

2016 Regular Session

HOUSE BILL NO. 618

BY REPRESENTATIVES WILLMOTT, AMEDEE, ANDERS, BAGLEY, BERTHELOT, BILLIOT, BROADWATER, TERRY BROWN, CARMODY, CONNICK, COUSSAN, COX, CROMER, DANAHAY, DAVIS, DEVILLIER, DWIGHT, EDMONDS, EMERSON, FALCONER, FOIL, GAROFALO, GISCLAIR, JIMMY HARRIS, HILL, HODGES, HOFFMANN, HORTON, HOWARD, IVEY, JACKSON, JEFFERSON, MIKE JOHNSON, ROBERT JOHNSON, NANCY LANDRY, LEBAS, LYONS, MAGEE, MCFARLAND, MIGUEZ, DUSTIN MILLER, GREGORY MILLER, JAY MORRIS, POPE, PUGH, PYLANT, REYNOLDS, SCHEXNAYDER, SCHRODER, SIMON, STOKES, WHITE, AND ZERINGUE

HUMAN REMAINS: Requires a health facility to provide notice of a parent's right to determine the final disposition of fetal remains

1 AN ACT

2 To enact Part VI of Subchapter B of Chapter 5-D of Title 40 of the Louisiana Revised

3 Statutes of 1950, to be comprised of R.S. 40:1191.1 through 1191.4, relative to fetal

4 remains; to provide for definitions; to require notification of parents' right to

5 determine the final disposition; to require notification of available counseling; to

6 provide for final disposition if no parental decision indicated after forty-eight hours;

7 to provide for a notice of parental right form; to establish a limitation of liability; to

8 provide for an effective date; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Part VI of Subchapter B of Chapter 5-D of Title 40 of the Louisiana

11 Revised Statutes of 1950, comprised of R.S. 40:1191.1 through 1191.4, is hereby enacted

12 to read as follows:

1                                    PART VI. DISPOSITION OF FETAL REMAINS2                    §1191.1. Definitions

3                                    As used in this Part, the following terms have the meaning ascribed to them  
4                    in this Section unless the context requires otherwise:

5                                    (1) "Final disposition" means the burial, cremation, or other disposition of  
6                    the remains of a human fetus following fetal death.

7                                    (2) "Health facility" means a facility licensed by the Department of Health  
8                    and Hospitals to provide health services.

9                                    (3) "Miscarried child" means the fetal remains resulting from a spontaneous  
10                    fetal death that does not require compulsory registration pursuant to the provisions  
11                    of R.S. 40:47.

12                    §1191.2. Final disposition of fetal remains; rights of parents; notice required;  
13                    exception

14                                    A. Prior to the final disposition of a miscarried child, but not more than  
15                    twenty-four hours after the miscarriage occurs in a health facility, the facility shall  
16                    notify the patient, or if the patient is incapacitated, the spouse of the patient, both  
17                    orally and in writing, of both of the following:

18                                    (1) The parent's right to arrange for the final disposition of the child through  
19                    the use of the notice of parental rights form as provided for in R.S. 40:1191.3.

20                                    (2) The availability of a chaplain or other counseling services concerning the  
21                    death of the child, if such services are provided by the health facility.

22                                    B.(1) The patient shall have forty-eight hours from receipt of the notice of  
23                    parental rights form provided by the health facility pursuant to Subsection A of this  
24                    Section to indicate on the notice of parental rights form the patient's intent to arrange  
25                    for the final disposition of the miscarried child and to return the notice of parental  
26                    rights form to the health facility.

27                                    (2) If the health facility receives the patient's completed notice of parental  
28                    rights form within the time period required by this Subsection, and once it is  
29                    medically appropriate for the final disposition of the fetal remains to occur, the

1 health facility shall make the remains available to transfer for a minimum of  
2 seventy-two hours. After the transfer, the final disposition of the fetal remains by  
3 the transferee shall be in accordance with the provisions of Chapter 10 of Title 8 of  
4 the Louisiana Revised Statutes of 1950.

5 (3) If the health facility does not receive the patient's completed notice of  
6 parental rights form within the time period required by this Subsection, the fetal  
7 remains shall be disposed of in accordance with the rules and regulations  
8 promulgated by the Department of Health and Hospitals.

