

1 HB18
2 125589-1
3 By Representative Rich
4 RFD: Health
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8 SYNOPSIS: This bill would prohibit elective abortions
9 at and after 20 weeks of pregnancy, based upon
10 medical assertions and legislative findings that an
11 unborn child is capable of feeling pain.

12 This bill would require a physician to
13 determine the probable postfertilization age of an
14 unborn child before performing or attempting to
15 perform an abortion.

16 This bill would prohibit any person from
17 performing or attempting to perform an abortion on
18 any unborn child with a postfertilization age of 20
19 weeks or more unless necessary to prevent the death
20 or serious risk of substantial and irreversible
21 physical impairment of a major bodily function of
22 the woman.

23 This bill would require every physician who
24 performs or attempts to perform an abortion to
25 report to the State Department of Public Health and
26 for the department to annually compile and issue a
27 public report.

1 This bill would provide civil remedies and
2 criminal penalties for violations.

3 This bill would provide for anonymity for
4 women in court proceedings.

5 Amendment 621 of the Constitution of Alabama
6 of 1901, now appearing as Section 111.05 of the
7 Official Recompilation of the Constitution of
8 Alabama of 1901, as amended, prohibits a general
9 law whose purpose or effect would be to require a
10 new or increased expenditure of local funds from
11 becoming effective with regard to a local
12 governmental entity without enactment by a 2/3 vote
13 unless: it comes within one of a number of
14 specified exceptions; it is approved by the
15 affected entity; or the Legislature appropriates
16 funds, or provides a local source of revenue, to
17 the entity for the purpose.

18 The purpose or effect of this bill would be
19 to require a new or increased expenditure of local
20 funds within the meaning of the amendment. However,
21 the bill does not require approval of a local
22 governmental entity or enactment by a 2/3 vote to
23 become effective because it comes within one of the
24 specified exceptions contained in the amendment.

25
26 A BILL
27 TO BE ENTITLED

1 AN ACT

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3 To prohibit elective abortions at and after 20 weeks
4 of pregnancy; to provide legislative findings regarding
5 medical assertions that an unborn child is capable of feeling
6 pain; to require a physician to determine the
7 postfertilization age of an unborn child before performing or
8 attempting to perform an abortion; to prohibit the abortion of
9 any unborn child with a postfertilization age of 20 weeks or
10 more, with certain exceptions relating to the health of the
11 woman; to require physician reporting of abortions to the
12 Department of Public Health; to require the department to
13 annually issue a public report; to provide civil remedies and
14 criminal penalties for violations; to provide for anonymity
15 for women in court proceedings; to provide for construction
16 with other laws; and in connection therewith to have as its
17 purpose or effect the requirement of a new or increased
18 expenditure of local funds within the meaning of Amendment 621
19 of the Constitution of Alabama of 1901, now appearing as
20 Section 111.05 of the Official Compilation of the
21 Constitution of Alabama of 1901, as amended.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. For purposes of this act, the following
24 terms shall have the following meanings:

25 (1) ABORTION. The use or prescription of any
26 instrument, medicine, drug, or other substance or device to
27 terminate the pregnancy of a woman known to be pregnant with

1 an intention other than to increase the probability of a live
2 birth, to preserve the life or health of the child after live
3 birth, or to remove a dead unborn child who died as the result
4 of natural causes in utero, accidental trauma, or a criminal
5 assault on the pregnant woman or her unborn child, and which
6 causes the premature termination of the pregnancy.

7 (2) ATTEMPT TO PERFORM OR INDUCE AN ABORTION. An
8 act, or an omission of a statutorily required act, that, under
9 the circumstances as the actor believes them to be,
10 constitutes a substantial step in a course of conduct planned
11 to culminate in the performance or induction of an abortion in
12 this state in violation of this act.

13 (3) FERTILIZATION. The fusion of a human
14 spermatozoon with a human ovum.

15 (4) MEDICAL EMERGENCY. A condition which, in
16 reasonable medical judgment, so complicates the medical
17 condition of the pregnant woman as to necessitate the
18 immediate abortion of her pregnancy to avert her death or for
19 which a delay will create a serious risk of substantial and
20 irreversible physical impairment of a major bodily function.
21 No condition shall be deemed a medical emergency if based on a
22 claim or diagnosis that the woman will engage in conduct which
23 would result in her death or in substantial and irreversible
24 physical impairment of a major bodily function.

25 (5) POSTFERTILIZATION AGE. The age of the unborn
26 child as calculated from the fertilization of the human ovum.

1 (6) REASONABLE MEDICAL JUDGMENT. A medical judgment
2 that would be made by a reasonably prudent physician,
3 knowledgeable about the case and the treatment possibilities
4 with respect to the medical conditions involved.

5 (7) PHYSICIAN. Any person licensed to practice
6 medicine and surgery or osteopathic medicine and surgery in
7 this state.

