

Regular Session, 2011

HOUSE BILL NO. 645 (Substitute for House Bill No. 587 by Representative LaBruzzo)

BY REPRESENTATIVE LABRUZZO

ABORTION: Revises the Human Life Protection Act

1 AN ACT

2 To amend and reenact R.S. 14:32.5(A) and R.S. 40:1299.30, 1299.33(D), 1299.34.5,  
3 1299.35.0, 1299.35.1(2), (4), (6), (8), and (9), and 1299.35.3, to enact R.S.  
4 40:1299.35.1(1)(d), and to repeal R.S. 40:1299.35.2, 1299.35.4, 1299.35.7, and  
5 1299.35.12, relative to abortion; to revise the definition of feticide; to repeal certain  
6 provisions relative to the prohibition of abortion; to repeal the federally funded  
7 Medicaid trigger to the prohibition of abortion; to modify certain definitions; to  
8 remove certain requirements relative to discrimination for refusal to participate in  
9 abortion; to provide with respect to the use of public funds; to modify legislative  
10 intent; to repeal provisions relative to abortions performed by physicians, the  
11 determination of viability, and ultrasound tests; to provide relative to the born-alive  
12 protection provision; to repeal provisions relative to the abortion after viability and  
13 the second attendant physician requirement; to repeal provisions relative to an  
14 abortion sought after rape or incest; to repeal certain medical emergency provisions;  
15 to provide an effective date; and to provide for related matters.

16 Be it enacted by the Legislature of Louisiana:

17 Section 1. R.S. 14:32.5(A) is hereby amended and reenacted to read as follows:

18 §32.5. Feticide defined; exceptions

19 A. Feticide is the killing of an unborn child by the act, procurement, or  
20 culpable omission of a person other than the mother of the unborn child. ~~The offense~~  
21 ~~of feticide shall not include acts which cause the death of an unborn child if those~~  
22 ~~acts were committed during any abortion to which the pregnant woman or her legal~~

1 guardian has consented or which was performed in an emergency as defined in R.S.  
2 40:1299.35.12. Nor shall the offense of feticide include acts which are committed  
3 pursuant to usual and customary standards of medical practice during diagnostic  
4 testing or therapeutic treatment.

5 \* \* \*

6 Section 2. R.S. 40:1299.30, 1299.33(D), 1299.34.5, 1299.35.0, 1299.35.1(2), (4), (6),  
7 (8), and (9), and 1299.35.3 are hereby amended and reenacted and R.S. 40:1299.35.1(1)(d)  
8 is hereby enacted to read as follows:

9 §1299.30. Abortion; prohibition

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

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

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

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

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

28 ~~D. B.~~ B. Any violation of this Section shall be prosecuted pursuant to R.S.  
29 14:87.

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

6           F: D. It shall not be a violation of Subsection ~~€~~ A of this Section for a  
7           ~~licensed physician~~ health care professional to perform a medical procedure necessary  
8           in reasonable medical judgment to prevent the death or substantial risk of death due  
9           to a physical condition, or to prevent the serious, permanent impairment of a life-  
10          sustaining organ of a pregnant woman. However, the physician shall make  
11          reasonable medical efforts under the circumstances to preserve both the life of the  
12          mother and the life of her unborn child in a manner consistent with reasonable  
13          medical practice.

14          G: E. Medical treatment provided to the mother by a ~~licensed physician~~  
15          health care professional which results in the accidental or unintentional injury or  
16          death to the unborn child is not a violation of Subsection ~~€~~ A of this Section.

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

20          I: G. The following terms as used in this Section shall have the following  
21          meanings:

22                 (1) "Pregnant" means the human female reproductive condition, of having  
23                 a living unborn ~~human being~~ child within her body throughout the entire embryonic  
24                 and fetal stages of the unborn child from fertilization to full gestation and childbirth.

