

Regular Session, 2008

ACT No. 815

HOUSE BILL NO. 1372 (Substitute for House Bill No. 1016 by Representative Smiley)

BY REPRESENTATIVES SMILEY, ABRAMSON, BALDONE, BURFORD, CHAMPAGNE, CONNICK, GISCLAIR, HINES, HOFFMANN, JOHNSON, KATZ, LEGER, LIGI, MORRELL, PEARSON, PUGH, RICHARD, JANE SMITH, AND WADDELL

1 AN ACT

2 To amend and reenact R.S. 17:185.3, R.S. 36:4(B)(1)(e), R.S. 40:1299.40(E), and R.S.
3 46:2352(10)(a)(iii) and to repeal R.S. 17:3397.3(C), Chapter 27 of Title 25 of the
4 Louisiana Revised Statutes of 1950, comprised of R.S. 25:1231 through 1237, R.S.
5 36:4.1(D)(7), 109(B)(1) and (2), 209(Q), 259(JJ) and (KK), 509(D) and (V), 919.8,
6 and 919.10, Chapter 27 of Title 37 of the Louisiana Revised Statutes of 1950,
7 comprised of R.S. 37:2301 through 2319, Part XXXIII of Chapter 13 of Title 38 of
8 the Louisiana Revised Statutes of 1950, comprised of R.S. 38:3087.321 through
9 3087.335, R.S. 39:301, R.S. 40:31.2, and Subpart E of Part VII of Chapter 5 of Title
10 40 of the Louisiana Revised Statutes of 1950, comprised of R.S. 40:1236.15 through
11 1236.29, R.S. 46:2355, 2525.1, Chapter 46-A of Title 46 of the Louisiana Revised
12 Statutes of 1950, comprised of R.S. 46:2616 through 2618, Chapter 23 of Title 48
13 of the Louisiana Revised Statutes of 1950, comprised of R.S. 48:1831 through 1836,
14 Chapter 25 of Title 48 of the Louisiana Revised Statutes of 1950, comprised of R.S.
15 48:2001 through 2006, Chapter 29 of Title 48 of the Louisiana Revised Statutes of
16 1950, comprised of R.S. 48:2061 through 2067, Part VI of Chapter 3 of Title 51 of
17 the Louisiana Revised Statutes of 1950, comprised of R.S. 51:971 through 978,
18 Chapter 12-A of Title 51 of the Louisiana Revised Statutes of 1950, comprised of
19 R.S. 51:1371 through 1377, and Chapter 49 of Title 51 of the Louisiana Revised
20 Statutes of 1950, comprised of R.S. 51:3051 through 3056, relative to boards,
21 commissions, districts, authorities, and like entities; to abolish certain boards,
22 commissions, districts, authorities, and like entities; to remove references to,

1 provisions for, and the powers, functions, and duties of the Louisiana Purchase
 2 Bicentennial Commission, the Advisory Council for Technology Access by
 3 Individuals with Disabilities, the Medical Disclosure Panel, the Bio-recovery
 4 Technician Certification Commission, the Interagency Task Force on Health
 5 Literacy, the Diabetes Initiative Council, the Task Force on Violent Crime Against
 6 Women, the Telephone Access Program Board, the Agriculture Education Advisory
 7 Committee, the Research and Development Council, the Jackson Parish Dugdemona
 8 Watershed Authority, the Jean Lafitte Scenic Byway District, the Real French
 9 Destination Scenic Byway District, the Investment in Infrastructure for Economic
 10 Development Commission, the Waterways Infrastructure and Development Bank
 11 and its board of directors, the Applied Polymer Technology Extension Consortium
 12 Board of Directors and Advisory Committee, the Major Projects Development
 13 Authority, and the Louisiana State Radio and Television Technicians Board; to
 14 transfer powers and responsibilities of certain abolished entities; and to provide for
 15 related matters.