8 (8) PROBABLE POSTFERTILIZATION AGE OF THE UNBORN
9 CHILD. What, in reasonable medical judgment, will with
10 reasonable probability be the postfertilization age of the
11 unborn child at the time the abortion is planned to be
12 performed.

13 (9) UNBORN CHILD or FETUS. An individual organism of
14 the species homo sapiens from fertilization until live birth.

15 (10) WOMAN. A female human being whether or not she
16 has reached the age of majority.

17 Section 2. The Legislature makes all of the
18 following findings:

19 (1) At least by 20 weeks after fertilization there
20 is substantial evidence that an unborn child has the physical
21 structures necessary to experience pain.

22 (2) There is substantial evidence that, by 20 weeks
23 after fertilization, unborn children seek to evade certain
24 stimuli in a manner which in an infant or an adult would be
25 interpreted as a response to pain.

1 (3) Anesthesia is routinely administered to unborn
2 children who have developed 20 weeks or more past
3 fertilization who undergo prenatal surgery.

4 (4) Even before 20 weeks after fertilization, unborn
5 children have been observed to exhibit hormonal stress
6 responses to painful stimuli. Such responses were reduced when
7 pain medication was administered directly to such unborn
8 children.

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

13 Section 3. (a) Except in the case of a medical
14 emergency which prevents compliance with this section, no
15 abortion shall be performed or induced or be attempted to be
16 performed or induced unless the physician performing or
17 inducing the abortion has first made a determination of the
18 probable postfertilization age of the unborn child or relied
19 upon such a determination made by another physician. In making
20 such a determination, the physician shall make such inquiries
21 of the woman and perform or cause to be performed such medical
22 examinations and tests as a reasonably prudent physician,
23 knowledgeable about the case and the medical conditions
24 involved, would consider necessary to perform in making an
25 accurate diagnosis with respect to postfertilization age.

1 (b) Failure by any physician to conform to any
2 requirement of this section constitutes unprofessional
3 conduct.

4 Section 4. No person shall perform or induce or
5 attempt to perform or induce an abortion upon a woman when it
6 has been determined, by the physician performing or inducing
7 the abortion or by another physician upon whose determination
8 that physician relies, that the probable postfertilization age
9 of the unborn child of the woman is 20 or more weeks unless,
10 in reasonable medical judgment, the woman has a condition
11 which so complicates her medical condition as to necessitate
12 the abortion of her pregnancy to avert her death or to avert
13 serious risk of substantial and irreversible physical
14 impairment of a major bodily function or it is necessary to
15 preserve the life of an unborn child. No such condition shall
16 be deemed to exist if it is based on a claim or diagnosis that
17 the woman will engage in conduct which would result in her
18 death or in substantial and irreversible physical impairment
19 of a major bodily function. In such a case, the physician
20 shall terminate the pregnancy in the manner which, in
21 reasonable medical judgment, provides the best opportunity for
22 the unborn child to survive, unless, in reasonable medical
23 judgment, termination of the pregnancy in that manner would
24 pose a greater risk either of the death of the pregnant woman
25 or of the substantial and irreversible physical impairment of
26 a major bodily function of the woman than would another
27 available method. No such greater risk shall be deemed to

1 exist if it is based on a claim or diagnosis that the woman
2 will engage in conduct which would result in her death or in
3 substantial and irreversible physical impairment of a major
4 bodily function.

5 Section 5. (a) Any physician who performs or induces
6 or attempts to perform or induce an abortion shall report to
7 the Department of Public Health, on a schedule and in
8 accordance with forms and rules adopted and promulgated by the
9 department, all of the following:

10 (1) If a determination of probable postfertilization
11 age was made, the probable postfertilization age determined
12 and the method and basis of the determination.

13 (2) If a determination of probable postfertilization
14 age was not made, the basis of the determination that a
15 medical emergency existed.

16 (3) If the probable postfertilization age was
17 determined to be 20 or more weeks, the basis of the
18 determination that the pregnant woman had a condition which so
19 complicated her medical condition as to necessitate the
20 abortion of her pregnancy to avert her death or to avert
21 serious risk of substantial and irreversible physical
22 impairment of a major bodily function, or the basis of the
23 determination that it was necessary to preserve the life of an
24 unborn child.

25 (4) The method used for the abortion and, in the
26 case of an abortion performed when the probable
27 postfertilization age was determined to be 20 or more weeks,

1 whether the method of abortion used was one that, in
2 reasonable medical judgment, provided the best opportunity for
3 the unborn child to survive or, if such a method was not used,
4 the basis of the determination that termination of the
5 pregnancy in that manner would pose a greater risk either of
6 the death of the pregnant woman or of the substantial and
7 irreversible physical impairment of a major bodily function of
8 the woman than would other available methods.

9 (b) By June 30 of each year, the department shall
10 issue a public report providing statistics for the previous
11 calendar year compiled from all of the reports covering that
12 year submitted in accordance with this section for each of the
13 items listed in subsection (1). Each report shall also provide
14 the statistics for all previous calendar years during which
15 this section was in effect, adjusted to reflect any additional
16 information from late or corrected reports. The department
17 shall take care to ensure that none of the information
18 included in the public reports could reasonably lead to the
19 identification of any pregnant woman upon whom an abortion was
20 performed.