25                 (2) ~~"Unborn human being" means an individual living member of the~~  
26                 ~~species, homo sapiens, throughout the entire embryonic and fetal stages of the~~  
27                 ~~unborn child from fertilization to full gestation and childbirth.~~ "Unborn child" means  
28                 the unborn offspring of human beings from the moment of fertilization until birth.



1 given and the written consent and acknowledgment that a full explanation of the  
2 abortion procedure to be performed has been given and is understood:

3 \* \* \*

4 §1299.34.5. Use of public funds

5 ~~A.~~ Notwithstanding any other provision of law to the contrary, no public  
6 funds, made available to any institution, board, commission, department, agency,  
7 official, or employee of the state of Louisiana, or of any local political subdivision  
8 thereof, whether such funds are made available by the government of the United  
9 States, the state of Louisiana, or of a local governmental subdivision, or from any  
10 other public source shall be used in any way for, to assist in, or to provide facilities  
11 for an abortion, ~~, except when the abortion is medically necessary to prevent the~~  
12 ~~death of the mother.~~

13 ~~B.~~ Notwithstanding any other provision of law to the contrary, no public  
14 funds made available to any institution, board, commission, department, agency,  
15 official, or employee of the state of Louisiana, or of any local political subdivision  
16 thereof, whether such funds are made available by the government of the United  
17 States, the state of Louisiana, or a local governmental subdivision, or from any other  
18 public source, shall be used in any way for, to assist in, or to provide facilities for an  
19 abortion, except for any of the following:

20 (1) ~~Whenever the abortion is necessary to save the life of the mother.~~

21 (2) ~~Whenever the abortion is being sought to terminate a pregnancy resulting~~  
22 ~~from an alleged act of rape and all of the requirements of R.S. 40:1299.35.7(A) are~~  
23 ~~met.~~

24 (3) ~~Whenever the abortion is being sought to terminate a pregnancy resulting~~  
25 ~~from an alleged act of incest and all of the requirements of R.S. 40:1299.35.7(B) are~~  
26 ~~met.~~

27 ~~C.~~ The secretary of the Department of Health and Hospitals shall promulgate  
28 rules to insure that no funding of any abortion shall be made based upon a claim of  
29 rape or incest until the applicable requirements of R.S. 40:1299.35.7 have been

1 ~~complied with and written verification has been obtained from the physician~~  
2 ~~performing the abortion and from the law enforcement official to whom the report~~  
3 ~~is made, if applicable.~~

4 ~~D. Subsection A of this Section shall be superseded and Subsections B and~~  
5 ~~C and R.S. 40:1299.35.7 shall become effective only when the circumstances in~~  
6 ~~Subparagraph (1)(a) or in Subparagraph (2)(a) occur:~~

7 ~~(1)(a) A decision or order of a court of competent jurisdiction is rendered~~  
8 ~~declaring the provisions of Subsection A unconstitutional, inconsistent with federal~~  
9 ~~law, or otherwise unenforceable based on inconsistency with the Hyde Amendment,~~  
10 ~~or enjoins the state or any of its officials from enforcing Subsection A while at the~~  
11 ~~same time accepting federal funds pursuant to Title XIX, as modified by the Hyde~~  
12 ~~Amendment, and then only if, as, and when a stay pending all appeals of the decision~~  
13 ~~or order is denied, or, if a stay is granted, such stay expires or is no longer effective.~~

14 ~~(b) If such a decision or order is rendered, the state Department of Justice,~~  
15 ~~on behalf of the state, shall vigorously and expeditiously pursue judicial remedies~~  
16 ~~seeking to obtain a stay pending all appeals of the decision or order and its reversal.~~

17 ~~(2)(a) An order or decision of a court of competent jurisdiction is rendered~~  
18 ~~affirming a finding of the administrator of the Health Care Financing Administration~~  
19 ~~of the United States Department of Health and Human Services that Subsection A~~  
20 ~~fails to substantially comply with the Hyde Amendment or denying a stay of the~~  
21 ~~finding of the administrator and then only if, as, and when the state receives formal~~  
22 ~~notification from the administrator that Medicaid funds, including but not limited to~~  
23 ~~the federal percentage of Medicaid assistance payments pursuant to 42 U.S.C. 1396~~  
24 ~~et seq. allocated to the state from the United States government, will be withheld or~~  
25 ~~terminated on a specified date.~~

