

ACT No. 59

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.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____