

# Louisiana

## **La. R.S. §40: 1061. Abortion; prohibition**

A. The provisions of this Act shall become effective immediately upon, and to the extent permitted by, the occurrence of any of the following circumstances:

(1) Any decision of the Supreme Court of the United States which overrules, in whole or in part, *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed. 2d 147 (1973), thereby restoring to the state of Louisiana the authority to prohibit or limit abortion.

(2) Adoption of an amendment to the United States Constitution which, in whole or in part, restores to the state of Louisiana the authority to prohibit or limit abortion.

(3) A decision of the Supreme Court of the United States in the case of *Dobbs v. Jackson Women's Health Organization*, Docket No. 19-1392, which overrules, in whole or in part, *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed. 2d 147 (1973), thereby restoring to the state of Louisiana the authority to prohibit or limit abortion.

B. The provisions of this Act shall be effective relative to the appropriation of Medicaid funds, to the extent consistent with any executive order by the President of the United States, federal statute, appropriation rider, or federal regulation that sets forth the limited circumstances in which states must fund abortion to remain eligible to receive federal Medicaid funds pursuant to 42 U.S.C. 1396 et. seq.

C. No person may knowingly administer to, prescribe for, or procure for, or sell to any pregnant woman any medicine, drug, or other substance with the specific intent of causing or abetting the termination of the life of an unborn human being. No person may knowingly use or employ any instrument or procedure upon a pregnant woman with the specific intent of causing or abetting the termination of the life of an unborn human being.

D. Any person in violation of this Section shall be prosecuted pursuant to the effective provisions of R.S. 14:87.7, and shall be subject to the penalties provided in R.S. 40:1061.29.

E. Nothing in this Section may be construed to prohibit the sale, use, prescription, or administration of a contraceptive measure, drug or chemical, if it is administered prior to the time when a pregnancy could be determined through conventional medical testing and if the contraceptive measure is sold, used, prescribed, or administered in accordance with manufacturer instructions.

F. It shall not be a violation of Subsection C of this Section for a licensed physician to perform a medical procedure necessary in reasonable medical judgment to prevent the death or substantial risk of death due to a physical condition, or to prevent the serious, permanent impairment of a life-sustaining organ of a pregnant woman. However, the physician shall make reasonable medical efforts under the circumstances to preserve both the life of the mother and the life of her unborn child in a manner consistent with reasonable medical practice.

G. Medical treatment provided to the mother by a licensed physician which results in the accidental or unintentional injury or death to the unborn child is not a violation of Subsection C of this Section.

H. Nothing in this Section may be construed to subject the pregnant mother upon whom any abortion is performed or attempted to any criminal conviction and penalty.

I. The terms as used in this Section have the same meaning as the definitions provided in R.S. 14:87.1.

J. This Section shall be known, and may be cited, as the Human Life Protection Act. Acts 2006, No. 467, §1; Redesignated from R.S. 40:1299.30 by HCR 84 of 2015 R.S.; Acts 2018, No. 468, §2, eff. May 23, 2018; Acts 2022, No. 545, §3; Acts 2022, No. 548, §2.

NOTE: Former R.S. 40:1061 redesignated to R.S. 40:1121.1 by HCR 84 of 2015 R.S.

**La. R.S. §40:1061.1. Legislative intent; construction of abortion provisions law regulating abortion**

A.(1) It is the intention of the Legislature of Louisiana to regulate, prohibit, or restrict abortion to the fullest extent permitted by the decisions of the Supreme Court of the United States. The legislature does solemnly declare, find, and reaffirm the longstanding public policy of this state that every unborn child is a human being from the moment of conception and is, therefore, a legal person for purposes under the laws of this state and Constitution of Louisiana.

(2) The legislature further finds and declares that the longstanding policy of this state to protect the right to life of every unborn child from conception by prohibiting abortion is impermissible only because of the decisions of the Supreme Court of the United States and that, therefore, if those decisions of the Supreme Court of the United States are ever reversed or modified or the United States Constitution is amended to allow protection of the unborn then the public policy of this state to prohibit abortions shall be enforced.

B.(1) The provisions of this Chapter that regulate the practice of abortion shall not be construed to repeal any other provision of law that restricts or prohibits abortion.

(2) The provisions of this Chapter that regulate the practice of abortion are enacted to provide for the health, safety, and welfare of women in outpatient abortion facilities until such time and to the extent that the state of Louisiana no longer regulates outpatient abortion facilities.

C. The provisions of this Chapter that regulate the practice of abortion are subject to R.S. 40:2175.10.

Added by Acts 1981, No. 774, §1, eff. July 23, 1981; Redesignated from R.S. 40:1299.35.0 by HCR 84 of 2015 R.S.; Acts 2022, No. 545, §§3, 6B; Redesignated from R.S. 40:1061.8.

NOTE: Former R.S. 40:1061.1 redesignated as R.S. 40:1061.1.2 by Acts 2022, No. 545, §6C.

**La. R.S. § 40:1061.10. Abortion by physician; determination of viability; ultrasound test required; exceptions; penalties**

A.

(1) **Physician requirements.** No person shall perform or induce an abortion unless that person is a physician licensed to practice medicine in the state of Louisiana and is currently board-certified in obstetrics and gynecology or family medicine or enrolled in a residency program for obstetrics and gynecology or family medicine, when that resident performs or induces an abortion under the direct supervision of a physician who is board-certified in obstetrics and gynecology or family medicine. Any outpatient abortion facility that knowingly or negligently employs, contracts with, or provides any valuable consideration for the performance of an abortion in an outpatient abortion facility by any person who does not meet the requirements of this Section is subject to having its license denied, non-renewed, or revoked by the Department of Health and Hospitals in accord with [R.S. 40:2175.6](#). For the purposes of this Subsection, “direct supervision” shall mean that the physician must be present in the hospital, on the campus, or in the outpatient facility, and immediately available to furnish assistance and direction throughout the performance of the procedure. The physician need not be present in the room when the procedure is performed in order to maintain direct supervision.

(2) On the date the abortion is performed or induced, a physician performing or inducing an abortion shall:

(a) Have active admitting privileges at a hospital that is located not further than thirty miles from the location at which the abortion is performed or induced and that provides obstetrical or gynecological health care services. For purposes of this Section, “active admitting privileges” means that the physician is a member in good standing of the medical staff of a hospital that is currently licensed by the department, with the ability to admit a patient and to provide diagnostic and surgical services to such patient consistent with the requirements of Paragraph (A)(1) of this Subsection.

(b) Provide the pregnant woman with all of the following before the abortion is performed or induced:

(i) A telephone number by which the pregnant woman may reach the physician, or other health care personnel employed by the physician or facility at which the abortion was performed or induced, who has twenty-four hours per day access to the woman’s relevant medical records so that the woman may request assistance related to any complication that arises from the performance or induction of the abortion, or to ask health-related questions regarding the abortion.

(ii) The name and telephone number of the hospital nearest to the home of the pregnant woman at which an emergency arising from the abortion would be treated.

(c) Whoever violates the provisions of Subparagraph (2)(a) of this Paragraph shall be fined not more than four thousand dollars per violation.

**B. Viability.** — Exception the case of a medical emergency, before a physician performs an abortion, the physician, by use of his good faith medical judgment, shall first determine if the unborn child is viable.

**C. Determination of Viability.** — In order to preserve the health of the woman, and in order to assist in making an accurate finding of viability considering the gestational age, weight, and lung maturity of the unborn child, the physician intending to terminate a pregnancy shall first perform or cause to be performed an ultrasound examination pursuant to the provisions of Subsection D of this Section. The physician shall enter such findings and determination of viability in the medical record of the pregnant woman, along with photographs or prints of the ultrasound evidencing the findings.

**D. Ultrasound Requirements.** — Except in the case of a medical emergency, and in addition to the provisions of [R.S. 40:1061.17](#), consent to an abortion of an unborn child at any stage of gestational development is voluntary and informed only if an obstetric ultrasound is performed in accordance with the provisions of this Section.

