

2019 Regular Session

SENATE BILL NO. 184

BY SENATORS MILKOVICH, CHABERT, ERDEY, FANNIN, GATTI, HENSGENS,  
HEWITT, JOHNS, LONG, MARTINY, MIZELL, RISER, JOHN  
SMITH, THOMPSON, WALSWORTH AND WHITE

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

ABORTION. Prohibits the abortion of an unborn human being with a detectable heartbeat.  
(See Act)

1 AN ACT

2 To enact R.S. 40:1061.1.3, relative to abortion; to prohibit the abortion of an unborn human

3 being with a detectable heartbeat; to provide definitions; to provide penalties; to

4 provide for effectiveness; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 40:1061.1.3 is hereby enacted to read as follows:

7 **§1061.1.3. Abortion prohibited; detectable fetal heartbeat; ultrasound required**

8 **A.(1)(a) Prior to any abortion being performed, there shall first be**

9 **performed an ultrasound, in accordance with the standards set forth in R.S.**

10 **40:1061.10(D), in order to determine whether or not a fetal heartbeat is present,**

11 **and the results of the ultrasound shall be included in the pregnant woman's**

12 **medical records.**

13 **(b) Except as provided in Paragraph (2), (3), or (4) of this Subsection, it**

14 **shall be unlawful for any person to knowingly perform an abortion with the**

15 **specific intent of causing or abetting the termination of the life of an unborn**

16 **human being when a fetal heartbeat has been detected. Any person who acts**

17 **based on the exceptions provided in Paragraph (2), (3), or (4) of this Subsection**

1 shall so note in the pregnant woman's medical records and shall specify in the  
2 pregnant woman's medical records which of the exceptions the person  
3 performing the abortion has invoked.

4 (2)(a) A person shall not be in violation of Paragraph (1) of this  
5 Subsection if the person performs a medical procedure designed to or intended,  
6 in that person's reasonable medical judgment, to prevent the death of a  
7 pregnant woman or to prevent a serious risk of the substantial and irreversible  
8 impairment of a major bodily function of the pregnant woman.

9 (b)(i) A person who performs a medical procedure as described in  
10 Subparagraph (a) of this Paragraph shall declare in writing, under penalty of  
11 perjury, that the medical procedure was necessary, to the best of that person's  
12 reasonable medical judgment, to prevent the death of the pregnant woman or  
13 to prevent a serious risk of the substantial and irreversible impairment of a  
14 major bodily function of the pregnant woman. The person shall also provide in  
15 that written statement the specific medical condition of the pregnant woman  
16 that the medical procedure was performed to address, and the medical rationale  
17 for the conclusion that the medical procedure was necessary to prevent the  
18 death of the pregnant woman or to prevent a serious risk of the substantial and  
19 irreversible impairment of a major bodily function of the pregnant woman.

20 (ii) The person who performs a medical procedure as described in  
21 Subparagraph (a) of this Paragraph shall place the written documentation  
22 required by this Subparagraph in the pregnant woman's medical records, and  
23 shall maintain a copy of the written documentation for not less than seven years.

24 (3) A person shall not be in violation of Paragraph (1) of this Subsection  
25 if the person has performed an examination for the presence of a fetal heartbeat  
26 in the unborn human individual using standard medical practice and that  
27 examination does not reveal a fetal heartbeat, or the person has been informed  
28 by a physician who has performed the examination for a fetal heartbeat that the  
29 examination did not reveal a fetal heartbeat.

1           (4) For purposes of this Section, "abortion" shall not include an abortion  
2           performed when the pregnancy is diagnosed as medically futile.

3           B. For purposes of this Section:

4           (1) "Fetal heartbeat" means cardiac activity or the steady and repetitive  
5           rhythmic contraction of the fetal heart within the gestational sac.

6           (2) "Physician" means an individual licensed by the Louisiana State  
7           Board of Medical Examiners.

8           (3) "Unborn human being" means an individual living member of the  
9           species Homo sapiens throughout the entire embryonic and fetal stages, from  
10           fertilization through full gestation and birth.

11           (4) "Medically futile" means that, in reasonable medical judgment, the  
12           unborn child has a profound and irremediable congenital or chromosomal  
13           anomaly that is incompatible with sustaining life after birth. This diagnosis shall  
14           be a medical judgment certified in the pregnant woman's medical record by a  
15           reasonably prudent physician who is knowledgeable about the case and the  
16           treatment possibilities with respect to the medical conditions involved.

17           C. Whoever violates this Section shall be prosecuted pursuant to the  
18           effective provisions of R.S. 14:87 and shall be subject to the penalties provided  
19           in R.S. 40:1061.29.

20           D. In addition to any other grounds provided by law, it shall be grounds  
21           for the nonissuance, suspension, revocation, or restriction of a license, or the  
22           denial of reinstatement or renewal of a license, issued by the Louisiana State  
23           Board of Medical Examiners, that the applicant or licensee has performed an  
24           abortion in violation of this Section.

25           E. This Section shall not be construed to repeal any other provision of  
26           law that restricts or regulates the performance of an abortion by a particular  
27           method or during a particular stage of a pregnancy.

