

2015 Regular Session

HOUSE BILL NO. 701

BY REPRESENTATIVES WHITNEY AND HOFFMANN

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

ABORTION: Prohibits abortion based on sex selection

1 AN ACT

2 To amend and reenact R.S. 40:1299.35.6(B)(3)(d), and to enact R.S. 40:1299.30.2,  
3 1299.35.2(A)(3), and 1299.35.10(A)(27) and (28), relative to abortion; to provide  
4 relative to attempts to perform abortions; to prohibit certain actions undertaken in  
5 connection with abortion; to provide for civil actions pursuant to violation of certain  
6 abortion prohibitions; to provide for determination of age and sex of an unborn child  
7 in certain instances; to provide for information to be communicated to a woman prior  
8 to abortion; to provide relative to individual abortion reports; to provide a legislative  
9 declaration; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 40:1299.35.6(B)(3)(d) is hereby amended and reenacted and R.S.  
12 40:1299.30.2, 1299.35.2(A)(3), and 1299.35.10(A)(27) and (28) are hereby enacted to read  
13 as follows:

14 §1299.30.2. Abortion as means of sex selection; prohibition; civil actions

15 A.(1) Definition. As used in this Section "attempt to perform an abortion"  
16 shall mean to do or omit to do anything that, under the circumstances as the actor  
17 believes them to be, is an act or omission constituting a substantial step in a course  
18 of conduct planned to culminate in an abortion. Such a substantial step may include,  
19 without limitation, any of the following:

20 (a) Agreeing with an individual to perform an abortion on that individual or  
21 on some other person, whether or not the term "abortion" is used in the agreement,

1 and whether or not the agreement is contingent on another factor such as receipt of  
2 payment or a determination of pregnancy.

3 (b) Scheduling or planning a time to perform an abortion on an individual,  
4 whether or not the term "abortion" is used, and whether or not the performance is  
5 contingent on another factor such as receipt of payment or a determination of  
6 pregnancy.

7 (2) The definition provided in this Subsection shall not be construed to  
8 require that an abortion procedure actually be initiated for an attempt to occur.

9 B. Prohibition. No person shall intentionally perform or attempt to perform  
10 an abortion with knowledge that the pregnant woman is seeking the abortion because  
11 of the sex of the unborn child.

12 C. Civil penalties. Any person upon whom an abortion was performed in  
13 violation of this Section, or the father or a grandparent of the unborn child who was  
14 the subject of such an abortion, may maintain an action against the person who  
15 performed the abortion. Each person who establishes actual damages shall be  
16 entitled to treble damages and punitive damages in the amount of ten thousand  
17 dollars. No person shall be prohibited from recovery in such a suit on the grounds  
18 that either the plaintiff or the woman upon whom the abortion was performed gave  
19 consent to the abortion.

20 D.(1) Injunctive relief. A cause of action for injunctive relief against any  
21 person who has knowingly violated a provision of this Section may be maintained  
22 by any of the following persons:

23 (a) The woman upon whom an abortion was performed or attempted in  
24 violation of this Section.

25 (b) A spouse, parent, sibling, or guardian of, or a current or former licensed  
26 health care provider of, the woman upon whom an abortion has been performed or  
27 attempted in violation of this Section.

28 (c) A state's attorney with appropriate jurisdiction.

29 (d) The attorney general.

1           (2) The injunction provided for in this Subsection shall prevent the abortion  
2           provider from performing further abortions in violation of this Section.

3           E.(1) Violation of injunction. Any person who knowingly violates the terms  
4           of an injunction issued in accordance with Subsection D of this Section shall be  
5           subject to civil contempt, and shall be fined ten thousand dollars for the first  
6           violation, fifty thousand dollars for the second violation, one hundred thousand  
7           dollars for the third violation, and for each succeeding violation an amount in excess  
8           of one hundred thousand dollars sufficient to deter future violations. The fines  
9           provided for in this Subsection shall be the exclusive penalties for such contempt and  
10           shall be cumulative.

11           (2) Each performance or attempted performance of an abortion in violation  
12           of the terms of an injunction provided for in this Subsection shall constitute a  
13           separate violation.

14           (3) No fine shall be assessed against the woman upon whom an abortion is  
15           performed or attempted.

16           F. Attorney fees. If judgment is rendered in favor of the plaintiff in any  
17           action described in this Section, the court shall also render judgment for reasonable  
18           attorney fees in favor of the plaintiff against the defendant. If judgment is rendered  
19           in favor of the defendant and the court finds that the plaintiff's suit was frivolous and  
20           brought in bad faith, the court shall render judgment for reasonable attorney fees in  
21           favor of the defendant against the plaintiff.