26 ~~(b) If the administrator finds that the state is in noncompliance with the Hyde~~  
27 ~~Amendment as it relates to funding certain abortions, the governor, the state~~  
28 ~~Department of Justice, and the state Department of Health and Hospitals, on behalf~~

1 of the state, shall vigorously and expeditiously pursue administrative and judicial  
2 remedies to obtain a stay of the finding and its reversal.

3 (c) If such a decision or order is rendered by a court, the state Department  
4 of Justice, on behalf of the state, shall vigorously and expeditiously pursue judicial  
5 remedies seeking to obtain a stay of the decision or order and to seek its reversal.

6 E. If Subsections B and C and R.S. 40:1299.35.7 become effective and  
7 subsequently the federal requirement for acceptance of Medicaid funds, that public  
8 funds be made available for abortions resulting from pregnancy due to rape or incest,  
9 is no longer applicable to the state of Louisiana, then on the same day, the provisions  
10 of Subsections B and C and R.S. 40:1299.35.7 shall be superseded and the provisions  
11 of Subsection A shall be effective to the fullest extent allowed by law.

12 \* \* \*

13 §1299.35.0. Legislative intent

14 It is the intention of the Legislature of the State of Louisiana to regulate  
15 prohibit abortion to the extent permitted by the decisions of the United States  
16 Supreme Court. The Legislature does solemnly declare and find in reaffirmation of  
17 the longstanding policy of this State, that the unborn child is a human being from the  
18 time of conception and is, therefore, a legal person for purposes of the unborn child's  
19 right to life and is entitled to the right to life from conception under the laws and  
20 Constitution of this State. Further, the Legislature finds and declares that the  
21 longstanding policy of this State is to protect the right to life of the unborn child  
22 from conception by prohibiting abortion, ~~impermissible only because of the~~  
23 ~~decisions of the United States Supreme Court and that, therefore, if those decisions~~  
24 ~~of the United States Supreme Court are ever reversed or modified or the United~~  
25 ~~States Constitution is amended to allow protection of the unborn then the former~~  
26 ~~policy of this State to prohibit abortions shall be enforced.~~

27 §1299.35.1. Definitions

28 As used in R.S. 40:1299.35.0 through 1299.35.18, the following words have  
29 the following meanings:



1 ordinarily employed, under similar circumstances, by one practicing in good standing  
2 in that specialty.

3 \* \* \*

4 (6) "Live birth" or "born alive", with respect to a member of the species  
5 homo sapiens, means the complete expulsion or extraction from its mother of that  
6 member, at any stage of development, ~~who after that expulsion or extraction~~  
7 ~~breathes or shows signs of life such as beating of the heart, pulsation of the umbilical~~  
8 ~~cord, or definite movement of voluntary muscles, whether or not the umbilical cord~~  
9 ~~has been cut or the placenta is attached, and regardless of whether the expulsion or~~  
10 ~~extraction occurs as a result of natural or induced labor, cesarean section, or induced~~  
11 ~~abortion.~~

12 \* \* \*

13 (8) "Pregnant" means that female reproductive condition of having a  
14 developing ~~embryo or fetus in the uterus which commences~~ unborn child inside  
15 commencing at fertilization ~~and implantation.~~

16 (9) "Unborn child" ~~or "fetus"~~ means the unborn offspring of human beings  
17 from the moment of ~~conception through pregnancy~~ fertilization and until ~~live~~ birth.

18 \* \* \*

19 §1299.35.3. ~~Born-Alive~~ Infant Protection Act

20 A. In determining the meaning of any statute or of any rule, regulation, or  
21 interpretation of the various administrative agencies of this state, the words "person",  
22 "human being", "child", and "individual" include every infant member of the species  
23 homo sapiens ~~who is born alive~~ at any stage of development.