**(1) Qualifications to perform ultrasound.** — The ultrasound shall be performed by the physician who is to perform the abortion or a qualified person who is the physician’s agent. For purposes of this Section, “qualified person” means a person having documented evidence that he or she has completed a course in the operation of ultrasound equipment and is in compliance with any other requirements of law regarding the operation of ultrasound equipment.

**(2) Requirements.**

(a) Except as provided in Subparagraph (b) of this Paragraph, at least seventy-two hours prior to the woman's having any part of an abortion performed or induced, and prior to the administration of any anesthesia or medication in preparation for the abortion on the woman, the physician who is to perform the abortion or a qualified person who is the physician's agent shall comply with all of the following requirements:

(i) Perform an obstetric ultrasound on the pregnant woman; simultaneously display the screen which depicts the active ultrasound images so that the pregnant woman may view them; and make audible the fetal heartbeat, if present, in a quality consistent with current medical practice. Nothing in this Section shall be construed to prevent the pregnant woman from not listening to the sounds detected by the fetal heart monitor, or from not viewing the images displayed on the ultrasound screen.

(ii) Provide a simultaneous and objectively accurate oral explanation of what the ultrasound is depicting, in a manner understandable to a layperson, which shall include the presence and location of the unborn child within the uterus and the number of unborn children depicted, the dimensions of the unborn child, and the presence of cardiac activity if present and viewable, along with the opportunity for the pregnant woman to ask questions.

(iii) Offer the pregnant woman the option of requesting an ultrasound photograph or print of her unborn child of a quality consistent with current standard medical practice that accurately portrays, to the extent feasible, the body of the unborn child including limbs, if present and viewable.

(iv) Prior to the ultrasound, obtain from the pregnant woman a copy of a completed, signed, and dated election form. The election form shall be produced and made available by the department, and shall state as follows:

**Ultrasound Before Abortion Notice and Election Form**

Louisiana law requires an ultrasound examination prior to the performance of an abortion. By signing below, I certify that I understand the following:

- (1) I have the option to look at or look away from the ultrasound display at any time.
- (2) I have the option to listen to the heartbeat of the unborn child that is required to be made audible unless I decline by initialing here:.
- (3) I am required by law to hear an oral explanation of the ultrasound images, unless I certify below that I am pregnant due to an act of rape or crime against nature as defined by [R.S. 14:89\(A\)\(2\)](#).
- (4) I have the option to ask and receive answers to any questions about the images of the unborn child.
- (5) I have the option to ask for an ultrasound photographic print depicting the unborn child.

Signature Date

**OPTION FOR WOMEN WHO HAVE FILED LAW ENFORCEMENT REPORTS:**

I certify that I have reported an act of rape or to law enforcement officials, and that I decline to hear an oral explanation of the ultrasound images. I certify that I have reported an act of rape or to law enforcement officials, and that I decline to hear an oral explanation of the ultrasound images. crime against nature as defined by [R.S. 14:89\(A\)\(2\)](#) I certify that I have reported an act of rape or to law enforcement officials, and that I decline to hear an oral explanation of the ultrasound images. I certify that I have reported an act of rape or to law enforcement officials, and that I decline to hear an oral explanation of the ultrasound images.

Signature Date

(v) Orally read the following statement to the pregnant woman in the ultrasound examination room prior to beginning the ultrasound examination, and certify by signature on a form that shall be produced and made available by the department that the following statement was delivered orally:

“During this ultrasound examination, you have the right to an oral explanation of the results. You have the option to view the images on the ultrasound screen. The heartbeat of the unborn child, if present, will be made audible, unless you declined on the election form. You have the right to receive answers to any questions you ask about your ultrasound examination. You have the right to receive an ultrasound photographic print, which will be provided at your request.”

(vi) Retain copies of the election form and certification prescribed by Items (iv) and (v) of this Subparagraph. The certification shall be placed in the medical file of the woman and shall be kept by the abortion provider for a period of not less than seven years. If the woman is a minor, the certification shall be placed in the medical file of the minor and kept for at least seven years or for five years after the minor reaches the age of majority, whichever is greater. The woman’s medical files shall be kept confidential as provided by law.

(b) If the pregnant woman certifies in writing that she currently lives one hundred fifty miles or more from the nearest licensed outpatient abortion facility to her residence, then the physician who is to perform the abortion or a qualified person who is the physician’s agent shall comply with all of the requirements of Subparagraph (a) of this Paragraph at least twenty-four hours prior to the woman having any part of an abortion performed or induced.

**(3) Options to view or listen to required medical information.**

- (a) A pregnant woman may choose not to exercise her option to request an ultrasound photograph print as provided for under this Section.
- (b) A pregnant woman may choose not to view the ultrasound images required to be provided to and reviewed with the pregnant woman as provided for under this Section.
- (c) A pregnant woman may choose not to listen to the sounds detected by the fetal heart monitor required to be provided to the pregnant woman as provided for under this Section.
- (d) The physician, the agent of the physician, and the pregnant woman are not subject to a penalty under this Chapter solely because the pregnant woman chooses not to request an ultrasound print, view the ultrasound images, or hear the heart

auscultation.

**(4) Medical emergencies.**

**(a)** “Medical emergency” as used in this Section, means the existence of any physical condition, not including any emotional, psychological, or mental condition, which a reasonably prudent physician, with knowledge of the case and treatment possibilities with respect to the medical conditions involved, would determine necessitates the immediate abortion of the pregnancy to avert the pregnant woman’s death or to avert substantial and irreversible impairment of a major bodily function arising from continued pregnancy.

**(b)** Upon a determination by a physician that a medical emergency exists with respect to a pregnant woman, the provider shall certify in writing the specific medical conditions that constitute the emergency. The certification shall be placed in the medical file of the woman and shall be kept by the abortion provider for a period of not less than seven years. If the woman is a minor, then the certification shall be placed in the medical file of the minor and kept for at least seven years or for five years after the minor reaches the age of majority, whichever is greater. The woman’s medical files shall be kept confidential as provided by law.

**(5) Penalties.** — Any person who intentionally or knowingly fails to comply with any requirement of this Section shall be subject to the penalties as provided for in [R.S. 40:1061.29](#).

**(6) Protection of privacy in court proceedings.** — In every civil or criminal proceeding or action brought under this Section, the court shall rule whether the anonymity of any female upon whom an abortion has been performed or attempted shall be preserved from public disclosure if she does not give her consent to such disclosure. The court may close any proceedings in the case and enter other protective orders to preserve the privacy of the woman upon whom the abortion has been performed or attempted. This Section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant.

**E.** Pregnant rape survivors or victims of crime against nature as defined by [R.S. 14:89\(A\)\(2\)](#) who have reported the act to law enforcement officials shall have the opportunity to opt out of the oral explanation provisions of Subparagraph D(2)(b) of this Section, in addition to having the same options to view or listen to the required medical information as provided in Paragraph (D)(3) of this Section.

**F.** The provisions of [R.S. 40:1061.1](#) shall apply to this Section.

**La. R.S. § 40:1061.11. Drugs or chemicals used; penalties.**

**A.** When any drug or chemical is used for the purpose of inducing an abortion as defined in [R.S. 40:1061.9\(1\)](#), the physician who prescribed the drug or chemical shall be in the same room and in the physical presence of the pregnant woman when the drug or chemical is initially administered, dispensed, or otherwise provided to the pregnant woman.

**B.** The drug or chemical shall not be administered, dispensed, or otherwise provided to the pregnant woman by a physician or any person acting under the physician’s direction, whether in a licensed outpatient abortion facility, private medical office or any other facility, unless the physician has obtained the voluntary and informed consent of the pregnant woman pursuant to the provisions of [R.S. 40:1061.17](#) and the requirements set forth in that Section.

C. If a physician prescribes, dispenses, administers, or provides any drug or chemical to a pregnant woman for the purpose of inducing an abortion as defined in [R.S. 40:1061.9](#), the physician shall report the abortion to the Department of Health and Hospitals as provided in [R.S. 40:1061.21](#).

D. In addition to the requirements of reporting complications to the Department of Health and Hospitals pursuant to [R.S. 40:1061.21](#), if the physician knows that the woman experienced a serious adverse event, as defined by the Med Watch Reporting System, during or after the administration or use of the drug, the physician shall also report the event to the United States Food and Drug Administration through the Med Watch Reporting System not later than the third day after the date the physician learns that the event occurred.