22           G. Privacy. In each proceeding or action brought pursuant to the provisions  
23           of this Section, the anonymity of any woman upon whom an abortion is performed  
24           or attempted shall be preserved from public disclosure unless she gives her consent  
25           to such disclosure. The court, upon motion or sua sponte, shall issue orders to the  
26           parties, witnesses, and counsel, and shall direct the sealing of the record and  
27           exclusion of individuals from courtrooms or hearing rooms to the extent necessary  
28           to safeguard the woman's identity from public disclosure. In the absence of written  
29           consent of the woman upon whom an abortion has been performed or attempted, any

1 person who brings an action under Subsection C of this Section shall do so under a  
2 pseudonym.

3 \* \* \*

4 §1299.35.2. Abortion by physician; determination of viability, probable  
5 postfertilization age, and sex; ultrasound test required; exceptions; penalties

6 A.

7 \* \* \*

8 (3)(a) Except in the case of a medical emergency, the physician performing  
9 or inducing an abortion shall determine the probable postfertilization age of the  
10 unborn child in accordance with R.S. 40:1299.30.1(D).

11 (b)(i) If the unborn child is determined to have a probable postfertilization  
12 age of ten weeks or greater, the physician shall attempt to determine the sex of the  
13 unborn child according to the standard prescribed in Item (ii) of this Subparagraph.  
14 If the sex is determined, the mother shall be informed of the sex at least twenty-four  
15 hours before the abortion in accordance with R.S. 40:1299.35.6(B)(3). If the  
16 physician is unable to determine the sex of the unborn child, the mother shall be  
17 informed that the sex was not determinable.

18 (ii) In attempting to make the determination of sex, the physician shall  
19 perform such medical examinations and tests as a reasonably prudent physician,  
20 knowledgeable about the case and the medical conditions involved, would consider  
21 necessary to perform in making an accurate diagnosis with respect to the sex of the  
22 unborn child.

23 (c) For purposes of this Paragraph, the terms "medical emergency",  
24 "postfertilization age", "probable postfertilization age of the unborn child", and  
25 "unborn child" have the meanings ascribed in R.S. 40:1299.30.1(C).

26 \* \* \*

1 §1299.35.6. Woman's Right To Know

2 \* \* \*

3 B. Informed consent; requirements. After a woman is determined to be  
4 pregnant, no abortion shall be performed or induced without the voluntary and  
5 informed consent of the woman upon whom the abortion is to be performed or  
6 induced. Except in the case of a medical emergency, consent to an abortion is  
7 voluntary and informed if and only if:

8 \* \* \*

9 (3) Oral information from the physician. At least twenty-four hours before  
10 the abortion, the physician who is to perform the abortion or the referring physician  
11 has informed the woman, orally and in person, of:

12 \* \* \*

13 (d)(i) The probable anatomical and physiological characteristics of the  
14 unborn child at the time the abortion is to be performed.

15 (ii) The sex of the unborn child, if known.

16 \* \* \*

17 §1299.35.10. Reports

18 A. An individual abortion report for each abortion performed or induced  
19 shall be completed by the attending physician. The report shall be confidential and  
20 shall not contain the name or address of the woman. The report shall include:

21 \* \* \*

22 (27) The probable postfertilization age of the unborn child, as determined in  
23 accordance with R.S. 40:1299.30.1(D).

24 (28) The sex of the unborn child, if known, as determined in accordance with  
25 R.S. 40:1299.32(A)(3); or an indication that the sex of the unborn child was not  
26 determinable.

27 \* \* \*

28 Section 2. In accordance with R.S. 24:175, if any provision or item of this Act or the  
29 application thereof to any person or circumstance is found to be unconstitutional, the same

1 is hereby declared to be severable and the balance of this Act shall remain effective  
2 notwithstanding such unconstitutionality. The legislature hereby declares that it would have  
3 passed this Act, and each provision, section, subsection, sentence, clause, phrase, or word  
4 thereof, irrespective of the fact that any one or more provision or item be declared  
5 unconstitutional.

6 Section 3. The Louisiana State Law Institute is hereby authorized to redesignate the  
7 number of any Section of statute enacted by this Act in a manner that comports with the  
8 technical recodification provisions of House Concurrent Resolution No. 84 of this 2015  
9 Regular Session of the Legislature.

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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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HB 701 Engrossed

2015 Regular Session

Whitney

**Abstract:** Requires that physicians who perform or induce abortions determine the sex of the unborn child in certain instances, prohibits abortion based on sex selection, and provides for civil actions pursuant to violations of that prohibition.

Proposed law prohibits the performance of an abortion and any attempt to perform an abortion by a person who has knowledge that the pregnant woman is seeking the abortion because of the sex of the unborn child.

Proposed law defines "attempt to perform an abortion" as doing or omitting to do anything that, under the circumstances as the actor believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in an abortion. Provides that a "substantial step" may include, without limitation, all of the following:

- (1) Agreeing with an individual to perform an abortion on that individual or on some other person, whether or not the term "abortion" is used in the agreement, and whether or not the agreement is contingent on another factor such as receipt of payment or a determination of pregnancy.
- (2) Scheduling or planning a time to perform an abortion on an individual, whether or not the term "abortion" is used, and whether or not the performance is contingent on another factor such as receipt of payment or a determination of pregnancy.