24 B. An infant at any stage of development ~~who has survived an abortion~~  
25 ~~procedure resulting in his or her live birth~~ shall be given reasonable and immediate  
26 medical care ~~as provided in R.S. 40:1299.35.4(C).~~

27 \* \* \*

28 Section 3. R.S. 40:1299.35.2, 1299.35.4, 1299.35.7, and 1299.35.12 are hereby  
29 repealed in their entirety.

1 Section 4. This Act shall become effective upon signature by the governor or, if not  
 2 signed by the governor, upon expiration of the time for bills to become law without signature  
 3 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
 4 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
 5 effective on the day following such approval.

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DIGEST

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

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LaBruzzo

HB No. 645

**Abstract:** Amends the Human Life Protection Act.

Present law (R.S. 14:32.5(A)) establishes the criminal offense of feticide. Provides that feticide is the killing of an unborn child by the act, procurement, or culpable omission of a person other than the mother of the unborn child. It also establishes the following limited exceptions: (1) The offense of feticide shall not include acts which cause the death of an unborn child if those acts were committed during any abortion to which the pregnant woman or her legal guardian has consented or which was performed in an emergency as defined in R.S. 40:1299.35.12 and (2) Nor shall the offense of feticide include acts which are committed pursuant to usual and customary standards of medical practice during diagnostic testing or therapeutic treatment.

Proposed law repeals the exceptions to the criminal offense of feticide.

Present law (R.S. 40:1299.30(A),(1), and (2)) establishes contingencies for the effectiveness of abortion. Provides that the provisions of present law will become effective immediately upon, and to the extent permitted, by the occurrence of any of the following circumstances:

- (1) Any decision of the United States Supreme Court which reverses, 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 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 abortion.

Proposed law repeals present law.

Present law (R.S. 40:1299.30(B)) provides that the provisions of present law will become effective relative to the appropriation of Medicaid funds, if any executive order by the President of the United States, federal statute, appropriation rider, or federal regulation establishes limited circumstances in which states must fund abortion to remain eligible to receive federal Medicaid funds pursuant to federal law (42 U.S.C. 1396, et. seq.).

Proposed law repeals present law.

Present law (R.S. 40:1299.30(C)) provides that 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. Further, provides that 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.

Proposed law modifies present law by changing the term "human being" to "child."

Proposed law makes technical changes.

Present law (R.S. 40:1299.30(F)) provides that it is not a violation of present law 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.

Proposed law changes the term "licensed physician" to "health care physician."

Present law (R.S. 40:1299.30(G)) provides that medical treatment that is 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 present law.

Proposed law changes the term "licensed physician" to "health care physician."

Present law (R.S. 40:1299.30(I)) provides that the following terms as used in present law have the following meanings:

- (1) "Pregnant" means the human female reproductive condition, of having a living unborn human being within her body throughout the entire embryonic and fetal stages of the unborn child from fertilization to full gestation and childbirth.
- (2) "Unborn human being" means an individual living member of the species, homo sapiens, throughout the entire embryonic and fetal stages of the unborn child from fertilization to full gestation and childbirth.
- (3) "Fertilization" means that point in time when a male human sperm penetrates the zona pellucida of a female human ovum.

Proposed law modifies present law by changing the definition of "pregnant" to refer to a living unborn child. Also repeals the definition of "unborn human being". Adds a definition of "unborn child" which means the unborn offspring of human beings from the moment of fertilization until birth. Proposed law modifies the definition of "fertilization" to include "conception" and specifies that both mean that point in time when a male human sperm penetrates the zona pellucida of a female human ovum. Further provides that wherever the words fertilization or conception are used, they shall also include human beings created through asexual forms of reproduction such as twinning, cloning, and the functional equivalent thereof. Also adds the definition of "health care professional" which means: (1) a person who possesses a current license, certificate, registration, or other authority from a professional licensing board to provide health care services in this state and (2) any person who is licensed or otherwise authorized by a professional licensing board to participate in a health care training program in this state.