E. The Louisiana State Board of Medical Examiners may take disciplinary action as authorized in [R.S. 37:1261](#) et seq. or any other applicable provision of law against a physician who violates any provision of this Section.

F. Any person not under the direct and immediate supervision of a physician who knowingly performs or attempts to perform an abortion using chemicals or drugs in violation of this Section shall be subject to penalties pursuant to [R.S. 40:1061.29](#). No penalty may be assessed against the woman who undergoes the abortion.

#### **La. R.S. § 40:1061.29. Penalties**

A. Whoever violates the provisions of this Chapter shall be fined not more than one thousand dollars per incidence or occurrence, or imprisoned for not more than two years, or both.

B. Whoever violates the provisions of this Chapter shall be subject to a civil fine of one thousand dollars per incidence or occurrence. In addition to any other authority granted by the constitution and laws of this state, the attorney general shall have the authority to pursue the civil fines provided for in this Section.

C. In addition to whatever remedies are otherwise available under the law of this state, failure to comply with the provisions of this Chapter shall:

(1) Provide a basis for a civil malpractice action. Such an action may be brought by the woman upon whom the abortion was performed. Any intentional violation of this Chapter shall be admissible in a civil suit as prima facie evidence of a failure to comply with the requirements of this Chapter. When requested, the court shall allow a woman to proceed using solely her initials or a pseudonym and may close any proceedings in the case and enter other protective orders to preserve the privacy of the woman upon whom the abortion was performed.

(2) Provide a basis for professional disciplinary action, including but not limited to any action authorized under [R.S. 37:1261](#) et seq.

(3) Provide a basis for recovery for the woman for the death of her unborn child under [Civil Code Article 2315.2](#), whether or not the unborn child was viable at the time the abortion was performed, or was born alive.

(4) Provide a basis for the attorney general, the district attorney in whose jurisdiction the violation occurred, or the secretary of the department to obtain a writ of injunction, which shall not be subject to being released upon bond. The trial of the proceeding shall be

summary and by the judge without a jury.

### **La. R.S. § 40:1061.1.2. Pain-Capable Unborn Child Protection Act**

A. This Section may be cited as the "Pain-Capable Unborn Child Protection Act".

B. Legislative intent. (1) The legislature makes the following findings:

(a) Pain receptors (nociceptors) are present throughout the unborn child's entire body and nerves link these receptors to the brain's thalamus and subcortical plate by no later than twenty weeks.

(b) By eight weeks after fertilization, the unborn child reacts to touch. After twenty weeks, the unborn child reacts to stimuli that would be recognized as painful if applied to an adult human, for example, by recoiling.

(c) In the unborn child, application of such painful stimuli is associated with significant increases in stress hormones known as the stress response.

(d) Subjection to such painful stimuli is associated with long-term harmful neurodevelopmental effects, such as altered pain sensitivity and, possibly, emotional, behavioral, and learning disabilities later in life.

(e) For the purposes of surgery on unborn children, fetal anesthesia is routinely administered and is associated with a decrease in stress hormones compared to their level when painful stimuli are applied without such anesthesia.

(f) The position, asserted by some medical experts, that the unborn child is incapable of experiencing pain until a point later in pregnancy than twenty weeks after fertilization predominately rests on the assumption that the ability to experience pain depends on the cerebral cortex and requires nerve connections between the thalamus and the cortex. However, recent medical research and analysis, especially since 2007, provides strong evidence for the conclusion that a functioning cortex is not necessary to experience pain.

(g) Substantial evidence indicates that children born missing the bulk of the cerebral cortex, those with hydranencephaly, nevertheless experience pain.

(h) In adults, stimulation or ablation of the cerebral cortex does not alter pain perception, while stimulation or ablation of the thalamus does.

(i) Substantial evidence indicates that structures used for pain processing in early development differ from those of adults, using different neural elements available at specific times during development, such as the subcortical plate, to fulfill the role of pain processing.

(j) The position, asserted by some medical experts, that the unborn child remains in a coma-like sleep state that precludes the unborn child's experiencing pain is inconsistent with the documented reaction of unborn children to painful stimuli and with the experience of fetal surgeons who have found it necessary to sedate the unborn child with anesthesia to prevent the unborn child from thrashing about in reaction to invasive surgery.

(k) Consequently, there is substantial medical evidence that an unborn child is capable of experiencing pain by twenty weeks after fertilization.

(2)(a) It is the purpose of the state to assert a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain.

(b) Louisiana's compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain is intended to be separate from and independent of Louisiana's compelling state interest in protecting the lives of unborn children from the stage of viability, and neither state interest is intended to replace the other.



(3) Mindful of *Leavitt v. Jane L.*, 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion the United States Supreme Court noted that an explicit statement of legislative intent specifically made applicable to a particular statute is of greater weight than a general savings or severability clause, it is the intent of the state that if any one or more provisions, sections, subsections, sentences, clauses, phrases or words of this Section or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of this Section shall remain effective notwithstanding such unconstitutionality. Moreover, the state declares that it would have passed this Section, and each provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more provisions, sections, subsections, sentences, clauses, phrases or words, or any of their applications, were to be declared unconstitutional.

C. Definitions. For purposes of this Section, the following terms shall have the following meanings unless the context clearly indicates otherwise:

(1) "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as the result of natural causes in utero, accidental trauma, or a criminal assault on the pregnant woman or her unborn child, and which causes the premature termination of the pregnancy.

(2) "Attempt to perform or induce an abortion" means an act, or an omission of a statutorily required act, that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance or induction of an abortion in this state in violation of this Section.

(3) "Department" means Louisiana Department of Health.

(4) "Fertilization" means the fusion of a human spermatozoon with a human ovum.

(5) "Medical emergency" means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman that it necessitates the immediate abortion of her pregnancy without first determining postfertilization age to avert her death or for which the delay necessary to determine postfertilization age will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

(6) "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.

(7) "Physician" means any person licensed to practice medicine and surgery or osteopathic medicine and surgery in the state of Louisiana.

(8) "Postfertilization age" means the age of the unborn child as calculated from the fusion of a human spermatozoon with a human ovum.

(9) "Probable postfertilization age of the unborn child" means what, in reasonable medical judgment, will with reasonable probability be the postfertilization age of the unborn child at the time the abortion is planned to be performed or induced.

(10) "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

(11) "Unborn child" or "fetus" each mean an individual organism of the species homo sapiens from fertilization until live birth.

(12) "Woman" means a female human being whether or not she has reached the age of majority.

D. Determination of post fertilization age.

(1) Except in the case of a medical emergency or when a pregnancy is diagnosed as medically futile, no abortion shall be performed or induced or be attempted to be performed or induced unless the physician performing or inducing it has first made a determination of the probable post fertilization age of the unborn child or relied upon such a determination made by another physician. In making such a determination, the physician shall make such inquiries of the woman and perform or cause to be performed such medical examinations and tests as a reasonably prudent physician, knowledgeable about the case and the medical conditions involved, would consider necessary to perform in making an accurate diagnosis with respect to post fertilization age.

(2) Failure by any physician to conform to any requirement of this Section constitutes "unprofessional conduct" pursuant to R.S. 37:1261.

E. Abortion of unborn child of twenty or more weeks post fertilization age prohibited.

(1) No person shall perform or induce or attempt to perform or induce an abortion upon a woman when it has been determined, by the physician performing or inducing or attempting to perform or induce the abortion or by another physician upon whose determination that physician relies, that the probable post fertilization age of the woman's unborn child is twenty or more weeks, unless the pregnancy is diagnosed as medically futile or, in reasonable medical judgment, she has a condition which so complicates her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions.

(2) When an abortion upon a woman whose unborn child has been determined to have a probable post fertilization age of twenty or more weeks is not prohibited by Paragraph (1) of this Subsection, the physician shall terminate the pregnancy in the manner which, in reasonable medical judgment, provides the best opportunity for the unborn child to survive, unless, in reasonable medical judgment, termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions, of the woman than would other available methods.