Proposed law provides that the definition of "attempt to perform an abortion" shall not be construed to require that an abortion procedure actually be initiated for an attempt to occur.

Proposed law provides that any of the following persons may maintain an action against the person who performed the abortion for treble damages and punitive damages in the amount of \$10,000:

- (1) The person upon whom an abortion was performed in violation of proposed law.

- (2) The father of the unborn child who was the subject of the abortion.
- (3) A grandparent of the unborn child who was the subject of the abortion.

Proposed law stipulates that no person shall be prohibited from recovery in such a suit on the grounds that either the plaintiff or the woman upon whom the abortion was performed gave consent to the abortion.

Proposed law provides that any of the following persons may maintain a cause of action for injunctive relief against any person who has knowingly violated a provision of proposed law:

- (1) The woman upon whom an abortion was performed or attempted in violation of proposed law.
- (2) A spouse, parent, sibling, or guardian of, or a current or former licensed health care provider of, the woman upon whom an abortion has been performed or attempted in violation of proposed law.
- (3) A state's attorney with appropriate jurisdiction.
- (4) The attorney general.

Proposed law stipulates that the injunction provided for in proposed law shall prevent the abortion provider from performing further abortions in violation of proposed law.

Proposed law provides that any person who knowingly violates the terms of an injunction issued in accordance with proposed law shall be subject to civil contempt and shall be fined as follows:

- (1) \$10,000 for the first violation.
- (2) \$50,000 for the second violation.
- (3) \$100,000 for the third violation.
- (4) For each succeeding violation, an amount in excess of \$100,000 sufficient to deter future violations.

Proposed law stipulates that no fine shall be assessed against the woman upon whom an abortion is performed or attempted.

Proposed law provides for reasonable attorney fees in favor of the plaintiff against the defendant, or the defendant against the plaintiff, depending upon which party the judgment favors in a civil action brought pursuant to proposed law.

Proposed law provides that in each proceeding or action brought pursuant to proposed law, the anonymity of any woman upon whom an abortion is performed or attempted shall be preserved from public disclosure unless she gives her consent to disclosure.

Proposed law adds the following to requirements in present law of a physician who performs or induces an abortion:

- (1) If the unborn child is determined to have a probable postfertilization age of 10 weeks or greater, the physician shall attempt to determine the sex of the unborn child according to a standard prescribed in proposed law.
- (2) If the sex is determined, the mother shall be informed of the sex at least 24 hours before the abortion in accordance with proposed law.

- (3) If the physician is unable to determine the sex of the unborn child, the mother shall be informed that the sex was not determinable.
- (4) That the physician, in attempting to make the determination of sex, perform 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 the sex of the unborn child.

Proposed law adds to present law known as the "Woman's Right To Know" law a requirement that the sex of the unborn child, if known, be communicated to the woman orally and in person by the physician who is to perform the abortion or the referring physician at least 24 hours before the abortion.

Proposed law adds to present law relative to individual abortion reports requirements that the following information be included in the reports:

- (1) The probable postfertilization age of the unborn child, as determined in accordance with present law.
- (2) The sex of the unborn child, if known, as determined in accordance with proposed law; or an indication that the sex of the unborn child was not determinable.

Proposed law provides that in accordance with present law relative to severability (R.S. 24:175), if any provision or item of proposed law or the application thereof to any person or circumstance is found to be unconstitutional, the same is declared to be severable and the balance of proposed law shall remain effective notwithstanding such unconstitutionality. Provides a declaration indicating that the legislature would have passed proposed law, and each provision, section, subsection, sentence, clause, phrase, or word thereof, irrespective of the fact that any provision or item be declared unconstitutional.

(Amends R.S. 40:1299.35.6(B)(3)(d); Adds R.S. 40:1299.30.2, 1299.35.2(A)(3), and 1299.35.10(A)(27) and (28))

#### Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Health and Welfare to the original bill:

1. Add the following to requirements in present law of a physician who performs or induces an abortion:
  - (a) If the unborn child is determined to have a probable postfertilization age of 10 weeks or greater, the physician shall attempt to determine the sex of the unborn child according to a standard prescribed in proposed law.
  - (b) If the sex is determined, the mother shall be informed of the sex at least 24 hours before the abortion in accordance with proposed law.
  - (c) If the physician is unable to determine the sex of the unborn child, the mother shall be informed that the sex was not determinable.
  - (d) That the physician, in attempting to make the determination of sex, perform 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 the sex of the unborn child.



2. Add to present law known as the "Woman's Right To Know" law a requirement that the sex of the unborn child, if known, be communicated to the woman orally and in person by the physician who is to perform the abortion or the referring physician at least 24 hours before the abortion.
3. Add to present law relative to individual abortion reports requirements that the following information be included in the reports:
  - (a) The probable postfertilization age of the unborn child, as determined in accordance with present law.
  - (b) The sex of the unborn child, if known, as determined in accordance with proposed law; or an indication that the sex of the unborn child was not determinable.
4. Make technical changes.