

1 HB57
2 145710-4
3 By Representative McClurkin
4 RFD: Health
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ENROLLED, An Act,

To require physician involvement in an abortion performed at an abortion or reproductive health center; to define terms and express legislative intent; to require certain standards in nursing care, post-operative and follow-up care; to require the father's name be reported to law enforcement in certain circumstances; to require the Board of Health to adopt rules and to provide criminal and civil penalties for failure to comply; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited as the "Women's Health and Safety Act."

Section 2. (a) The Legislature finds all of the following:

(1) That the percentage of abortion or reproductive health centers that have been subject to adverse licensure action vastly exceeds the percentage of facilities in any other category that have similarly been subject to adverse licensure actions. This alarming level of regulatory

1 non-compliance among abortion and reproductive health centers
2 in Alabama puts abortion patients at unreasonable risk.

3 (2) At abortion or reproductive health centers,
4 patients are often treated in a manner inconsistent with a
5 traditional physician/patient relationship.

6 (3) Abortion or reproductive health centers are not
7 operated in the same manner as ambulatory surgical treatment
8 centers or physician offices.

9 (4) Abortion involves not only a surgical procedure
10 with the usual risks attending surgery, but also involves the
11 taking of human life.

12 (5) Abortion is a highly personal and very sensitive
13 procedure which results in stress and concern for the patient
14 that is unique to the decision to have an abortion.

15 (6) Abortion is a very profitable procedure most
16 often engaged in by stand-alone clinics without many of the
17 safeguards found in a traditional physician/patient
18 relationship or other medical care setting.

19 (7) Because abortion and reproductive health centers
20 do not currently provide the level of personal contact found
21 in many physician/patient relationships and in other medical
22 care settings, it is necessary for the Legislature to mandate
23 the personal presence and participation of the physician in
24 the process.

1 (8) Moreover, because abortion or reproductive
2 health centers have often failed to meet acceptable standards
3 of medical care, it is necessary for Legislature to enact
4 reasonable and medically appropriate health and safety
5 standards for all abortion and reproductive health centers,
6 and to provide effective enforcement mechanisms and
7 disincentives for centers that are unable or unwilling to meet
8 these requirements.

9 Section 3. As used in this act, the following terms
10 shall have the following meanings:

11 (1) ABORTION. The use or prescription of any
12 instrument, medicine, drug, or any other substance or device
13 with the intent to terminate the pregnancy of a woman known to
14 be pregnant with knowledge that the termination by those means
15 will with reasonable likelihood cause the death of the unborn
16 child. Such use or prescription is not an abortion if done
17 with the intent to save the life or preserve the health of an
18 unborn child, remove a dead unborn child, or to deliver the
19 unborn child prematurely in order to preserve the health of
20 both the mother (pregnant woman) and her unborn child. The
21 term "abortion" as used in these rules, does not include a
22 procedure or act to terminate the pregnancy of a woman with an
23 ectopic pregnancy, nor does it include the procedure or act to
24 terminate the pregnancy of a woman when the unborn child has a
25 lethal anomaly. For the purposes of this act, a "lethal

1 anomaly" means that the child would die at birth or be still
2 born. For the purposes of this act, the term, "ectopic
3 pregnancy," means any pregnancy resulting from a fertilized
4 egg that has implanted or attached outside the uterus. The
5 term, "ectopic pregnancy," also includes a pregnancy resulting
6 from a fertilized egg implanted inside the cornu of the
7 uterus.

8 (2) ABORTION INDUCING DRUG. A medicine, drug, or any
9 other substance prescribed or dispensed with the intent of
10 terminating the clinically diagnosable pregnancy of a woman,
11 with the knowledge that the termination will with reasonable
12 likelihood cause the death of the unborn child. Use of such
13 drugs to induce abortion is also known as "medical abortion."
14 This includes off-label use of drugs known to have
15 abortion-inducing properties, which are prescribed
16 specifically with the intent of causing an abortion, such as
17 misoprostol (Cytotec), and methotrexate. This definition does
18 not apply to drugs that may be known to cause an abortion, but
19 which are prescribed for other medical indications, such as
20 chemotherapeutic agents and diagnostic drugs.

21 (3) ABORTION OR REPRODUCTIVE HEALTH CENTER. A
22 facility defined and regulated as an abortion or reproductive
23 health center by the rules of the Alabama State Board of
24 Health.

1 (4) ADMINISTER. To give or apply a pharmacologic or
2 other therapeutic agent to a patient.

3 (5) DISPENSE. To sell, distribute, administer, leave
4 with, give away, dispose of, deliver, or supply a drug or
5 medicine to the ultimate user or the user's agent.

6 (6) PHYSICIAN. A person currently licensed by the
7 Medical Licensure Commission, State of Alabama, to practice
8 medicine or osteopathy pursuant to Section 34-24-50, et seq.,
9 Code of Alabama 1975.