Present law (R.S. 40:1299.33(D)) provides that no abortion shall be performed on any woman unless prior to the abortion she has been advised, orally and in writing, that she is not required to submit to the abortion and that she may refuse any abortion for any reason and without explanation and that she shall not be deprived of any governmental assistance or any other kind of benefits for refusing to submit to an abortion. Also provides that present law shall be of full force and effect even if the woman in question is a minor, in which event said minor's parents, or if a minor emancipated by marriage, the minor's husband, shall also be fully advised of their right to refuse an abortion for the minor in the same manner as the minor is advised. Further provides that compliance with this provision shall be evidenced by the written consent of the woman that she submits to the abortion voluntarily and of her

own free will, and by written consent of her parents, if she is an unmarried minor, and by consent of her husband if she is a minor emancipated by marriage, such written consent to set forth the written advice given and the written consent and acknowledgment that a full explanation of the abortion procedure to be performed has been given and is understood.

Proposed law modifies present law by specifying that no abortion can be performed on any female. Further it repeals the requirement that a woman must be advised, orally and in writing, that she is not required to submit to an abortion and that she may refuse for any reason and without explanation and that she shall not be deprived of any governmental assistance or any other kinds of benefits for refusing to submit to an abortion. Also, repeals the provision which made present law applicable to minors. Further, it repeals the requirement that compliance with present law had to be evidenced by the written consent of the following: (1) the woman, that she submits to the abortion voluntarily and of her own free will; (2) her parents, if she is an unmarried minor; and (3) her husband if she is a minor emancipated by marriage. Also, repeals the requirement that the written consent include the type of written advice given and an acknowledgment that a full explanation of the abortion procedure to be performed has been given and is understood.

Present law (R.S. 40:1299.34.5(A)) provides that no public funds, made available to any institution, board, commission, department, agency, official, or employee of the state of Louisiana, or of any local political subdivision thereof, whether such funds are made available by the government of the United States, the state of Louisiana, or of a local governmental subdivision, or from any other public source shall be used in any way for, to assist in, or to provide facilities for an abortion, except when the abortion is medically necessary to prevent the death of the mother

Proposed law repeals the exception to the prohibition against the use of public funds for an abortion in circumstances where it is medically necessary to prevent the death of the mother.

Present law (R.S. 40:1299.34.5(B)) provides that no public funds made available to any institution, board, commission, department, agency, official, or employee of the state of Louisiana, or of any local political subdivision thereof, whether such funds are made available by the government of the United States, the state of Louisiana, or a local governmental subdivision, or from any other public source, shall be used in any way for, to assist in, or to provide facilities for an abortion, except for any of the following:

- (1) Whenever the abortion is necessary to save the life of the mother.
- (2) Whenever the abortion is being sought to terminate a pregnancy resulting from an alleged act of rape and all of the requirements of R.S. 40:1299.35.7(A) are met.
- (3) Whenever the abortion is being sought to terminate a pregnancy resulting from an alleged act of incest and all of the requirements of R.S. 40:1299.35.7(B) are met.

Proposed law repeals present law.

Present law (R.S. 40:1299.34.5(C)) requires the secretary of the Department of Health and Hospitals to promulgate rules to insure that no funding of any abortion shall be made based upon a claim of rape or incest until the applicable requirements of R.S. 40:1299.35.7 have been complied with and written verification has been obtained from the physician performing the abortion and from the law enforcement official to whom the report is made, if applicable.

Proposed law repeals present law.

