

1 HB493  
2 158666-1  
3 By Representative Wallace  
4 RFD: Health  
5 First Read: 13-FEB-14

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8 SYNOPSIS: This bill would prohibit abortions based on  
9 a lethal fetal anomaly unless a woman is made aware  
10 of the option of perinatal hospice services. The  
11 bill would prescribe civil sanctions and criminal  
12 penalties for violations.

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

26 The purpose or effect of this bill would be  
27 to require a new or increased expenditure of local

1 funds within the meaning of the amendment. However,  
2 the bill does not require approval of a local  
3 governmental entity or enactment by a 2/3 vote to  
4 become effective because it comes within one of the  
5 specified exceptions contained in the amendment.

6  
7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 To provide for the Perinatal Hospice Information  
12 Act; to require that a pregnant woman may not receive an  
13 abortion based on a lethal fetal anomaly unless she is made  
14 aware of the option of perinatal hospice services; to  
15 prescribe civil sanctions and criminal penalties for  
16 violations of the act; and in connection therewith would have  
17 as its 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 Recompilation of the  
21 Constitution of Alabama of 1901, as amended.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. This act may be known as the "Perinatal  
24 Hospice Information Act."

25 Section 2. (a) The Legislature hereby finds the  
26 following:

1 (1) As prenatal diagnoses improve, increasingly more  
2 lethal fetal anomalies are diagnosed earlier in pregnancy.

3 (2) Currently, parents are often given minimal  
4 options, to terminate the pregnancy or simply to wait for the  
5 child to die. The majority of parents choose to terminate the  
6 pregnancy. Only 20 percent of parents decide to continue the  
7 pregnancy.

8 (3) Studies indicate that choosing to terminate the  
9 pregnancy can pose severe, long-term psychological risks for  
10 the woman, including the chance of posttraumatic stress,  
11 depression, and anxiety. On the other hand, parents who choose  
12 to continue the pregnancy in the supportive, compassionate  
13 care of a perinatal hospice team report being emotionally and  
14 spiritually prepared for the death of their child.

15 (4) Studies reveal that when given the option, at  
16 least 80 to 87 percent of parents choose to continue the  
17 pregnancy in the supportive environment of perinatal hospice  
18 care.

19 (b) Based on the findings in subsection (a), it is  
20 the purpose of this act to:

21 (1) Guarantee that women considering abortion after  
22 the diagnosis of a lethal fetal anomaly are presented with  
23 information on the option of perinatal hospice care.

24 (2) Ensure that any abortion-related choice made by  
25 a woman whose unborn child has been diagnosed with a lethal  
26 fetal anomaly has been fully informed.

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

3           (1) ABORTION. The use or prescription of any  
4 instrument, medicine, drug, or any other substance or device  
5 with the intent to terminate the pregnancy of a woman known to  
6 be pregnant with knowledge that the termination by those means  
7 will with reasonable likelihood cause the death of the unborn  
8 child. Such use or prescription is not an abortion if done  
9 with the intent to save the life or preserve the health of an  
10 unborn child, remove a dead unborn child, or to deliver the  
11 unborn child prematurely in order to preserve the health of  
12 both the pregnant woman and her unborn child. The term  
13 abortion, as used in this act, does not include a procedure or  
14 act to terminate the pregnancy of a woman with an ectopic  
15 pregnancy. As used herein, the term ectopic pregnancy means  
16 any pregnancy resulting from a fertilized egg that has  
17 implanted or attached outside the uterus. The term ectopic  
18 pregnancy also includes a pregnancy resulting from a  
19 fertilized egg implanted inside the cornu of the uterus.

20           (2) DEPARTMENT. The Department of Public Health of  
21 the State of Alabama.

22           (3) LETHAL FETAL ANOMALY. A fetal condition  
23 diagnosed before birth that, with reasonable certainty, will  
24 result in the death of the unborn child within three months  
25 after birth.

26           (4) MEDICAL EMERGENCY. A condition which, on the  
27 basis of a physician's good faith clinical judgment, so

1 complicates the medical condition of a pregnant woman as to  
2 necessitate the immediate termination of her pregnancy to  
3 avert her death or for which a delay will create serious risk  
4 of substantial and irreversible impairment of a major bodily  
5 function.

6 (5) PERINATAL HOSPICE. Comprehensive support  
7 provided to a pregnant woman who has an unborn child that has  
8 been diagnosed with a lethal fetal anomaly, as well as to such  
9 woman's family, that includes support from the time of  
10 diagnosis through the time of birth and death of the infant  
11 and through the postpartum period. Supportive care may  
12 include, but is not limited to, counseling and medical care by  
13 maternal-fetal medical specialists, obstetricians,  
14 neonatologists, anesthesia specialists, clergy, social  
15 workers, and specialty nurses focused on alleviating fear and  
16 ensuring that the woman and her family experience the life and  
17 death of their child in a comfortable and supportive  
18 environment.