16 Be it enacted by the Legislature of Louisiana:

17 Section 1. R.S. 17:185.3 is hereby amended and reenacted to read as follows:

18 §185.3. Agricultural education; ~~advisory committee~~; state action plan

19 ~~A.(1) The Agricultural Education Advisory Committee, hereinafter referred~~
 20 ~~to as "advisory committee", shall be established to provide recommendations for the~~
 21 ~~development and implementation of the state action plan for the delivery of~~
 22 ~~education in agriculture literacy, awareness, and career exploration in public schools.~~

23 ~~(2) The advisory committee shall be composed of the following members:~~

24 ~~(a) The state superintendent of education, or his designee.~~

25 ~~(b) The commissioner of agriculture, or his designee.~~

26 ~~(c) One member of the State Board of Elementary and Secondary Education,~~
 27 ~~appointed by the board president.~~

28 ~~(d) The commissioner of higher education, or his designee.~~

29 ~~(e) The president of the Louisiana Community and Technical College~~
 30 ~~System, or his designee.~~

1 ~~(f) The chancellor of the Louisiana State University Agricultural Center, or~~
 2 ~~his designee.~~

3 ~~(g) The president of the Louisiana School Boards Association, or his~~
 4 ~~designee.~~

5 ~~(h) The president of the Louisiana Association of School Superintendents,~~
 6 ~~or his designee.~~

7 ~~(i) The president of the Louisiana Association of School Principals, or his~~
 8 ~~designee.~~

9 ~~(j) The chairman of the Workforce Commission, or his designee.~~

10 ~~(k) One member to serve as a representative of the Louisiana Farm Bureau~~
 11 ~~Federation.~~

12 ~~(l) An agricultural education teacher educator, appointed by the~~
 13 ~~commissioner of higher education.~~

14 ~~(m) A local career and technical education supervisor, appointed by the~~
 15 ~~superintendent of education.~~

16 ~~(n) A local curriculum supervisor, appointed by the superintendent of~~
 17 ~~education.~~

18 ~~(o) Two agricultural science teachers, to be appointed by the superintendent~~
 19 ~~of education from a list of five names submitted by the Louisiana Vocational~~
 20 ~~Agriculture Teachers Association.~~

21 ~~(p) Two "Ag in the Classroom" teachers, to be appointed by the~~
 22 ~~superintendent of education from a list of five names submitted by the president of~~
 23 ~~the Louisiana Farm Bureau Federation.~~

24 ~~(q) One career and technical education staff member from the state~~
 25 ~~Department of Education, appointed by the state superintendent of education.~~

26 ~~(r) One member to serve as a representative of the Louisiana School for the~~
 27 ~~Agricultural Sciences.~~

28 ~~(s) One adult member to serve as a representative of the Louisiana FFA~~
 29 ~~Organization.~~

1 ~~(t) One member to serve as a representative for the coordinator of the office~~
 2 ~~of environmental education.~~

3 ~~(3) The members shall serve without compensation.~~

4 ~~B. The advisory committee shall, at a minimum, provide recommendations~~
 5 ~~for the following:~~

6 ~~(1) A plan to provide for a statewide agriculture resource center.~~

7 ~~(2) Funding strategies.~~

8 ~~(3) Coordination of the agricultural education program delivery between~~
 9 ~~postsecondary education, elementary and secondary, and workforce development.~~

10 ~~(4) Coordination of professional development activities.~~

11 ~~(5) Technical assistance to city, parish, and other local public school~~
 12 ~~systems.~~

13 ~~(6) Submission of a state action plan that falls within the parameters~~
 14 ~~established in the Unified State Plan for Workforce Development and~~
 15 ~~recommendations for implementation to the state Department of Education and to~~
 16 ~~the Senate and House committees on education.~~

17 ~~C. The advisory committee may establish an instructional strategies team and~~
 18 ~~appoint its members as the advisory committee deems necessary to help develop~~
 19 ~~lesson plans that meet the statewide content standards, support the goals and mission~~
 20 ~~of the statewide accountability system, and that can be integrated into local~~
 21 ~~curriculum. The team may include but shall not be limited to teachers, curriculum~~
 22 ~~directors, department staff, principals, postsecondary representatives, local business~~
 23 ~~owners or their representatives, representatives of agricultural organizations, and any~~
 24 ~~other member as designated by the advisory committee.~~

25 ~~D. The state superintendent of education shall call the first meeting of the~~
 26 ~~Agricultural Education Advisory Committee no later than August 15, 2001, and a~~
 27 ~~chairman shall be elected from among the membership at such meeting.~~

28 ~~E. A. The State Board of Elementary and Secondary Education, upon~~
 29 ~~recommendation of the state Department of Education, shall approve a state action~~
 30 ~~plan for a nonmandatory comprehensive agricultural education program for~~

1 kindergarten through grade twelve, inclusive, in the public schools in Louisiana. The
2 state action plan shall include instructional strategies, guidelines, instructional
3 materials, and professional development activities.