F. Penalties. Any person who intentionally or knowingly fails to comply with the requirements of this Section shall be subject to the penalties as provided for in R.S. 40:1061.29.

G. Construction. This Section shall not be construed to repeal, by implication or otherwise, R.S. 40:1061.10 or any otherwise applicable provision of Louisiana law regulating or restricting abortion. An abortion that complies with this Section, but violates the provisions of R.S. 40:1061.10 or any otherwise applicable provision of Louisiana law, shall be deemed unlawful as provided in such provision. An abortion that complies with the provisions of R.S. 40:1061.10 or any otherwise applicable provision of Louisiana law regulating or restricting abortion, but violates this Section, shall be deemed unlawful as provided in this Section. If some or all of the provisions of this Section are temporarily or permanently restrained or enjoined by judicial order, all other provisions of Louisiana law regulating or restricting abortion shall be enforced as though such restrained or enjoined provisions had not been adopted; provided, however, that whenever such temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, such provisions shall have full force and effect.

H. The provisions of R.S. 40:1061.1 shall apply to this Section.

Acts 2012, No. 738, §1; Redesignated from R.S. 40:1299.30.1 by HCR 84 of 2015 R.S.; Acts 2022, No. 545, §§3, 6C; Redesignated from R.S. 40:1061.1.

NOTE: Former R.S. 40:1061.1.2 redesignated as R.S. 40:1061.1.4 by Acts 2022, No. 545, §6C.

**La. R.S. §40:1061.1.3. Louisiana Unborn Child Protection from Dismemberment Abortion Act**

A. This Section shall be known and may be cited as the "Louisiana Unborn Child Protection from Dismemberment Abortion Act".

B. Repealed by Acts 2022, No. 545, §4.

C.(1) Notwithstanding any other provision of law, it shall be unlawful for any person to intentionally perform or attempt to perform a dismemberment abortion and thereby kill an unborn child unless necessary to prevent serious health risk to the unborn child's mother.

(2) No woman upon whom an abortion is performed or attempted to be performed shall be thereby liable for performing or attempting to perform a dismemberment abortion. No nurse, technician, secretary, receptionist, or other employee or agent who is not a physician but who acts at the direction of a physician, and no pharmacist or other individual who is not a physician but who fills a prescription or provides instruments or materials used in an abortion at the direction of or to a physician shall be thereby liable for performing or attempting to perform a dismemberment abortion.

D. Whoever violates the provisions of this Section shall be fined not more than one thousand dollars per incidence or occurrence, or imprisoned for not more than two years, or both. In addition to whatever remedies are otherwise available under the laws of this state, failure to comply with the provisions of this Section shall provide all of the following:

(1) A basis for a cause of action for civil damages for injuries and wrongful death as more fully set forth in Civil Code Articles 2315.1 and 2315.2, whether or not the unborn child was viable at the time the abortion was performed, or was born alive, except that such causes of action shall be maintained only by the following persons:

(a) The natural or biological father of the aborted infant or fetus, unless such father's criminal conduct caused the pregnancy.

(b) The mother of the aborted infant or fetus, subject to the provisions of Subsection F of this Section.

(c) The parents or guardian on behalf of the mother of the aborted infant or fetus if the mother was a minor at the time of the abortion, unless the parents or guardian consented to the dismemberment abortion.

(2) A basis for professional disciplinary action under R.S. 37:1261 et seq.

E.(1) A physician charged with an offense pursuant to this Section may seek a hearing before the Louisiana State Board of Medical Examiners on whether the physician's conduct was necessary to save the life of the mother whose life was endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

(2) The findings concerning the issue provided for in Paragraph (1) of this Subsection are admissible on that issue at the trial of the physician. Upon motion of the physician, the court shall delay the beginning of the trial for not more than thirty days to permit such hearing to take place; however, this delay may be extended for good cause.

F. When requested, the court shall allow a woman to proceed using solely her initials or a pseudonym and may close any proceedings in the case and enter other protective orders to preserve the privacy of the woman upon whom the abortion was performed.

G. Any person who is not a physician or not otherwise legally authorized by the state to perform abortions, but who nevertheless directly performs a dismemberment abortion, shall be subject to the provisions of this Section.

H. Nothing in this Section shall be construed as creating or recognizing a right to abortion, or a right to a particular method of abortion.

I. The provisions of R.S. 40:1061.1 shall apply to this Section.

Acts 2016, No. 264, §1; Acts 2022, No. 545, §§3, 4, 6C; Redesignated from R.S. 40:1061.1.1.

NOTE: Former R.S. 40:1061.1.3 redesignated as R.S. 40:1061.1.5 by Acts 2022, No. 545, §6C.

#### **La. R.S. §40:1061.1.4. Abortion based on genetic abnormality; prohibition**

A. Repealed by Acts 2022, No. 545, §4.

B. Notwithstanding any other provision of law, it shall be unlawful for any person to intentionally perform or attempt to perform an abortion of an unborn child of twenty or more weeks post fertilization age, as provided for in R.S. 40:1061.1.2, with knowledge that the pregnant woman is seeking the abortion solely because the unborn child has been diagnosed with either a genetic abnormality or a potential for a genetic abnormality.

C.(1) It shall be unlawful for a person to intentionally perform or attempt to perform an abortion of an unborn child of less than twenty weeks post fertilization age without first providing the pregnant woman with an informational document including resources, programs, and services for pregnant women who have a diagnosis of fetal genetic abnormality and resources, programs, and services for infants and children born with disabilities. The informational document provided for in this Subsection shall be given to the pregnant woman at the same time as the requirements in R.S. 40:1061.17(B).

(2) The Louisiana Department of Health shall develop an informational document to comply with the mandate established in this Section to include resources, programs, and services for pregnant women who have a diagnosis of fetal genetic abnormality and resources, programs, and services for infants and children born with disabilities and shall make such information available to any requesting provider of women's health care services and shall maintain the information on a link on the department's website.

(3) No person shall be found in violation of this Subsection, and no penalty for a violation of this Subsection shall be assessed, in any instance in which the informational document required by this Subsection is not available for use.

D. Whoever violates the provisions of this Section shall be subject to the penalties provided in R.S. 40:1061.29.

E. The provisions of this Section shall not apply whenever the abortion is necessary to save the life of the mother.

Acts 2016, No. 563, §1, eff. June 17, 2016; Acts 2018, No. 77, §1, eff. May 10, 2018; Acts 2022, No. 545, §4; Redesignated from R.S. 40:1061.1.2.

**NOTE: LA. RS 40: §1061.1.5 eff. upon final decision of the U.S. Court of Appeals of the 5th Circuit upholding the Act that originated as SB 2116 of the 2019 R.S. of the Mississippi Legislature.**

#### **La. RS §40 1061.1.5. Abortion prohibited; detectable fetal heartbeat; ultrasound required**

A.(1)(a) Prior to any abortion being performed, there shall first be performed an ultrasound, in accordance with the standards set forth in R.S. 40:1061.10(D), 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.

(b) Except as provided in Paragraph (2), (3), or (4) of this Subsection, it shall be 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. Any person who acts based on the exceptions provided in Paragraph (2), (3), or (4) of this Subsection

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

(2)(a) A person shall not be in violation of Paragraph (1) of this Subsection if 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.

(b)(i) A person who performs a medical procedure as described in Subparagraph (a) of this Paragraph shall 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 shall 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.

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

(3) A person shall not be in violation of Paragraph (1) of this Subsection if 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.

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

B. Repealed by Acts 2022, No. 545, §4.

C. Whoever violates this Section shall be prosecuted pursuant to the effective provisions of R.S. 14:87.7 and shall be subject to the penalties provided in R.S. 40:1061.29.

D. In addition to any other grounds provided by law, it shall 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 this Section.

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

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

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

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

Acts 2019, No. 31, §1, special eff. date; Acts 2022, No. 545, §§3, 4; Redesignated from R.S. 40:1061.1.3.

### **La. RS §40:1061.13. Abortion after viability; second attendant physician required; duties**

A. Before a physician may perform an abortion upon a pregnant woman whose unborn child is viable, such physician shall first certify in writing that the abortion is necessary to preserve

the life or health of the woman and shall further certify in writing the medical indications for such abortion and the probable health consequences.

