

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 AND SENATOR BARROW

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:

13 PART VI. DISPOSITION OF FETAL REMAINS

14 §1191.1. Definitions

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

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

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

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

6                   §1191.2. Final disposition of fetal remains; rights of parents; notice required;  
 7                   exception

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

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

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

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

21                   (2) If the health facility receives the patient's completed notice of parental  
 22                   rights form within the time period required by this Subsection, and once it is  
 23                   medically appropriate for the final disposition of the fetal remains to occur, the  
 24                   health facility shall make the remains available to transfer for a minimum of  
 25                   seventy-two hours. After the transfer, the final disposition of the fetal remains by  
 26                   the transferee shall be in accordance with the provisions of Chapter 10 of Title 8 of  
 27                   the Louisiana Revised Statutes of 1950.

28                   (3) If the health facility does not receive the patient's completed notice of  
 29                   parental rights form within the time period required by this Subsection, the fetal

1 remains shall be disposed of in accordance with the rules and regulations  
2 promulgated by the Department of Health and Hospitals.

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

6 §1191.3. Notice of parental rights form

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

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

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

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

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

21 §1191.4. Limitation of liability

22 The provisions of this Part shall not be construed to create a cause of action,  
23 nor shall the health facility, or any person authorized to act on behalf of the health  
24 facility, be held civilly liable for any damages when a health facility makes a final  
25 disposition of the fetal remains in accordance with the provisions of this Part.

26 Section 2. The Department of Health and Hospitals shall promulgate the notice of  
27 parental rights form pursuant to R.S. 40:1191.3 as enacted by this Act prior to January 1,  
28 2017.

29 Section 3(A). Except as provided in Section (3)(B) of this Act, this Act shall become  
30 effective upon signature by the governor or, if not signed by the governor, upon expiration

1 of the time for bills to become law without signature by the governor, as provided by Article  
2 III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently  
3 approved by the legislature, this Act shall become effective on the day following such  
4 approval.

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

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_