4 ~~F.~~ B. The instructional strategies established pursuant to this Section for
5 kindergarten through grade six may include grade-appropriate and collaborative
6 learning experiences through investigation and inquiry, including laboratory and site-
7 based learning activities.

8 ~~G.~~ C. The instructional strategies established pursuant to this Section for
9 grades seven through twelve may include the elements as provided in Subsection ~~F~~
10 B of this Section and the following components:

11 (1) Organized classes in the study of agriculture, agriscience, and
12 agribusiness.

13 (2) Supervised program of work-based learning experiences in agricultural
14 careers that occur outside of the classroom.

15 (3) Organized program of leadership, organization, and personal
16 development at the local level.

17 (4) Learning activities that are intracurricular and may contribute to the
18 grade of the student when such activities are integral to assisting such student in
19 achieving an objective of a class or course. Such intracurricular activities may
20 include those activities associated with the FFA Organization.

21 Section 2. R.S. 36:4(B)(1)(e) is hereby amended and reenacted to read as follows:

22 §4. Structure of executive branch of state government

23 * * *

24 B. The office of the governor shall be in the executive branch of state
25 government.

26 (1) The following agencies and their powers, duties, functions, and
27 responsibilities are hereby transferred to the office of the governor:

28 * * *

29 (e) The office of information technology (R.S. 39:15.1-15.6); and the office
30 of electronic services (R.S. 39:16.1-16.5), including the Louisiana Geographic

1 Information Systems Council (R.S. 49:1051-1057) ~~and the Advisory Council for~~
2 ~~Technology Access by Individuals with Disabilities (R.S. 39:301 et seq.)~~, within the
3 division of administration.

4 * * *

5 Section 3. R.S. 40:1299.40(E) is hereby amended and reenacted to read as follows:

6 §1299.40. Consent to medical treatment; exception; ~~Louisiana Medical Disclosure~~
7 ~~Panel~~; availability of lists to establish necessity and degree

8 * * *

9 E.(1) As used in this Subsection,

10 (a) ~~"Panel"~~ means the ~~Louisiana Medical Disclosure Panel~~.

11 (b) ~~"Secretary"~~ "secretary" means the secretary of the Department of Health
12 and Hospitals.

13 (2)(a) In a suit against a physician or other health care provider involving a
14 health care liability or medical malpractice claim which is based on the failure of the
15 physician or other health care provider to disclose or adequately to disclose the risks
16 and hazards involved in the medical care or surgical procedure rendered by the
17 physician or other health care provider, the only theory on which recovery may be
18 obtained is that of negligence in failing to disclose the risks or hazards that could
19 have influenced a reasonable person in making a decision to give or withhold
20 consent.

21 (b) Consent to medical treatment may be evidenced according to the
22 provisions of Subsections A and C of this Section or, as an alternative, a physician
23 or other health care provider may choose to avail himself of the lists established by
24 the ~~Louisiana Medical Disclosure Panel~~ secretary pursuant to the provisions of this
25 Subsection as another method by which to evidence a patient's consent to medical
26 treatment.

27 (3)(a) The ~~Louisiana Medical Disclosure Panel~~ ~~is created within the~~
28 ~~Department of Health and Hospitals to~~ secretary shall determine which risks and
29 hazards related to medical care and surgical procedures must be disclosed by a

1 physician or other health care provider to a patient or person authorized to consent
2 for a patient and to establish the general form and substance of such disclosure.