10 (7) PRESCRIPTION. A physician's order for the
11 preparation and administration of a drug or device for a
12 patient.

13 (8) REGISTERED PROFESSIONAL NURSE (RN). A person
14 currently licensed in the State of Alabama pursuant to Section
15 34-21-21, Code of Alabama 1975.

16 Section 4. (a) Only a physician may perform an
17 abortion.

18 (b) During and after an abortion procedure performed
19 at an abortion or reproductive health center, a physician must
20 remain on the premises until all patients are discharged. The
21 discharge order must be signed by the physician. Prior to
22 discharge from the facility, the patient shall be provided
23 with the name and telephone number of the physician who will
24 provide care in the event of complications, and the name of
25 the medications given at the abortion clinic.

1 (c) Every physician referenced in this section shall
2 have staff privileges at an acute care hospital within the
3 same standard metropolitan statistical area as the facility is
4 located that permit him or her to perform dilation and
5 curettage, laparotomy procedures, hysterectomy, and any other
6 procedures reasonably necessary to treat abortion-related
7 complications.

8 Section 5. At all times during procedures in an
9 abortion or reproductive health center, nursing care shall be
10 under the supervision of a registered professional nurse
11 currently licensed in Alabama. At least one registered
12 professional nurse shall be on duty to provide or supervise
13 all nursing care of patients in preparation for and during the
14 abortion procedure, during the recovery period, and through
15 the initial discharge by the attending physician. Other
16 nursing service personnel shall remain on duty as required to
17 meet the needs of each patient.

18 Section 6. All patient care in an abortion or
19 reproductive health center must be rendered in accordance with
20 all applicable federal, state, and local laws, State Board of
21 Health rules, State Board of Medical Examiners rules, and
22 current standards of care, including all professional
23 standards of practice.

24 Section 7. Only a physician may give, sell,
25 dispense, administer, or otherwise prescribe an

1 abortion-inducing drug. Because the failure and complications
2 from medical abortion increase with advancing gestational age,
3 because the physical symptoms of medical abortion can be
4 identical to the symptoms of ectopic pregnancy, and because
5 abortion-inducing drugs do not treat ectopic pregnancies but
6 rather are contraindicated in ectopic pregnancies, the
7 physician giving, selling, dispensing, administering, or
8 otherwise providing or prescribing the abortion-inducing drug
9 must first examine the pregnant woman in person and document,
10 in the woman's medical chart, the gestational age and
11 intrauterine location of the pregnancy prior to giving,
12 selling, dispensing, administering, or otherwise providing or
13 prescribing the abortion-inducing drug.

14 Section 8. Physicians performing abortion procedures
15 in abortion or reproductive health centers shall conform to
16 the rules for office-based surgery of the Alabama State Board
17 of Medical Examiners, shall meet the standards prescribed in
18 the rules for "office-based procedures - moderate
19 sedation/analgesia," and shall meet all other requirements in
20 those rules, including the recommended guidelines for
21 follow-up care, requirements for recovery area, assessment for
22 discharge, reporting requirements, and registration
23 requirements.

24 Section 9. An abortion or reproductive health center
25 shall be classified as ambulatory health care occupancy and

1 shall meet all standards in the NFPA 101 Life Safety Code 2000
2 edition, or such standards in any later edition of the NFPA
3 101 Life Safety Code that the Board of Health may adopt for
4 facilities classified as ambulatory health care occupancy. Not
5 later than 180 days after the effective date of this act, each
6 licensed abortion or reproductive health center shall submit
7 to the Department of Public Health architectural drawings and
8 plans and sprinkler system plans and such other materials as
9 may be required to show compliance or prospective compliance
10 with the applicable life safety code. These shall be submitted
11 and reviewed pursuant to the Board of Health Rules for Plan
12 Review, including the payment of plan review fees. Not later
13 than 12 months after the effective date of this act, each
14 abortion or reproductive health center shall obtain from the
15 Department of Public Health a certificate of completion which
16 shall certify that the facility meets all ambulatory health
17 care occupancy standards in the applicable NFPA 101 Life
18 Safety Code, as well as all other life safety and building
19 standards required by law or rule. Any facility that fails to
20 submit architectural drawings and plans, sprinkler system
21 plans, and such other materials as may be required to the
22 Department of Public Health within the deadline for such
23 submission shall have its license revoked. Any facility that
24 fails to obtain a certificate of occupancy within the deadline
25 for obtaining such certificate shall have its license revoked.