9 C. No notice shall be required if both the patient and the patient's spouse are  
10 incapacitated or otherwise unable to receive the notice required by Subsection A of  
11 this Section.

12 §1191.3. Notice of parental rights form

13 The Department of Health and Hospitals shall promulgate, in accordance  
14 with the Administrative Procedure Act, a notice of parental rights form to be used  
15 by health facilities to comply with the provisions of this Part. The form shall include,  
16 at a minimum, all of the following:

17 (1) A definitive statement that reads as follows: "This notice of parental  
18 rights form is required to be provided to you pursuant to Louisiana law."

19 (2) A brief description of the provisions of this Part along with concise  
20 instructions for the patient to follow regarding how to properly complete the form  
21 and return it to the health facility in the event the patient desires to arrange for the  
22 final disposition of the miscarried child.

23 (3) A concise statement of the timelines that must be satisfied in order for  
24 the patient to arrange for the final disposition of the miscarried child.

25 (4) A listing of state, regional, or national grief counseling organizations that  
26 may provide counseling services concerning the death of a child.

27 §1191.4. Limitation of liability

28 The provisions of this Part shall not be construed to create a cause of action,  
29 nor shall the health facility, or any person authorized to act on behalf of the health

1        facility, be held civilly liable for any damages when a health facility makes a final  
 2        disposition of the fetal remains in accordance with the provisions of this Part.

3        Section 2. The Department of Health and Hospitals shall promulgate the notice of  
 4        parental rights form pursuant to R.S. 40:1191.3 as enacted by this Act prior to January 1,  
 5        2017.

6        Section 3(A). Except as provided in Section (3)(B) of this Act, this Act shall become  
 7        effective upon signature by the governor or, if not signed by the governor, upon expiration  
 8        of the time for bills to become law without signature by the governor, as provided by Article  
 9        III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently  
 10       approved by the legislature, this Act shall become effective on the day following such  
 11       approval.

12       (B). R.S. 40:1191.2 as enacted by this Act shall be effective January 1, 2017.

#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 618 Reengrossed

2016 Regular Session

Willmott

**Abstract:** Requires a health facility to provide notice to parents of the right to determine the final disposition of a miscarried child.

Proposed law requires a health facility, prior to the final disposition of a miscarried child, but not more than 24 hours after the miscarriage occurs in the facility, to notify the patient, or, if the patient is incapacitated, the spouse of the patient, both orally and in writing, of both of the following:

- (1) The parent's right to arrange for the final disposition of the child through the use of the notice of parental rights form.
- (2) The availability of a chaplain or other counseling services concerning the death of the child, whether provided by the facility or another provider.

No notice is required if both the patient and the patient's spouse are incapacitated or otherwise unable to receive the notice required by proposed law.

Proposed law grants the patient a period of 48 hours from receipt of the notice to elect to arrange for the final disposition of the child. Upon receipt of the parent's decision for final disposition, proposed law requires the health facility to make the remains available to transfer for a minimum of 72 hours, or else the health facility shall dispose of the remains in accordance with rules and regulations promulgated by the Dept. of Health and Hospitals (DHH).

Proposed law requires DHH to promulgate a standard notice of parental rights form to be used by health facilities and sets forth the minimum required content of the form.

Proposed law limits civil liability for health facilities or any person authorized to act on behalf of a health facility when acting pursuant to proposed law.

Proposed law requires DHH to promulgate the notice of parental rights form prior to Jan. 1, 2017, and requires health facilities to provide notice in accordance with proposed law beginning Jan. 1, 2017.

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

(Adds R.S. 40:1191.1-1191.4)

#### Summary of Amendments Adopted by House

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

1. Make technical changes.
2. Define "miscarried child".
3. Remove references to stillbirths.
4. Require DHH to promulgate a notice of parental rights form to be used by health facilities.
5. Limit liability for health facilities and persons authorized to act on their behalf.
6. Add an effective date.

#### The House Floor Amendments to the engrossed bill:

1. Make technical changes to relocate the promulgation deadline date and the notification requirement effective date from statutory law to an uncodified section.