3 ~~(b) The panel established by this Subsection shall be comprised of eleven~~
4 ~~members, with one member licensed to practice dentistry who specializes in oral and~~
5 ~~maxillofacial surgery, and four members licensed to practice law in this state and six~~
6 ~~members licensed to practice medicine in this state. Members of the panel shall be~~
7 ~~appointed by the secretary of the Department of Health and Hospitals and submitted~~
8 ~~to the Senate for confirmation. The members of the panel licensed to practice~~
9 ~~medicine shall be selected from a list of nominees submitted to the secretary by the~~
10 ~~Louisiana State Medical Society. Of the members of the panel licensed to practice~~
11 ~~law, three shall be selected from a list of nominees submitted to the secretary by the~~
12 ~~Louisiana Trial Lawyers Association and one shall be selected from a list of~~
13 ~~nominees submitted to the secretary by the Louisiana Defense Counsel Association.~~
14 ~~The member of the panel licensed to practice dentistry who specializes in oral and~~
15 ~~maxillofacial surgery shall be selected from a list of nominees submitted to the~~
16 ~~secretary by the Louisiana Society of Oral and Maxillofacial Surgeons.~~

17 ~~(c) The initial members of the panel shall have the following terms:~~

18 ~~(i) The dentist who specializes in oral and maxillofacial surgery, one~~
19 ~~attorney, and two physicians shall serve a term of two years, or until a successor is~~
20 ~~appointed and qualified;~~

21 ~~(ii) Two attorneys and two physicians shall serve a term of four years, or~~
22 ~~until a successor is appointed and qualified;~~

23 ~~(iii) One attorney and two physicians shall serve a term of six years, or until~~
24 ~~a successor is appointed and qualified.~~

25 ~~Thereafter, at the expiration of the term of each member of the panel, the~~
26 ~~secretary shall appoint a successor and such successor shall serve for a term of six~~
27 ~~years, or until his successor is appointed and qualified. Any member of the panel~~
28 ~~who is absent for three consecutive meetings without the consent of a majority of the~~
29 ~~panel at each such meeting may be removed by the secretary at the request of the~~
30 ~~panel present submitted in writing and signed by the chairman. Upon the death,~~

1 ~~resignation, or removal of any member, the secretary shall fill the vacancy by~~
2 ~~selection for the unexpired portion of the term.~~

3 ~~(d) Members of the panel shall not be entitled to per diem or any other~~
4 ~~compensation for their service, but shall be entitled to reimbursement of any~~
5 ~~necessary and reasonable expense incurred in the performance of their duties on the~~
6 ~~panel, including travel expenses.~~

7 ~~(e) Meetings of the panel shall be held at the call of the chairman or on~~
8 ~~petition of at least three members of the panel.~~

9 ~~(f) At the first meeting of the panel each year after its members assume their~~
10 ~~positions, the panelists shall select one of the panel members to serve as chairman~~
11 ~~and one of the panel members to serve as vice chairman, and each such officer shall~~
12 ~~serve for a term of one year. The chairman shall preside at meetings of the panel,~~
13 ~~and in his absence, the vice chairman shall preside.~~

14 ~~(g) The Department of Health and Hospitals shall provide administrative~~
15 ~~assistance to and serve as the staff for the panel.~~

16 ~~(h) The secretary shall appoint the initial members of the panel no later than~~
17 ~~September 1, 1990, and the panel shall convene its first meeting no later than~~
18 ~~October 1, 1990.~~

19 (4)(a) To the extent feasible, the panel secretary shall identify and make a
20 thorough examination of all medical treatments and surgical procedures in which
21 physicians and other health care providers may be involved in order to determine
22 which of those treatments and procedures do and do not require disclosure of the
23 risks and hazards to the patient or person authorized to consent for the patient. ~~The~~
24 ~~dentist member of the panel shall only participate in the panel's deliberation,~~
25 ~~determination, and preparation of lists of dental treatments and procedures that do~~
26 ~~and do not require disclosure.~~

27 (b) The panel secretary shall prepare separate lists of those medical
28 treatments and surgical procedures that do and do not require disclosure and for
29 those treatments and procedures that do require disclosure shall establish the degree
30 of disclosure required and the form in which the disclosure will be made.