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

C. An abortion of a viable unborn child shall be performed or induced only when there is in attendance a physician other than the physician performing or inducing the abortion who shall take control of and provide immediate medical care for an infant born alive as a result of the abortion. During the performance of the abortion, the physician performing it, and subsequent to the abortion, the physician required by this Section to be in attendance, shall take all reasonable steps in keeping with good medical practice, consistent with the procedure used, to preserve the life and health of the viable unborn child and born-alive infant, respectively, provided that it does not pose an increased risk to the life or health of the woman.

D. The provisions of this Section shall apply to an infant born alive, and the infant born alive shall be given immediate medical care regardless of whether the abortion was considered legal or illegal under the law at the time the abortion was performed.

E. The provisions of R.S. 40:1061.1 shall apply to this Section.

Added by Acts 1978, No. 435, §1. Amended by Acts 1981, No. 774, §1, eff. July 23, 1981; Acts 1999, No. 1232, §1, eff. July 9, 1999; Acts 2001, No. 1110, §1, eff. June 28, 2001; Redesignated from R.S. 40:1299.35.4 by HCR 84 of 2015 R.S.; Acts 2022, No. 545, §3.

#### **La. R.S. §40:1061.18. Abortion sought due to rape or certain acts of crime against nature; reporting and certification**

A. Whenever an abortion is being sought pursuant to R.S. 40:1061.6 to terminate a pregnancy resulting from an alleged act of rape, prior to the abortion all of the following requirements shall be met:

(1) The rape victim shall report the rape to a law enforcement official unless the treating physician certifies in writing that in the physician's professional opinion, the victim was too physically or psychologically incapacitated to report the rape.

(2) The victim certifies that the pregnancy is the result of rape, which certificate shall be witnessed by the treating physician.

B. Whenever an abortion is being sought pursuant to R.S. 40:1061.6 to terminate a pregnancy resulting from an alleged act of crime against nature as defined by R.S. 14:89(A)(2), prior to the abortion all of the following requirements shall be met:

(1) The victim of crime against nature as defined by R.S. 14:89(A)(2) shall report the act to a law enforcement official unless the treating physician certifies in writing that in the physician's professional opinion the victim was too physically or psychologically incapacitated to report the act.

(2) The victim certifies that the pregnancy is the result of crime against nature as defined by R.S. 14:89(A)(2), which certificate shall be witnessed by the treating physician.

C. The failure of the victim to comply with Subsection A or B, as applicable, shall not subject the victim to the provisions of R.S. 40:1061.28.

D. Whenever an abortion is being sought pursuant to R.S. 40:1061.6 to terminate a pregnancy resulting from an alleged act of rape or crime against nature as defined by R.S.

14:89(A)(2), the victim may request spiritual counseling and shall be offered the same informed consent information, without the seventy-two-hour or twenty-four-hour delay, whichever may be applicable pursuant to R.S. 40:1061.17(B), prior to the performance of the abortion.

Acts 1994, 4th Ex. Sess., No. 1, §1, eff. Aug. 23, 1994; Acts 2005, No. 421, §1; Acts 2014, No. 602, §6, eff. June 12, 2014; Redesignated from R.S. 40:1299.35.7 by HCR 84 of 2015 R.S.; Acts 2016, No. 97, §1.

### **La. R.S. §40:061.19. Records**

A. In addition to any other duty that may be imposed by state law or regulations, each physician who performs or induces an abortion, the medical director of the facility where an abortion is performed or induced, the administrator of an abortion facility, each abortion facility, and each owner of an abortion facility shall have an independent duty to ensure that a designated custodian of records for the facility obtains, retains, and makes part of the medical record of each pregnant woman upon whom an abortion is performed or induced at least one copy of each of the following documents:

- (1) The certificate required by R.S. 40:1061.13.
- (2) If the pregnant woman is an unemancipated minor, one of the following:
  - (a) A notarized consent form and copies of identification as provided for in R.S. 40:1061.14(A)(1).
  - (b) A court order required by R.S. 40:1061.14(B), if applicable.
- (3) The consent form required by R.S. 40:1061.17.
- (4) The reports required by R.S. 40:1061.21.
- (5) The certificate required by R.S. 40:1061.23, if applicable.
- (6) The signed certification form provided for in R.S. 40:1061.16(C) indicating that the woman or minor female acknowledged receipt of informational materials concerning psychological impacts, illegal coercion, abuse, and human trafficking.
- (7) Any report made pursuant to Title VI of the Children's Code and any other report made to law enforcement in relation to the patient.

B. The individuals listed in Subsection A of this Section and the abortion facility shall each have an independent duty to ensure that the custodian of records for the abortion facility where the abortion was performed or induced retains the documents required in Subsection A of this Section for not less than seven years for adult patients and not less than ten years from the age of majority for minor patients. The ten-year period for minors shall begin to run when the patient attains the age of eighteen; provided, however, that in any case where the patient has reported facts that would require reporting under Title VI of the Children's Code, the retention period shall be thirty years.

C. For purposes of this Section, "owner" shall include each person with an ownership interest totaling five percent or more in an abortion facility.

D.(1) Any person who intentionally or negligently fails to comply with the requirements of this Section or any duty recognized therein shall be subject to the penalties provided for in R.S. 40:1061.29.

(2) Any abortion facility that fails to comply with the requirements of this Section or any duty recognized therein shall be subject to the penalties provided for in R.S. 40:1061.29.

(3) Each medical record that does not include the documents identified in Subsection A of this Section, or which is not retained for the time specified in Subsection B of this Section, shall constitute a separate incidence or occurrence for purposes of R.S. 40:1061.29, and shall constitute a continuing violation until the relevant retention period specified in Subsection B of this Section has expired.

E.(1) In addition to the remedies provided in this Section and any other remedies available under the laws of this state, a person listed in Subsection A of this Section who, either intentionally

or with negligence, fails to obtain, make part of a medical record, or retain any document in compliance with this Section may be temporarily or permanently disqualified from performing or inducing an abortion, applying for a medical facility license, or otherwise operating or managing a medical facility in this state.

(2) For purposes of this Subsection, "operating" or "managing" shall include acting as an owner, governing board member, physician, medical director, administrator, or in any comparable role or title in which the individual has executive responsibility for the medical facility or has professional medical responsibility for patient care.

F. Each abortion facility, as a condition of obtaining and maintaining a license under R.S. 40:2175.1 et seq., shall establish a written record retention and archiving policy, which shall be submitted within thirty days of June 22, 2019, to the department. The department shall review and approve the policy within ninety days of its receipt. During the pendency of the ninety days, the facility shall be deemed in compliance with this Section and if the department fails to act within ninety days of receipt of the proposed policy, the policy shall be deemed approved. The policy shall be signed by the individuals identified in Subsection A of this Section who shall acknowledge their legal obligations and acknowledge receiving a copy of the policy.

G. A person may comply with this Section by depositing a copy of each document required by Subsection A of this Section with the department in an organized and readily accessible format. The department shall have a cause of action against the persons identified in Subsection A of this Section for the reasonably anticipated cost of storing the documents for the required period of time, for which those persons shall be liable in solido.

H. The provisions of R.S. 40:1061.1 shall apply to this Section.

Added by Acts 1978, No. 435, §1. Amended by Acts 1980, No. 418, §1; Acts 1981, No. 774, §1, eff. July 23, 1981; Acts 2014, No. 569, §2, special eff. date; Redesignated from R.S. 40:1299.35.8 by HCR 84 of 2015 R.S; Acts 2017, No. 165, §1; Acts 2019, No. 435, §1, eff. June 22, 2019; Acts 2022, No. 545, §3.

NOTE: See Acts 2014, No. 569, §3, regarding effective date.

### **La. R.S. § 14:32.11. Partial birth abortion**

**A.** Any physician who knowingly performs a partial birth abortion and thereby kills a human fetus shall be imprisoned at hard labor for not less than one nor more than ten years, fined not less than ten thousand nor more than one hundred thousand dollars, or both. This Section shall not apply to a partial birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

**B.** Repealed by [Acts 2022, No. 545](#), § 4, effective August 01, 2022.

**C.**

(1) A defendant charged with an offense under this Section may seek a hearing before the Louisiana State Board of Medical Examiners on whether the physician's conduct was necessary to save the life of the mother whose life was endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself. The report of the board shall be discoverable.