19 (6) PHYSICIAN. Any person licensed to practice  
20 medicine in this state. The term includes medical doctors and  
21 doctors of osteopathy.

22 Section 4. (a) No abortion shall be performed or  
23 induced, or attempted to be performed or induced, without the  
24 voluntary and informed consent of the woman upon whom the  
25 abortion is to be performed or induced. Except in the case of  
26 a medical emergency, consent to an abortion is voluntary and

1 informed if, and only if, at least 48 hours before the  
2 abortion:

3 (1) In the case of a woman seeking an abortion of  
4 her unborn child diagnosed with a lethal fetal anomaly, the  
5 physician who is to perform the abortion or the referring  
6 physician has informed the woman, orally and in-person, that  
7 perinatal hospice services are available and has offered this  
8 care as an alternative to abortion.

9 (2) In the case of a woman seeking an abortion of  
10 her unborn child diagnosed with a lethal fetal anomaly, the  
11 woman is provided, at no cost, a list of perinatal hospice  
12 programs available both in this state and nationally, prepared  
13 by the department and organized geographically by location,  
14 and the woman is also informed that such materials are  
15 available on the department's website.

16 (b) If perinatal hospice services are declined in  
17 favor of abortion, the woman must certify in writing both her  
18 decision to forgo such services and proceed with the abortion  
19 and that she received the materials listed in subdivision (2)  
20 of subsection (a).

21 Section 5. The department shall cause to be  
22 published the printed materials described in Section 4 within  
23 60 days after this act becomes law. The department shall also  
24 publish the printed materials described in Section 4 on the  
25 department's website within 60 days after this act becomes  
26 law. Such materials shall include, but not be limited to, a  
27 comprehensive list of the perinatal hospice agencies

1 available, a description of the services such agencies offer,  
2 and a description of the manner in which such agencies may be  
3 contacted.

4 Section 6. The department may adopt rules and  
5 procedures as necessary to implement the provisions and  
6 directives of this act.

7 Section 7. (a) Any person who intentionally,  
8 knowingly, or recklessly violates or attempts to violate this  
9 act shall be guilty on a first offense of a Class B  
10 misdemeanor, on a second offense of a Class A misdemeanor, and  
11 on a third or subsequent offense of a Class C felony. No  
12 penalty under this act may be assessed against the female upon  
13 whom the abortion is performed or attempted to be performed.

14 (b) In addition to whatever remedies are available  
15 under the common or statutory law of this state, failure to  
16 comply with the requirements of this chapter shall:

17 (1) Provide a basis for a civil action for  
18 compensatory and punitive damages. Any conviction under this  
19 act shall be admissible in a civil suit as prima facie  
20 evidence of a failure to obtain an informed consent. The civil  
21 action may be based on a claim that the act was a result of  
22 simple negligence, gross negligence, wantonness, willfulness,  
23 intention, or other legal standard of care.

24 (2) Provide a basis for professional disciplinary  
25 action under any applicable statutory or regulatory procedure  
26 for the suspension or revocation of any license for physicians  
27 or other applicable regulated persons. A conviction of any



1 person for any failure to comply with the requirements of this  
2 act which constitutes a second offense of the provisions of  
3 this act shall result in the automatic suspension of his or  
4 her license for a period of at least one year and shall be  
5 reinstated after that time only on such conditions as the  
6 appropriate regulatory or licensing body shall require to  
7 insure compliance with this act.

8 (3) If a civil judgment is rendered in favor of a  
9 plaintiff in any action described in this act, the court shall  
10 award reasonable attorney's fees in favor of the plaintiff. If  
11 a civil judgment is rendered in favor of the defendant in any  
12 action described in this act, the court shall, upon a  
13 determination that the plaintiff's suit was frivolous and  
14 brought in bad faith, award reasonable attorney's fees in  
15 favor of the defendant.

16 Section 8. The provisions of this act are severable.  
17 If any part of this act is declared invalid or  
18 unconstitutional, that declaration shall not effect the part  
19 which remains.

20 Section 9. Although this bill would have as its  
21 purpose or effect the requirement of a new or increased  
22 expenditure of local funds, the bill is excluded from further  
23 requirements and application under Amendment 621 because the  
24 bill defines a new crime or amends the definition of an  
25 existing crime.

1                   Section 10. This act shall become effective on the  
2           first day of the third month following its passage and signing  
3           by the Governor, or its otherwise becoming law.