1 (c) Lists prepared under Subparagraph 4(b) of this ~~Subsection~~ Paragraph
 2 together with written explanations of the degree and form of disclosure shall be
 3 promulgated according to the Administrative Procedure Act. The form of the
 4 disclosure and manner in which such disclosure will be made shall be subject to
 5 legislative oversight by the House and Senate ~~Health~~ health and ~~Welfare~~ welfare ~~Committees~~
 6 committees. ~~The initial lists of the panel shall be published on or before~~
 7 ~~January 1, 1991, or at such time as soon after that date as the panel determines to be~~
 8 ~~feasible, but, in no event, shall the initial lists be published later than March 1, 1991.~~
 9 The lists compiled and published and rules promulgated relative to the form and
 10 manner of disclosure according to the provisions of this Subsection and evidence of
 11 such disclosures or failure to disclose by a physician or other health care provider as
 12 provided in Paragraphs (5) and (6) of this Subsection shall be admissible in a health
 13 care liability suit or medical malpractice claim involving medical care rendered or
 14 a surgical procedure performed on or after March 1, 1991.

15 (d) At least annually, or at such other period as the ~~panel~~ secretary may
 16 determine, the ~~panel~~ secretary shall identify and examine any new medical
 17 treatments and surgical procedures that have been developed since its last
 18 determinations, shall assign them to the proper list, and shall establish the degree of
 19 disclosure required and the form in which the disclosure shall be made. The ~~panel~~
 20 secretary shall also review and examine such treatments and procedures for the
 21 purpose of revising lists previously published. These determinations shall be
 22 published in the same manner as described in Subparagraph 4(c) of this ~~Subsection~~
 23 Paragraph.

24 (5) Before a patient or a person authorized to consent for a patient gives
 25 consent to any medical or surgical procedure that appears on the ~~panel's~~ list requiring
 26 disclosure, the physician or other health care provider shall disclose to the patient,
 27 or person authorized to consent for the patient, the risks and hazards involved in that
 28 kind of care or procedure. A physician or other health care provider may choose to
 29 utilize the lists prepared by the ~~panel~~ secretary and shall be considered to have

1 complied with the requirements of this Subsection if disclosure is made as provided
 2 in Paragraph (6) of this Subsection.

3 (6) Consent to medical care that appears on the ~~panel's~~ secretary's list
 4 requiring disclosure shall be considered effective under this Subsection, if it is given
 5 in writing, signed by the patient or a person authorized to give the consent and by a
 6 competent witness, and if the written consent specifically states, in such terms and
 7 language that a layman would be expected to understand, the risks and hazards that
 8 are involved in the medical care or surgical procedure in the form and to the degree
 9 required by the ~~panel~~ secretary under Paragraph (4) of this Subsection.

10 (7)(a) In a suit against a physician or other health care provider involving a
 11 health care liability or medical malpractice claim which is based on the negligent
 12 failure of the physician or other health care provider to disclose or adequately to
 13 disclose the risks and hazards involved in the medical care or surgical procedure
 14 rendered by the physician or other health care provider:

15 (i) Both the disclosure made as provided in Paragraph (5) of this Subsection
 16 and the failure to disclose based on inclusion of any medical care or surgical
 17 procedure on the ~~panel's~~ secretary's list for which disclosure is not required shall be
 18 admissible in evidence and shall create a rebuttable presumption that the
 19 requirements of Paragraphs (5) and (6) of this Subsection have been complied with,
 20 and this presumption shall be included in the charge to the jury; and

21 (ii) The failure to disclose the risks and hazards involved in any medical care
 22 or surgical procedure required to be disclosed under Paragraphs (5) and (6) of this
 23 Subsection shall be admissible in evidence and shall create a rebuttable presumption
 24 of a negligent failure to conform to the duty of disclosure set forth in Paragraphs (5)
 25 and (6) of this Subsection, and this presumption shall be included in the charge to the
 26 jury; but failure to disclose may be found not to be negligent, if there was an
 27 emergency as defined in R.S. 40:2113.6(C) or, if for some other reason, it was not
 28 medically feasible to make a disclosure of the kind that would otherwise have been
 29 negligence.

1 (b) If medical care is rendered or a surgical procedure performed with
2 respect to which the ~~panel~~ secretary has not made a determination regarding a duty
3 of disclosure, the physician or other health care provider is under the general duty
4 to disclose otherwise imposed by this Section.