(2) The findings on that issue are admissible on that issue at the trial of the defendant. Upon a motion of the defendant, the court shall delay the beginning of the trial for not more than thirty days to permit such a hearing to take place.



D. A woman upon whom a partial birth abortion is performed shall not be subject to prosecution for a violation of this Section as a principal, accessory, or coconspirator thereto.

### **LA. R.S §14:87.1. Definitions**

Wherever used in this Subpart, unless a different meaning clearly appears in the context, the following terms, whether used in the singular or plural, shall have the following meanings:

(1)(a) "Abortion" or "induced abortion" means the performance of any act with the intent to terminate a clinically diagnosable pregnancy with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn child by one or more of the following means:

(i) Administering, prescribing, or providing any abortion-inducing drug, potion, medicine, or any other substance, device, or means to a pregnant female.

(ii) Using an instrument or external force on a pregnant female.

(b) Abortion shall not mean any one or more of the following acts, if performed by a physician:

(i) A medical procedure performed with the intention to save the life or preserve the health of an unborn child.

(ii) The removal of a dead unborn child or the inducement or delivery of the uterine contents in case of a positive diagnosis, certified in writing in the woman's medical record along with the results of an obstetric ultrasound test, that the pregnancy has ended or is in the unavoidable and untreatable process of ending due to spontaneous miscarriage, also known in medical terminology as spontaneous abortion, missed abortion, inevitable abortion, incomplete abortion, or septic abortion.

(iii) The removal of an ectopic pregnancy.

(iv) The use of methotrexate to treat an ectopic pregnancy.

(v) The performance of a medical procedure necessary in good faith medical judgment or reasonable medical judgment to prevent the death or substantial risk of death to the pregnant woman due to a physical condition, or to prevent the serious, permanent impairment of a life-sustaining organ of a pregnant woman. However, the physician shall make reasonable medical efforts under the circumstances to preserve both the life of the mother and the life of her unborn child in a manner consistent with reasonable medical practice.

(vi) The removal of an unborn child who is deemed to be medically futile. The diagnosis shall be a medical judgment certified by two qualified physicians and recorded in the woman's medical record. The medical procedure shall be performed in a licensed ambulatory surgical center or hospital. Upon the completion of the procedure, the physician shall submit an individual abortion report consistent with R.S. 40:1061.21 that includes appropriate evidence of the certified diagnosis.

(2)(a) "Abortion-inducing drug" means any drug or chemical, or any combination of drugs or chemicals, or any other substance when used with the intent to cause an abortion, including but not limited to RU-486, the Mifeprex regimen, misoprostol (Cytotec), or methotrexate.

(b) Abortion-inducing drug shall not mean a contraceptive, an emergency contraceptive, or the use of methotrexate to treat an ectopic pregnancy.

(3) "Bona fide medical reason" means a medical condition which is recognized by any medical licensing board as a standard of care, except that "bona fide medical reason" shall not include abortion, as defined in this Section.

(4) "Clinically diagnosable pregnancy" means a pregnancy that is capable of being verified by one of the following conventional medical testing methods, whether or not any testing was in fact performed by any person:

(a) A blood or urine test, whether used at home or in a medical setting, that tests for the human pregnancy hormone known as human chorionic gonadotropin (hCG) that medically indicates that implantation has occurred.

(b) An ultrasound examination.

(5) "Conception" or "fertilization" means the fusion of a human spermatozoon with a human ovum.

(6) "Contraceptive" means any device, measure, drug, chemical, or product, including single-ingredient levonorgestrel, that has been approved by the United States Food and Drug Administration for the purpose of preventing pregnancy and is intended to be administered prior to the time when a clinically diagnosable pregnancy can be determined, provided that the contraceptive is sold, prescribed, or administered in accordance with manufacturer's instructions.

(7) "Dismembered" or "dismemberment" means the use of a clamp, forceps, curette, suction cannula, or any other surgical tool or instrument with the intent to disarticulate the head or limbs from the body of the unborn child during an abortion, including but not limited to the common abortion methods known as suction curettage and dilation and evacuation.

(8) "Emergency contraceptive" means a drug, chemical, or product, including but not limited to single-ingredient levonorgestrel or ulipristal, that has been approved by the United States Food and Drug Administration designed or intended to be taken after sexual intercourse but prior to the time when a clinically diagnosable pregnancy can be determined, provided that the emergency contraceptive is sold, prescribed, or administered in accordance with manufacturer's instructions or is prescribed in accordance with the standard of care that is generally accepted by the American College of Obstetricians and Gynecologists.

(9) "Fertilization" means the fusion of a human spermatozoon with a human ovum.

(10) "Fetal body part" means a cell, tissue, organ, or other part of an unborn child who is aborted by an induced abortion.

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

(12) "Genetic abnormality" means any defect, disease, or disorder that is inherited genetically. The term includes, without limitation, any physical disfigurement, scoliosis, dwarfism, Down syndrome, albinism, amelia, and any other type of physical, mental, or intellectual disability, abnormality, or disease.

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

(14) "Good faith medical judgment" or "reasonable medical judgment" means a physician's use of reasonable care and diligence, along with his best judgment, in the application of his skill. The standard of care required of every healthcare provider, in rendering professional services or health care to a patient, shall be to exercise that degree of skill ordinarily employed, under similar circumstances, by the members of his profession in good standing in the same community or locality.

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

(16) "Late term abortion" means the performance of an abortion when the gestational age of the unborn child is fifteen weeks or more.

(17) "Live birth", "born alive", or "live born human being" means a member of the species homo sapiens that is expelled or extracted from its mother, at any stage of development, who after that expulsion or extraction breathes or shows signs of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion.

(18) "Medical emergency" means the existence of any physical condition, not including any emotional, psychological, or mental condition, within the reasonable medical judgment of a reasonably prudent physician, with knowledge of the case and treatment possibilities with respect to the medical conditions involved, would determine necessitates the immediate abortion of the pregnancy to avert the pregnant woman's death or to avert substantial and irreversible impairment of a major bodily function arising from continued pregnancy.

(19)(a) "Medically futile" means that, in reasonable medical judgment as certified by two physicians, the unborn child has a profound and irremediable congenital or chromosomal anomaly that is incompatible with sustaining life after birth.

(b) The Louisiana Department of Health shall promulgate, in accordance with the Administrative Procedure Act, administrative rules establishing an exclusive list of anomalies, diseases, disorders, and other conditions which shall be deemed "medically futile" for purposes of this Subpart. The rules may also encompass diagnostic methods and standards by which a medically futile condition may be diagnosed, including but not limited to tests that are appropriate to the developmental stage and the condition of the unborn child.

(20) "Miscarriage" or "stillbirth" means the spontaneous or accidental death of an unborn child, whether the death occurred in the womb or in the process of birth. Death of the unborn child is indicated by the lack of signs of breathing or any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

(21) "Partial birth abortion" means an abortion in which:

(a) The person performing the abortion deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head is outside the body of the mother, or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the mother, for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus.

(b) The person performing the abortion performs the overt act, other than completion of delivery, that kills the partially delivered living fetus.

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

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

(24) "Receive a fetal organ" means acquiring any fetal organ or fetal body part, or the rights to any fetal organ or fetal body part, through an act of donation or sale via any transaction prohibited by this Subpart.

(25) "Serious bodily injury" shall have the same meaning as defined in R.S. 14:2. For the purposes of this Section, "serious bodily injury" that includes the loss of an organ shall include a hysterectomy.

(26) "Serious health risk to the unborn child's mother" means that in reasonable medical judgment the mother has a condition that so complicates her medical condition that it necessitates the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions.

(27) "Unborn child", "unborn human being", or "fetus" shall have the same meaning as "unborn child" as defined in R.S. 14:2.

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

(29) "Woman" or "mother" means a female human being, whether or not she has reached the age of majority.