Present law (R.S. 40:1299.34.5(D)) provides that R.S. 40:1299.34.5(A) shall be superseded and R.S. 40:1299.34.5(B) and (C) and R.S. 40:1299.35.7 shall become effective only when the circumstances in R.S. 40:1299.34.5(D)(1)(a) or (2)(a) occur:

- (1)(a) A decision or order of a court of competent jurisdiction is rendered declaring the provisions of R.S. 40:1299.34.5(A) unconstitutional, inconsistent with federal law, or otherwise unenforceable based on inconsistency with the Hyde Amendment, or enjoins the state or any of its officials from enforcing Subsection A while at the same time accepting federal funds pursuant to Title XIX, as modified by the Hyde Amendment, and then only if, as, and when a stay pending all appeals of the decision or order is denied, or, if a stay is granted, such stay expires or is no longer effective.
- (b) If such a decision or order is rendered, the state Department of Justice, on behalf of the state, shall vigorously and expeditiously pursue judicial remedies seeking to obtain a stay pending all appeals of the decision or order and its reversal.
- (2)(a) An order or decision of a court of competent jurisdiction is rendered affirming a finding of the administrator of the Health Care Financing Administration of the United States Department of Health and Human Services that Subsection A fails to substantially comply with the Hyde Amendment or denying a stay of the finding of the administrator and then only if, as, and when the state receives formal notification from the administrator that Medicaid funds, including but not limited to the federal percentage of Medicaid assistance payments pursuant to 42 U.S.C. 1396 et seq. allocated to the state from the United States government, will be withheld or terminated on a specified date.
- (b) If the administrator finds that the state is in noncompliance with the Hyde Amendment as it relates to funding certain abortions, the governor, the state Department of Justice, and the state Department of Health and Hospitals, on behalf of the state, shall vigorously and expeditiously pursue administrative and judicial remedies to obtain a stay of the finding and its reversal.
- (c) If such a decision or order is rendered by a court, the state Department of Justice, on behalf of the state, shall vigorously and expeditiously pursue judicial remedies seeking to obtain a stay of the decision or order and to seek its reversal.

Proposed law repeals present law.

Present law (R.S. 40:1299.34.5(E)) provides that if R.S. 40:1299.34.5(B) and (C) and R.S. 40:1299.35.7 become effective and subsequently the federal requirement for acceptance of Medicaid funds, that public funds be made available for abortions resulting from pregnancy due to rape or incest, is no longer applicable to the state of Louisiana, then on the same day, the provisions of R.S. 40:1299.34.5(B) and (C) and R.S. 40:1299.35.7 shall be superseded and the provisions of R.S. 40:1299.34.5(A) shall be effective to the fullest extent allowed by law.

Proposed law repeals present law.

Present law (R.S. 40:1299.35.0) provides legislative intent and indicates that it is the intention of the Legislature of the State of Louisiana to regulate abortion to the extent permitted by the decisions of the United States Supreme Court. Further the Legislature finds and declares that the longstanding policy of this State is to protect the right to life of the unborn child from conception by prohibiting abortion impermissible only because of the decisions of the United States Supreme Court and that, therefore, if those decisions of the United States Supreme Court are ever reversed or modified or the United States Constitution is amended to allow protection of the unborn then the former policy of this State to prohibit abortions shall be enforced.

Proposed law modifies present law by specifying that the intention of the Legislature is to prohibit abortion. Repeals the provision which indicates the intention is to regulate abortion

to the extent permitted by decisions of the United States Supreme Court. Further repeals the provision which acknowledges that the prohibition of abortion is impermissible only because of the decisions of the United States Supreme Court and that, therefore, if those decisions of the United States Supreme Court are ever reversed or modified or the United States Constitution is amended to allow protection of the unborn then the former policy of this State to prohibit abortions shall be enforced.

Present law (R.S. 40:1299.35.1(1)) provides that for the purposes of R.S. 40:1299.35.0 through 1299.35.18, the following words have the following meanings:

- (1) "Abortion" or "induced abortion" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to:
  - (a) Save the life or preserve the health of an unborn child.
  - (b) Remove a dead unborn child caused by spontaneous abortion, missed abortion, or inevitable abortion.
  - (c) Remove an ectopic pregnancy.

Proposed law adds to exceptions for abortions in present law a medical procedure necessary in the reasonable medical judgment of a licensed physician 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. Further provides that 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.