5 (c) In order to be covered by the provisions of this Subsection, the physician
6 or other health care provider who will actually perform the contemplated medical or
7 surgical procedure shall:

8 (i) Disclose the risks and hazards in the form and to the degree required by
9 the ~~panel~~ secretary;

10 (ii) Disclose additional risks, if any, particular to a patient because of a
11 complicating medical condition, either told to the physician or other health care
12 provider by the patient or his representative in a medical history of the patient or
13 reasonably discoverable by such physician or other health care provider;

14 (iii) Disclose reasonable therapeutic alternatives and risks associated with
15 such alternatives;

16 (iv) Relate that he is obtaining a consent to medical treatment pursuant to the
17 lists formulated by the ~~Louisiana Medical Disclosure Panel~~ secretary; and

18 (v) Provide an opportunity to ask any questions about the contemplated
19 medical or surgical procedure, risks, or alternatives and acknowledge in writing that
20 he answered such questions, to the patient or other person authorized to give consent
21 to medical treatment, receipt of which shall be acknowledged in writing.

22 * * *

23 Section 4. R.S. 46:2352(10)(a)(iii) is hereby amended and reenacted to read as
24 follows:

25 §2352. Duties

26 The commission shall:

27 * * *

28 (10)(a) Establish, administer, and promote a statewide program to provide
29 access to all public telecommunications services by persons who are deaf, deaf-blind,

1 and others such as severely hearing impaired or severely speech impaired. This
2 program shall include but is not limited to:

3 * * *

4 (iii) ~~The creation of a telephone access program board, as provided for in~~
5 ~~R.S. 46:2355, recommendation~~ Recommendation for the selection of staff,
6 rate/surcharge, operating budget, and other related matters, determination of
7 functions of the staff, approval of the selection of appropriate equipment,
8 development, evaluation, and modification of the distribution system for specialized
9 equipment, approval of the development, implementation, evaluation, and
10 modification of a year-round, ~~twenty-four hour~~ twenty-four-hour dual party relay
11 system, and the engagement in other related activities not inconsistent with legal
12 mandates nor otherwise prohibited by law.

13 * * *

14 Section 5. R.S. 17:3397.3(C), Chapter 27 of Title 25 of the Louisiana Revised
15 Statutes of 1950, comprised of R.S. 25:1231 through 1237, R.S. 36:4.1(D)(7), 109(B)(1) and
16 (2), 209(Q), 259(JJ) and (KK), 509(D) and (V), 919.8, and 919.10, Chapter 27 of Title 37
17 of the Louisiana Revised Statutes of 1950, comprised of R.S. 37:2301 through 2319, Part
18 XXXIII of Chapter 13 of Title 38 of the Louisiana Revised Statutes of 1950, comprised of
19 R.S. 38:3087.321 through 3087.335, R.S. 39:301, R.S. 40:31.2, and Subpart E of Part VII
20 of Chapter 5 of Title 40 of the Louisiana Revised Statutes of 1950, comprised of R.S.
21 40:1236.15 through 1236.29, R.S. 46:2355, 2525.1, Chapter 46-A of Title 46 of the
22 Louisiana Revised Statutes of 1950, comprised of R.S. 46:2616 through 2618, Chapter 23
23 of Title 48 of the Louisiana Revised Statutes of 1950, comprised of R.S. 48:1831 through
24 1836, Chapter 25 of Title 48 of the Louisiana Revised Statutes of 1950, comprised of R.S.
25 48:2001 through 2006, and Chapter 29 of Title 48 of the Louisiana Revised Statues of 1950,
26 comprised of R.S. 48:2061 through 2067, and Part VI of Chapter 3 of Title 51 of the
27 Louisiana Revised Statues of 1950, comprised of R.S. 51:971 through 978, Chapter 12-A
28 of Title 51 of the Louisiana Revised Statutes of 1950, comprised of R.S. 51:1371 through
29 1377, and Chapter 49 of Title 51 of the Louisiana Revised Statutes of 1950, comprised of
30 R.S. 51:3051 through 3056, are hereby repealed in their entirety.

1 Section 6. The provisions of this Act shall not affect the validity of any action,
 2 determination, rule, or regulation of the Louisiana Medical Disclosure Panel validly made
 3 or adopted prior to the effective date of this Act. Any rule or regulation of the panel validly
 4 adopted prior to the effective date of this Act shall be effective as provided in such rule or
 5 regulation or any applicable provision of law and shall be subject to change as provided in
 6 this Act or any other provision of law.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____