Added by Acts 1973, No. 74, §1; Acts 2014, No. 791, §7; Acts 2022, No. 545, §2.

§87.3. Prohibited cutting, resection, excision, harvesting, removal, sale, receipt, research, commerce, or transport of fetal organs, tissues, and body parts; whistleblower account

A. No person may knowingly and for money, including but not limited to fees for storage or handling, any payments for reimbursement, repayments, or compensation, or any other consideration:

(1) Buy, sell, receive, or otherwise transfer or acquire a fetal organ or body part resulting from an induced abortion.

(2) Transport with the intent to sell or otherwise transfer a fetal organ or body part resulting from an induced abortion.

(3) Transport a fetal organ or body part resulting from an induced abortion that has been acquired by any person via any transaction prohibited by this Section.

B. Repealed by Acts 2022, No. 545, §4.

C. After an induced abortion has been completed, no person shall intentionally cut, resection, excise, harvest, or remove any body part, organ, or tissue of the aborted unborn child for any purpose prohibited by this Section, or for sale, commerce, transport, research, or profit.

D.(1) Nothing in this Section shall be construed to prohibit any transaction related to the final disposition of the bodily remains of the aborted human being in accordance with state law, or to prohibit any conduct permitted under state law that is undertaken with any of the following purposes:

(a) The purpose of providing knowledge solely to the mother, such as for pathological or diagnostic purposes.

(b) The purpose of providing knowledge solely to law enforcement officers, such as the case of an autopsy following a feticide.

(2) Nothing in this Section shall be construed to prohibit the donation of bodily remains from a human embryo or fetus whose death was caused by a natural miscarriage or stillbirth, in accordance with the guidelines and prohibitions provided in applicable state and federal law.

(3) Nothing in this Section shall be construed to affect existing federal or state law regarding the practice of abortion, or to create or recognize a right to abortion.

E. Any person who violates this Section shall be sentenced to a term of imprisonment at hard labor for not less than ten nor more than fifty years, at least ten years of which shall be served without benefit of probation or suspension of sentence, and may, in addition, be required to pay a fine of not more than fifty thousand dollars.

F.(1) The Fetal Organ Whistleblower Account, hereinafter referred to as "the account", is hereby created in the state treasury.

(2) The account shall be composed of any monies derived from appropriations by the legislature and any gift, grant, devise, donation, or bequest of monies or properties of any nature or description.

(3) An award of one thousand dollars shall be paid out of the account to any person who provides evidence that results in the arrest and indictment of any other person for a violation of this Section. Eligibility for an award pursuant to this Subsection shall be determined by the district attorney or the attorney general, as appropriate.

(4) All monies deposited in the account shall be used solely to pay awards to persons as provided by Paragraph (3) of this Subsection and shall be paid by the state treasurer upon written order signed by the district attorney or the attorney general, as appropriate, except that monies deposited in the account may be used to pay reasonable costs of administering the account.

(5) The name and other identifying information of any person who is paid an award pursuant to this Subsection shall remain confidential.

Acts 2016, No. 196, §1; Acts 2017, No. 243, §1, eff. June 14, 2017; Acts 2018, No. 645, §1, eff. June 1, 2018; Acts 2022, No. 545, §4.

**La. R.S. § 14:87.1.1. Killing a child during delivery; penalties**

**A.** Killing a child during delivery is the intentional destruction, during parturition of the mother, of the vitality or life of a child in a state of being born and before actual birth, which child would otherwise have been born alive; provided, however, that the crime of killing a child during delivery shall not be construed to include any case in which the death of a child results from the use by a physician of a procedure during delivery which is necessary to save the life of the child or of the mother and is used for the express purpose of and with the specific intent of saving the life of the child or of the mother.

**B.** Whoever commits the crime of killing a child during delivery shall be imprisoned at hard labor in the penitentiary for life.

**La. R.S. § 14:87.3. Prohibited cutting, resection, excision, harvesting, removal, sale, receipt, research, commerce, or transport of fetal organs, tissues, and body parts; whistleblower account**

**A.** No person may knowingly and for money, including but not limited to fees for storage or handling, any payments for reimbursement, repayments, or compensation, or any other consideration:

(1) Buy, sell, receive, or otherwise transfer or acquire a fetal organ or body part resulting from an induced abortion.

(2) Transport with the intent to sell or otherwise transfer a fetal organ or body part resulting from an induced abortion.

(3) Transport a fetal organ or body part resulting from an induced abortion that has been acquired by any person via any transaction prohibited by this Section.

**B.** Repealed by [Acts 2022, No. 545](#), § 4, effective August 01, 2022.

**C.** After an induced abortion has been completed, no person shall intentionally cut, resection, excise, harvest, or remove any body part, organ, or tissue of the aborted unborn child for any purpose prohibited by this Section, or for sale, commerce, transport, research, or profit.

**D.**

(1) Nothing in this Section shall be construed to prohibit any transaction related to the final disposition of the bodily remains of the aborted human being in accordance with state law, or to prohibit any conduct permitted under state law that is undertaken with any of the following purposes:

(a) The purpose of providing knowledge solely to the mother, such as for pathological or diagnostic purposes.

(b) The purpose of providing knowledge solely to law enforcement officers, such as the case of an autopsy following a feticide.

(2) Nothing in this Section shall be construed to prohibit the donation of bodily remains from a human embryo or fetus whose death was caused by a natural miscarriage or stillbirth, in accordance with the guidelines and prohibitions provided in applicable state and federal law.

(3) Nothing in this Section shall be construed to affect existing federal or state law regarding the practice of abortion, or to create or recognize a right to abortion.

**E.** Any person who violates this Section shall be sentenced to a term of imprisonment at hard labor for not less than ten nor more than fifty years, at least ten years of which shall be served without benefit of probation or suspension of sentence, and may, in addition, be required to pay a fine of not more than fifty thousand dollars.

**F.**

(1) The Fetal Organ Whistleblower Account, hereinafter referred to as “the account”, is hereby created in the state treasury.

(2) The account shall be composed of any monies derived from appropriations by the legislature and any gift, grant, devise, donation, or bequest of monies or properties of any nature or description.

(3) An award of one thousand dollars shall be paid out of the account to any person who provides evidence that results in the arrest and indictment of any other person for a violation of this Section. Eligibility for an award pursuant to this Subsection shall be determined by the district attorney or the attorney general, as appropriate.

(4) All monies deposited in the account shall be used solely to pay awards to persons as provided by Paragraph (3) of this Subsection and shall be paid by the state treasurer upon written order signed by the district attorney or the attorney general, as appropriate, except that monies deposited in the account may be used to pay reasonable costs of administering the account.

(5) The name and other identifying information of any person who is paid an award pursuant to this Subsection shall remain confidential.

**La. R.S. § 14:87.4. Abortion advertising.**

**A.** Abortion advertising is the placing or carrying of any advertisement of abortion services by the publicizing of the availability of abortion services.

**B.** Whoever commits the crime of abortion advertising shall be imprisoned, with or without hard labor, for not more than one year or fined not more than five thousand dollars, or both.

**La. R.S. § 14:87.5. Intentional failure to sustain life and health of aborted viable infant**

**A.** The intentional failure to sustain the life and health of an aborted viable infant shall be a crime. The intentional failure to sustain the life and health of an aborted viable infant is the intentional failure, by any physician or person performing or inducing an abortion, to exercise that degree of professional care and diligence, and to perform such measures as constitute good medical practice, necessary to sustain the life and health of an aborted viable infant, when the death of the infant results.

**B.** Any person who commits the crime of intentional failure to sustain the life and health of an aborted viable infant shall be imprisoned at hard labor for not more than twenty-one years.

**La. R.S. § 14:87.6. Coerced abortion**

**A.** Coerced abortion is committed when any person intentionally engages in the use or threatened use of physical force against the person of a pregnant woman, with the intent to compel the pregnant woman to undergo an abortion against her will, whether or not the abortion procedure has been attempted or completed.

**B.** Whoever commits the crime of coerced abortion shall be fined not more than five thousand dollars, or imprisoned for not more than five years, or both.

**La. R.S. § 14:87.7. Abortion**

**A.** It shall be unlawful for a physician or other person to perform an abortion, with or without the consent of the pregnant female.