28           F. The provisions of this Section are hereby repealed in favor of the  
29           provisions of R.S. 40:1061 immediately upon and to the extent that either:

1                    **(1) A decision of the United States Supreme Court upholds the authority**  
 2                    **of each of the several states of the United States or of the state of Louisiana to**  
 3                    **prohibit elective abortions.**

4                    **(2) An amendment to the Constitution of the United States of America**  
 5                    **is adopted that restores to each of the several states of the United States or to**  
 6                    **the state of Louisiana the authority to prohibit elective abortions.**

7                    Section 2. This Act shall become effective upon a final decision of the United States  
 8                    Court of Appeals for the Fifth Circuit upholding the Act that originated as Senate Bill 2116  
 9                    of the 2019 Regular Session of the Mississippi Legislature, which decision would thereby  
 10                    provide the authority for a state within the jurisdiction of that court of appeals to restrict  
 11                    abortion as provided in this Act.

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The original instrument and the following digest, which constitutes no part  
 of the legislative instrument, were prepared by Alden A. Clement Jr.

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DIGEST

SB 184 Reengrossed

2019 Regular Session

Milkovich

Proposed law provides prior to any abortion being performed, there shall first be performed an ultrasound, in order to determine whether or not a fetal heartbeat is present, and the results of the ultrasound shall be included in the pregnant woman's medical records.

Proposed law provides that it is unlawful for any person to knowingly perform an abortion with the specific intent of causing or abetting the termination of the life of an unborn human being when a fetal heartbeat has been detected.

Proposed law provides that a person is not in violation of proposed law under either of the following circumstances, but must note in the pregnant woman's medical records which of the exceptions the person performing the abortion has invoked:

- (1) The person performs a medical procedure designed to or intended, in that person's reasonable medical judgment, to prevent the death of a pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman. The person must declare in writing, under penalty of perjury, that the medical procedure was necessary, to the best of that person's reasonable medical judgment, to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman. The person must also provide in that written statement the specific medical condition of the pregnant woman that the medical procedure was performed to address, and the medical rationale for the conclusion that the medical procedure was necessary to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman. The written documentation required by proposed law must be placed in the pregnant woman's medical records, and a copy maintained for at least seven years.
- (2) The person has performed an examination for the presence of a fetal heartbeat in the

unborn human individual using standard medical practice and that examination does not reveal a fetal heartbeat, or the person has been informed by a physician who has performed the examination for a fetal heartbeat that the examination did not reveal a fetal heartbeat.

Proposed law provides that for purposes of proposed law, "abortion" does not include an abortion performed when the pregnancy is diagnosed as "medically futile."

Proposed law provides the following definitions:

- (1) "Fetal heartbeat" means cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.
- (2) "Physician" means an individual licensed by the Louisiana State Board of Medical Examiners.
- (3) "Unborn human being" means an individual living member of the species Homo sapiens throughout the entire embryonic and fetal stages, from fertilization through full gestation and birth.
- (4) "Medically futile" means that, in reasonable medical judgment, the unborn child has a profound and irremediable congenital or chromosomal anomaly that is incompatible with sustaining life after birth. This diagnosis is to be a medical judgment certified in the pregnant woman's medical record by a reasonably prudent physician who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved."

Proposed law provides that whoever violates the provisions of proposed law is to be prosecuted pursuant to the effective provisions of present law relative to criminal abortion and is to be fined up to \$1,000 per incidence or occurrence, or imprisoned for up to two years, or both, in accordance with the penalties contained in present law relative to unlawful abortion.

Proposed law provides that, in addition to any other grounds provided by law, it will be grounds for the nonissuance, suspension, revocation, or restriction of a license, or the denial of reinstatement or renewal of a license, issued by the Louisiana State Board of Medical Examiners, that the applicant or licensee has performed an abortion in violation of proposed law.

Proposed law provides that proposed law cannot be construed to repeal any other provision of present law that restricts or regulates the performance of an abortion by a particular method or during a particular stage of a pregnancy.

Proposed law provides that the provisions of proposed law are repealed in favor of the provisions of present law banning all elective abortions immediately upon and to the extent that either:

- (1) A decision of the U.S. Supreme Court upholds the authority of each of the several states of the United States or Louisiana to prohibit elective abortions.
- (2) An amendment to the U.S. Constitution is adopted that restores to each of the several states of the United States or to Louisiana the authority to prohibit elective abortions.

Effective upon a final decision of the U.S. Court of Appeals for the 5th Circuit upholding the Act that originated as Senate Bill 2116 of the 2019 Regular Session of the Mississippi Legislature, which decision would provide the authority for a state within the jurisdiction of that court to restrict abortion as provided in proposed law.

(Adds R.S. 40:1061.1.3)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary C to the original bill

1. Adds exception to proposed law for "medically futile" pregnancies and defines "medically futile."
2. Changes effectiveness of proposed law from governor's signature to final decision of 5th Circuit Court of Appeals upholding Mississippi's "heartbeat" law.

Senate Floor Amendments to engrossed bill

1. Adds language that prior to any abortion being performed an ultrasound is required to determine whether or not a fetal heartbeat is present, and the results of the ultrasound shall be included in the pregnant woman's medical records.