Present law (R.S. 40:1299.35.1(2)) defines "conception" and "fertilization" as each meaning the fusion of a human spermatozoon with a human ovum.

Proposed law repeals the present law definition of "conception" and "fertilization." Further, adds a new definition of "fertilization" and "conception" which mean that point in time when a male human sperm penetrates the zona pellucida of a female human ovum. Further, specifies that wherever the words fertilization or conception are used, they shall also include human beings created through asexual forms of reproduction such as twinning, cloning, or the functional equivalent thereof.

Present law (R.S. 40:1299.35.1(4)) defines "good faith medical judgment" as meaning a physician's use of reasonable care and diligence, along with his best judgment, in the application of his skill. Provides that the standard of care required of every health care provider, except a hospital, 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, but if the physician was performing abortion procedures that are considered to be included in the areas of a medical specialty, then the standard shall be that of the degree of skill ordinarily employed, under similar circumstances, by one practicing in good standing in that specialty.

Proposed law modifies present law by deleting the provision relative to a physician's performance of abortion procedures that are considered to be included in the areas of a medical specialty and the standard shall be that of the degree of skill ordinarily employed, under similar circumstances, by one practicing in good standing in that specialty.

Present law (R.S. 40:1299.35.1(6)) defines "live birth" or "born alive", with respect to a member of the species homo sapiens, as meaning the complete expulsion or extraction from its mother of that member, 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.

Proposed law modifies present law by deleting the provision that addresses the specific stage of the development of a member of the species homo sapiens.

Present law (R.S. 40:1299.35.1(8)) defines "pregnant" as meaning that female reproductive condition of having a developing embryo or fetus in the uterus which commences at fertilization and implantation.

Proposed law modifies present law by deleting the language referring to embryo or fetus in the uterus which commences and implantation. Instead, defines "Pregnant" as meaning that female reproductive condition of having a developing unborn child inside commencing at fertilization.

Present law (R.S. 40:1299.35.1(9)) defines "unborn child" or "fetus" as meaning the unborn offspring of human beings from the moment of conception through pregnancy and until live birth.

Proposed law modifies present law by deleting the term "fetus" and the words "conception through pregnancy" and "live." Instead, defines "Unborn child" as meaning the unborn offspring of human beings from the moment of fertilization and until live birth.

Present law (R.S. 40:1299.35.2) provides relative to an abortion by a physician, the determination of viability, ultrasound tests, exceptions, and penalties as follows:

- (1) Physician requirement. No person shall perform or induce an abortion unless that person is a physician licensed to practice medicine in the state of Louisiana.
- (2) Viability. Except in 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.
- (3) 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.
- (4) Ultrasound Requirements. Except in the case of a medical emergency, and in addition to the provisions of R.S. 40:1299.35.6, 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 under the provisions of this Section.
  - (a) Qualifications to perform ultrasound. The ultrasound shall be performed by the physician who is to perform the abortion, the referring physician, or a qualified person working in conjunction with either physician. 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.
  - (b) Requirements. At least two hours prior to the woman 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, the referring physician, or a qualified person working in conjunction with either physician shall comply with all of the following requirements:

- (i) Perform an obstetric ultrasound on the pregnant woman and offer to simultaneously display the screen which depicts the active ultrasound images so that the pregnant woman may view them.
  - (ii) Offer to provide a simultaneous explanation of what the ultrasound is depicting, 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 external members and internal organs, if present and viewable.
  - (iii) Offer to provide the pregnant woman with a sealed envelope clearly marked "ultrasound print" that contains 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 external members, if present and viewable; provided that the pregnant woman shall be informed that R.S. 40:1299.35.2 requires that she be provided with the envelope containing the ultrasound print, but that there is no requirement that she view the print image of her unborn child.
  - (iv) Orally read the following statement to the pregnant woman in the examination room prior to beginning the ultrasound examination:  
"Louisiana law requires that you be informed of three options that you may request at any time during this ultrasound examination:
    - (aa) You have the option to view the ultrasound screen at any time during the examination.
    - (bb) You have the option to receive an oral explanation of the ultrasound images.
    - (cc) You have the option to receive an ultrasound photographic print. Please inform me now or at any time during the ultrasound examination if you want to view the screen, receive an oral explanation or receive an ultrasound print."
  - (v) Obtain a written certification from the woman, after the ultrasound and prior to the abortion, that the requirements of this Subsection have been complied with.
  - (vi) Retain a copy of the written certification prescribed by present law. 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.
- (c) Medical Emergencies.
- (i) "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.
  - (ii) 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.