**B.** The terms used in this Section have the same meaning as the definitions provided in [R.S. 14:87.1](#).

**C.** Whoever commits the crime of abortion shall be imprisoned at hard labor for not less than one year nor more than ten years and shall be fined not less than ten thousand dollars nor more than one hundred thousand dollars.

**D.** This Section does not apply to a pregnant female upon whom an abortion is committed or performed in violation of this Section, and the pregnant female shall not be held responsible for the criminal consequences of any violation of this Section.

**E.** This Section shall not apply to the sale, use, prescription, or administration of a contraceptive or an emergency contraceptive.

**F.** The provisions of this Section shall become effective immediately upon, and to the extent permitted by, the occurrence of any of the following circumstances:

(1) Any decision of the Supreme Court of the United States which overrules, in whole or in part, [Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed. 2d 147 \(1973\)](#), thereby restoring to the state of Louisiana the authority to prohibit or limit abortion.

(2) Adoption of an amendment to the United States Constitution which, in whole or in part, restores to the state of Louisiana the authority to prohibit or limit abortion.

(3) A decision of the Supreme Court of the United States in the case of *Dobbs v. Jackson Women's Health Organization*, Docket No. 19-1392, which overrules, in whole or in part, [Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed. 2d 147 \(1973\)](#), thereby restoring to the state of Louisiana the authority to prohibit or limit abortion.



**La. R.S. § 14:87.8. Late term abortion**

**A.** It shall be unlawful for a physician or other person to perform a late term abortion, with or without the consent of the pregnant female.

**B.** Whoever commits the crime of late term abortion shall be imprisoned at hard labor for not less than one year nor more than fifteen years and shall be fined not less than twenty thousand dollars nor more than two hundred thousand dollars.

**C.** This Section does not apply to a pregnant female upon whom an abortion is committed or performed in violation of this Section, and the pregnant female shall not be held responsible for the criminal consequences of any violation of this Section.

**D.** This Section shall not apply to the sale, use, prescription, or administration of a contraceptive or an emergency contraceptive.

**E.** The provisions of this Section shall become effective immediately upon, and to the extent permitted by, the occurrence of any of the following circumstances:

(1) Any decision of the Supreme Court of the United States which overrules, in whole or in part, [Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed. 2d 147 \(1973\)](#), thereby restoring to the state of Louisiana the authority to prohibit, limit, or regulate abortion.

(2) Adoption of an amendment to the United States Constitution which, in whole or in part, restores to the state of Louisiana the authority to prohibit or limit abortion.

(3) A decision of the Supreme Court of the United States in the case of Dobbs v. Jackson Women's Health Organization, Docket No. 19-1392, which overrules, in whole or in part, [Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed. 2d 147 \(1973\)](#), thereby restoring to the state of Louisiana the authority to prohibit or limit abortion.

**La. R.S. § 14:87.9. Criminal abortion by means of abortion-inducing drugs**

**A.** Criminal abortion by means of an abortion-inducing drug is committed when a person knowingly causes an abortion to occur by means of delivering, dispensing, distributing, or providing a pregnant woman with an abortion-inducing drug.

**B.**

(1) Any person who knowingly performs an abortion by means of an abortion-inducing drug in violation of this Section shall be imprisoned at hard labor for not less than one nor more than five years, fined not less than five thousand nor more than fifty thousand dollars, or both.

(2) Any person who knowingly performs an abortion by means of an abortion-inducing drug in violation of this Section that results in the death or serious bodily injury of the pregnant woman shall be imprisoned at hard labor for not less than five nor more than ten

years, fined not less than ten thousand nor more than seventy-five thousand dollars, or both.

**(3)** Any person who knowingly performs or induces an abortion that results in the death or serious bodily injury of a pregnant woman under the age of eighteen in violation of this Section shall be imprisoned at hard labor for not less than fifteen nor more than fifty years, fined not less than fifteen thousand nor more than one hundred thousand dollars, or both.

**C.** None of the following shall be construed to create the crime of criminal abortion by means of an abortion-inducing drug:

**(1)** Any action taken when a physician or other licensed medical professional is acting in the course of administering lawful medical care.

**(2)** Any act taken or omission by a pregnant woman with regard to her own unborn child.

**(3)** Possessing for her own consumption or consuming an abortion-inducing drug by a pregnant woman in violation of this Section.

**(4)** Lawfully prescribing, dispensing, or distributing a drug, medicine, or other substance for a bona fide medical reason that is not intended to cause an abortion in violation of this Section.

**(5)**

**(a)** The act of administering an abortion-inducing drug when the drug is administered by a physician licensed by the state of Louisiana who administers the abortion-inducing drug in person to the pregnant woman.

**(b)** The provisions of Subparagraph (a) of this Paragraph shall not be a defense against prosecution under any other provision of law that makes the abortion unlawful, whether the other provision of law is in effect on August 1, 2022 or becomes unlawful at a later date.

**(6)** Any act by a licensed pharmacist or pharmacy related to filling a prescription for a drug, medicine, or other substance prescribed for a bona fide medical reason shall not subject the pharmacist or the pharmacy to the criminal consequences of this Section. A diagnosis or a diagnosis code shall be written on the prescription by the prescriber indicating that the drug, medicine, or other substance is intended for a purpose other than to cause an abortion in violation of this Section.

**La. R.S. § 14:87.10. Abortion by an unlicensed physician**

A. The crime of abortion by an unlicensed physician is an abortion performed, with or without the consent of the pregnant woman or her legal guardian, that results in the death of an unborn child when the abortion is performed by any individual who is not a physician licensed by the state of Louisiana.

B. Repealed by [Acts 2022, No. 545](#), § 4, effective August 1, 2022.

C. Any person who knowingly performs an abortion in violation of this Section shall be imprisoned at hard labor for not less than one nor more than five years, fined not less than five thousand nor more than fifty thousand dollars, or both.

D. None of the following shall be construed to create the crime of abortion by an unlicensed physician:

(1) Any action taken when a physician or other licensed medical professional is acting in the course of administering lawful medical care and an unborn child dies.

(2) Any act taken or omission by a pregnant woman with regard to her own unborn child.

E. The provisions of [R.S. 40:1061.1](#) shall apply to this Section.

**La. R.S. § 14:87.11. Aggravated abortion by dismemberment**

A. Aggravated abortion by dismemberment is the commission of an abortion when the unborn child is intentionally dismembered, whether the act of dismemberment was in the course of or following the death of the unborn child.

B. Repealed by [Acts 2022, No. 545](#), § 4, effective August 1, 2022.

C. Any person who knowingly performs an abortion in violation of this Section shall be imprisoned at hard labor for not less than one nor more than ten years, fined not less than ten thousand nor more than one hundred thousand dollars, or both.

D. None of the following shall be construed to create the crime of aggravated abortion by dismemberment:

(1) Any action taken when a physician or other licensed medical professional is acting in the course of administering lawful medical care and an unborn child dies.

(2) Any act taken or omission by a pregnant woman with regard to her own unborn child.

**La. RS §14:87.12. Partial birth abortion**

A. Any physician who knowingly performs a partial birth abortion and thereby kills a human fetus shall be imprisoned at hard labor for not less than one nor more than ten years, fined not less than ten thousand nor more than one hundred thousand dollars, or both. This Section shall not apply to a partial birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

B. Repealed by Acts 2022, No. 545, §4.

C.(1) A defendant charged with an offense under this Section may seek a hearing before the Louisiana State Board of Medical Examiners on whether the physician's conduct was necessary to save the life of the mother whose life was endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself. The report of the board shall be discoverable.

(2) The findings on that issue are admissible on that issue at the trial of the defendant. Upon a motion of the defendant, the court shall delay the beginning of the trial for not more than thirty days to permit such a hearing to take place.

D. A woman upon whom a partial birth abortion is performed shall not be subject to prosecution for a violation of this Section as a principal, accessory, or coconspirator thereto.

Acts 2007, No. 477, §1, eff. July 12, 2007; Acts 2022, No. 545, §4; Redesignated from R.S. 14:32.11 by Acts 2022, No. 545, §6A.