, (2) remove a dead unborn child caused by spontaneous abortion, missed abortion, or inevitable abortion, or (3) remove an ectopic pregnancy.

Present law provides that only a physician licensed to practice in Louisiana may perform an abortion in this state and that an ultrasound must be performed before the abortion.

Proposed law retains present law, but specifies that the physician shall give the pregnant woman the option of viewing the ultrasound images and that the physician shall enter his determination of viability and the ultrasound images into the medical record of the pregnant woman.

Proposed law provides for the Born-Alive Infant Protection Act, which specifies that the words "person", "human being", "child", and "infant" include every human infant who is born alive at any stage of development and that

every infant that survives an abortion procedure shall be given reasonable and immediate medical care.

Present law provides legislative findings and purpose regarding the state's right to regulate abortions in pursuit of its interest in the potentiality of human life.

Proposed law deletes these provisions.

Present law allows termination of pregnancy after viability only in cases of medical necessity. A physician performing such an abortion must certify the medical reasons which necessitated the abortion.

Proposed law retains present law but requires that the medical certification be made before the abortion is performed.

Proposed law requires that an abortion after viability utilize the method or technique most likely to preserve the life and health of the unborn child. Proposed law further requires the physician to record the available techniques considered and the reason for choosing the technique employed.

Proposed law also requires that an abortion after viability be attended by a second physician to take control of and provide immediate medical care for an infant born alive as a result of an abortion.

Present law provides that in a compelling emergency, the physician may perform an abortion without the ultrasound, without having to meet all conditions of the informed consent provisions, and without parental consent or a court order.

Proposed law retains present law emergency procedure allowances and allows the emergency procedure to be performed without the second physician in attendance and without the precertification of the necessity of the procedure.

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

(Amends R.S. 40:1299.35.1, 1299.35.2, 1299.35.4, 1299.35.10(A)(18), and 1299.35.12; Adds R.S. 40:1299.35.3)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Health and Welfare to the original bill.

1. Provided for naming the new §1299.35.3 the Born-Alive Infant Protection Act.

House Floor Amendments to the engrossed bill.

1. Deleted unnecessary language relative to the performance of an abortion by any means, whether surgical or by prescribing drugs or medication, which was regarded as duplicative.
2. Corrected internal citations.