- (d) Civil penalties. In addition to whatever remedies are otherwise available under the laws of this state, failure to comply with the requirements of this Section shall provide a basis for professional disciplinary action provided for under law.
- (e) 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. Present law cannot be construed to conceal the identity of the plaintiff or of witnesses from the defendant.

Proposed law repeals present law.

Present law (R.S. 40:1299.35.3(A)) provides that in determining the meaning of any statute or of any rule, regulation, or interpretation of the various administrative agencies of this state, the words "person", "human being", "child", and "individual" include every infant member of the species homo sapiens who is born alive at any stage of development.

Proposed law deletes the words "who is born alive" from present law.

Present law (R.S. 40:1299.35.3(B)) provides that an infant at any stage of development who has survived an abortion procedure resulting in his or her live birth shall be given reasonable and immediate medical care as provided in R.S. 40:1299.35.4(C).

Proposed law modifies present law by specifying that an infant at any stage of development shall be given reasonable and immediate medical care.

Present law (R.S. 40:1299.35.4) provides with respect to abortion after viability and second attendant physicians as follows:

- (1) 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.
- (2) 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.
- (3) 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.

Proposed law repeals present law.

Present law (R.S. 40:1299.35.7) provides with respect to abortion sought due to rape or incest and reporting and certification requirements as follows:

- (1) Whenever an abortion is being sought pursuant to R.S. 40:1299.34.5 to terminate a pregnancy resulting from an alleged act of rape, prior to the abortion all of the following requirements shall be met:
  - (a) 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.
  - (b) The victim certifies that the pregnancy is the result of rape, which certificate shall be witnessed by the treating physician.
- (2) Whenever an abortion is being sought pursuant to R.S. 40:1299.34.5 to terminate a pregnancy resulting from an alleged act of incest, prior to the abortion all of the following requirements shall be met:
  - (a) The victim of incest shall report the act of incest 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 incest.
  - (b) The victim certifies that the pregnancy is the result of incest, which certificate shall be witnessed by the treating physician.
- (3) The failure of the victim to comply with R.S. 40:1299.35.7(A) or (B), as applicable, shall not subject the victim to the provisions of R.S. 40:1299.35.18.
- (4) Whenever an abortion is being sought pursuant to R.S. 40:1299.34.5 to terminate a pregnancy resulting from an alleged act of rape or incest, the victim may request spiritual counseling and shall be offered the same informed consent information, without the twenty-four-hour delay, contained in R.S. 40:1299.35.6(B), prior to the performance of the abortion.

Proposed law repeals present law.

Present law (R.S. 40:1299.35.12) provides that the provisions of R.S. 40:1299.35.2, 1299.35.4, 1299.35.5, and 1299.35.6 shall not apply when a medical emergency compels the immediate performance of an abortion because the continuation of the pregnancy poses an immediate threat and grave risk to the life or permanent physical health of the pregnant woman. Provides that within 24 hours, the attending physician shall certify to the emergency need for the abortion and shall enter such certification in the medical record of the pregnant woman.

Proposed law repeals present law.

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

(Amends R.S. 14:32.5(A) and R.S. 40:1299.30, 1299.33(D), 1299.34.5, 1299.35.0, 1299.35.1(2), (4), (6), (8), and (9), and 1299.35.3; Adds 40:1299.35.1(1)(d); Repeals R.S. 40:1299.35.2, 1299.35.4, 1299.35.7, and 1299.35.12)