21 (c) Any physician who fails to submit a report by
22 the end of 30 days following the due date shall be subject to
23 a late fee of five hundred dollars (\$500) for each additional
24 30-day period or portion of a 30-day period the report is
25 overdue. Any physician required to report in accordance with
26 this act who has not submitted a report, or has submitted only
27 an incomplete report, more than one year following the due

1 date, in an action brought in the manner in which actions are
2 brought by the Medical Licensure Commission, may be directed
3 by a court of competent jurisdiction to submit a complete
4 report within a time period stated by court order or be
5 subject to civil contempt. Failure by any physician to conform
6 to any requirement of this section, other than late filing of
7 a report, constitutes unprofessional conduct. Failure by any
8 physician to submit a complete report in accordance with a
9 court order constitutes unprofessional conduct. Intentional or
10 reckless falsification of any report required under this
11 section is a Class B misdemeanor.

12 (d) Within 90 days after the effective date of this
13 act, the department shall adopt and promulgate rules to assist
14 in compliance with this section.

15 Section 6. Any person who intentionally or
16 recklessly performs or attempts to perform an abortion in
17 violation of this act is guilty of a Class C felony. No
18 penalty shall be assessed against the woman upon whom the
19 abortion is performed or attempted to be performed.

20 Section 7. (a) Any woman upon whom an abortion has
21 been performed in violation of this act, or the father of the
22 unborn child who was the subject of such an abortion, may
23 maintain an action against the person who performed the
24 abortion in intentional or reckless violation of this act for
25 actual damages. Any woman upon whom an abortion has been
26 attempted in violation of this act may maintain an action
27 against the person who attempted to perform the abortion in

1 intentional or reckless violation of this act for actual
2 damages.

3 (b) A cause of action for injunctive relief against
4 any person who has intentionally violated this act may be
5 maintained by the woman upon whom an abortion was performed or
6 attempted to be performed in violation of this act, by any
7 person who is the spouse, parent, sibling, or guardian of, or
8 a current or former licensed health care provider of, the
9 woman upon whom an abortion has been performed or attempted to
10 be performed in violation of this act, by a district attorney
11 with appropriate jurisdiction, or by the Attorney General. The
12 injunction shall prevent the abortion provider from performing
13 further abortions in violation of this act in this state.

14 (c) If judgment is rendered in favor of the
15 plaintiff in an action described in this section, the court
16 shall also render judgment for reasonable attorney fees in
17 favor of the plaintiff against the defendant.

18 (d) If judgment is rendered in favor of the
19 defendant and the court finds that the suit by the plaintiff
20 was frivolous and brought in bad faith, the court shall also
21 render judgment for reasonable attorney fees in favor of the
22 defendant against the plaintiff.

23 (e) No damages or attorney fees may be assessed
24 against the woman upon whom an abortion was performed or
25 attempted to be performed except as provided in subsection
26 (d).

1 Section 8. In every civil or criminal proceeding or
2 action brought under this act, the court shall rule whether
3 the anonymity of any woman upon whom an abortion has been
4 performed or attempted to be performed shall be preserved from
5 public disclosure if she does not give her consent to such
6 disclosure. The court, upon motion or sua sponte, shall make
7 such a ruling and, upon determining that her anonymity should
8 be preserved, shall issue orders to the parties, witnesses,
9 and counsel and shall direct the sealing of the record and
10 exclusion of individuals from courtrooms or hearing rooms to
11 the extent necessary to safeguard her identity from public
12 disclosure. Each order shall be accompanied by specific
13 written findings explaining why the anonymity of the woman
14 should be preserved from public disclosure, why the order is
15 essential to that end, how the order is narrowly tailored to
16 serve that interest, and why no reasonable less restrictive
17 alternative exists. In the absence of written consent of the
18 woman upon whom an abortion has been performed or attempted to
19 be performed, anyone, other than a public official, who brings
20 an action under subsection (a) of Section 7 shall do so under
21 a pseudonym. This section shall not be construed to conceal
22 the identity of the plaintiff or of witnesses from the
23 defendant or from attorneys for the defendant.

24 Section 9. The provisions of this act are
25 supplemental to and shall be read in para materia with Chapter
26 22, Title 26, relating to the abortion of viable unborn

1 children, and the Alabama Partial-Birth Abortion Ban Act of
2 1997.

3 Section 10. Although this bill would have as its
4 purpose or effect the requirement of a new or increased
5 expenditure of local funds, the bill is excluded from further
6 requirements and application under Amendment 621, now
7 appearing as Section 111.05 of the Official Recompilation of
8 the Constitution of Alabama of 1901, as amended, because the
9 bill defines a new crime or amends the definition of an
10 existing crime.

11 Section 11. This act shall become effective on the
12 first day of the third month following its passage and
13 approval by the Governor, or its otherwise becoming law.