1 Section 10. (a) Any minor child under the age of 16
2 seeking an abortion from an abortion or reproductive health
3 care facility shall be asked by the physician performing the
4 abortion or his or her agent to state the name and age of the
5 individual who is believed to be the father of the unborn
6 child. While the minor child may refuse to provide the
7 father's name and age, she should be encouraged to do so by
8 the physician or agent consistent with the physician's legal
9 obligation to reduce the incidence of child abuse when there
10 is reason to suspect that it has occurred.

11 (b) In addition to any other abuse reporting
12 requirements that may apply to the staff of an abortion or
13 reproductive health center, if the reported age of the father
14 is two or more years greater than the age of the minor child,
15 the facility shall report the names of the pregnant minor
16 child and the father to both local law enforcement and the
17 county department of human resources. If the pregnant minor
18 child is less than 14 years old, the name of the minor child
19 shall be reported to the Department of Human Resources,
20 regardless of whether the father is two or more years older
21 than the minor child. The receipt of reportable information by
22 any member of a facility staff shall trigger the requirement
23 for the facility to report such information. Nothing in this
24 section shall be construed to constructively repeal any other

1 provisions of law requiring parental consent before an
2 abortion procedure is performed.

3 Section 11. The Board of Health shall publish
4 amended rules for abortion and reproductive health care
5 centers that are consistent with this act within 180 days
6 after the effective date of this act. Such rules shall take
7 effect within the time frame required by the Alabama
8 Administrative Procedure Act.

9 Section 12. (a) Any person other than a physician
10 who performs or attempts to perform an abortion, including the
11 prescription, dispensing, or administration of abortion-
12 inducing drug, shall be guilty of a Class C felony.

13 (b) Any person who prescribes, dispenses, or
14 administers an abortion-inducing drug without first examining
15 the patient in person shall be guilty of a Class C felony.

16 (c) The administrator of an abortion or reproductive
17 health center who knowingly and willfully permits the facility
18 to be operated in a manner that violates Section 4, Section 5,
19 Section 6, or Section 7 of this act shall be guilty of a Class
20 C felony.

21 (d) The administrator of an abortion or reproductive
22 health center who knowingly and willfully violates Section
23 10(b) of this act shall be guilty of a Class A misdemeanor.

24 Section 13. Any person who can demonstrate personal
25 injury, including physical injury, emotional distress, or

1 mental anguish, where such injury has resulted from the
2 failure of an abortion or reproductive health center to
3 conform to the requirements of this act, may maintain a civil
4 action for damages against the abortion or reproductive health
5 center and against the administrator of the facility.

6 Section 14. (a) The failure of any physician, nurse
7 practitioner, physician assistant, registered professional
8 nurse, or licensed practical nurse to conform to the
9 requirements of this act or any rule or regulation adopted
10 under provision of this act may be grounds for adverse
11 licensure action, up to and including license revocation.

12 (b) Any abortion or reproductive health center that
13 is found to have provided an abortion, in a manner that
14 violates this act or any rule or regulation adopted under the
15 provision of this act, may be subject to adverse licensure
16 action, up to and including license revocation.

17 Section 15. Upon application by the Department of
18 Public Health, a circuit court or any judge thereof shall have
19 jurisdiction for cause shown, to grant a temporary restraining
20 order, a preliminary injunction, a permanent injunction, or
21 any combination of those remedies, restraining and enjoining
22 any person from violating the provisions of this act and any
23 rules promulgated thereunder. Any temporary restraining order,
24 preliminary injunction, or permanent injunction shall be

1 issued without bond. This remedy is in addition to any other
2 remedies available to the Department of Public Health.

3 Section 16. (a) Nothing in this act shall be
4 construed as creating or recognizing a right to abortion.

5 (b) It is not the intention of this act to make
6 lawful an abortion that is currently unlawful.

7 (c) The provisions of this act shall be construed in
8 pari materia with other statutes governing abortions.

9 (d) Nothing in this act shall be construed to
10 modify, supersede, or constructively repeal any provisions of
11 the Alabama Medical Liability Act of 1987, the Alabama Medical
12 Liability Act of 1996, or any amendments thereto.

13 Section 17. The Alabama Legislature, by joint
14 resolution, may appoint one or more of its members to
15 intervene as a matter of right in any case in which the
16 constitutionality of this act or any portion thereof is
17 challenged.

18 Section 18. Any provision of this act held to be
19 invalid or unenforceable by its terms, or as applied to any
20 person or circumstance, shall be construed so as to give it
21 the maximum effect permitted by law, unless such holding shall
22 be one of utter invalidity or unenforceability, in which event
23 such provision shall be deemed severable herefrom and shall
24 not affect the remainder hereof or the application of such

1 provision to other persons not similarly situated or to other,
2 dissimilar circumstances.

3 Section 19. 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 20. 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.

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 19-FEB-13.

Jeff Woodard
Clerk

Senate	02-APR-13	Amended and Passed
House	02-APR-13	Concurred in Senate Amendment