

1 SB363  
2 171399-2  
3 By Senators Williams, Shelnut, Stutts and Albritton  
4 RFD: Health and Human Services  
5 First Read: 15-MAR-16

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8 SYNOPSIS: This act would establish the Alabama Unborn  
9 Child Protection from Dismemberment Abortion Act.

10 This act would prohibit and punish any  
11 individual who performs or attempts to perform a  
12 dismemberment abortion unless necessary to prevent  
13 serious health risk to the mother of the unborn  
14 child.

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

1                   The purpose or effect of this bill would be  
2                   to require a new or increased expenditure of local  
3                   funds within the meaning of the amendment. However,  
4                   the bill does not require approval of a local  
5                   governmental entity or enactment by a 2/3 vote to  
6                   become effective because it comes within one of the  
7                   specified exceptions contained in the amendment.

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9                   A BILL  
10                  TO BE ENTITLED  
11                  AN ACT

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13                  To establish the Alabama Unborn Child Protection  
14                  from Dismemberment Abortion Act; to provide definitions; to  
15                  prohibit any person from performing or attempting to perform a  
16                  dismemberment abortion unless necessary to prevent serious  
17                  health risk to the mother of the unborn child; to provide for  
18                  a hearing before the State Board of Medical Examiners; to  
19                  permit injunctive relief; to provide for civil damages; to  
20                  provide for attorney fees; to provide for criminal penalties;  
21                  to provide for anonymity of certain individuals in court  
22                  proceedings; and in connection therewith to have as its  
23                  purpose or effect the requirement of a new or increased  
24                  expenditure of local funds within the meaning of Amendment 621  
25                  of the Constitution of Alabama of 1901, now appearing as  
26                  Section 111.05 of the Official Recompilation of the  
27                  Constitution of Alabama of 1901, as amended.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. This act shall be known and may be cited  
3 as the Alabama Unborn Child Protection from Dismemberment  
4 Abortion Act.

5 Section 2. For the purposes of this act, the  
6 following terms shall have the following meanings:

7 (1) ABORTION. The same as defined in Section  
8 26-21-2, Code of Alabama 1975.

9 (2) ATTEMPT TO PERFORM AN ABORTION.

10 a. To do or omit to do anything that, under the  
11 circumstances as the actor believes them to be, is an act or  
12 omission constituting a substantial step in a course of  
13 conduct planned to culminate in the actor performing an  
14 abortion. Such substantial steps include, but are not limited  
15 to, any of the following:

16 1. Agreeing with an individual to perform an  
17 abortion on that individual or on some other individual,  
18 whether or not the term abortion is used in the agreement, and  
19 whether or not the agreement is contingent on another factor,  
20 such as receipt of payment or a determination of pregnancy.

21 2. Scheduling or planning a time to perform an  
22 abortion on an individual, whether or not the term abortion is  
23 used, and whether or not the performance is contingent on  
24 another factor, such as receipt of payment or a determination  
25 of pregnancy.

1           b. This definition may not be construed to require  
2 that an abortion procedure actually be initiated for an  
3 attempt to occur.

4           (3) DISMEMBERMENT ABORTION. With the purpose of  
5 causing the death of an unborn child, purposely to dismember a  
6 living unborn child and extract him or her one piece at a time  
7 from the uterus through use of clamps, grasping forceps,  
8 tongs, scissors, or similar instruments that, through the  
9 convergence of two rigid levers, slice, crush, or grasp, or  
10 any combination of the foregoing, a portion of the unborn  
11 child's body to cut or rip it off. This definition does not  
12 include an abortion which uses suction to dismember the body  
13 of the developing unborn child by sucking fetal parts into a  
14 collection container. This definition includes an abortion in  
15 which a dismemberment abortion is used to cause the death of  
16 an unborn child and suction is subsequently used to extract  
17 fetal parts after the death of the unborn child.

18           (4) PHYSICIAN. An individual licensed to practice  
19 medicine and surgery or osteopathic medicine and surgery, or  
20 otherwise legally authorized to perform an abortion in the  
21 state.

22           (5) PURPOSELY. An individual acts purposely with  
23 respect to a material element of an offense when:

24           a. If the element involves the nature of his or her  
25 conduct or a result thereof, it is his or her conscious  
26 objective to engage in conduct of that nature or to cause such  
27 a result.

1                   b. If the element involves the attendant  
2 circumstances, he or she is aware of the existence of such  
3 circumstances or he or she believes or hopes that they exist.

4                   (6) SERIOUS HEALTH RISK TO THE UNBORN CHILD'S  
5 MOTHER. In reasonable medical judgment, the child's mother has  
6 a condition that so complicates her medical condition that it  
7 necessitates the abortion of her pregnancy to avert her death  
8 or to avert serious risk of substantial and irreversible  
9 physical impairment of a major bodily function, not including  
10 psychological or emotional conditions. No such condition may  
11 be determined to exist if it is based on a claim or diagnosis  
12 that the woman will engage in conduct which she intends to  
13 result in her death or in substantial and irreversible  
14 physical impairment of a major bodily function.

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

17                  Section 3. (a) Notwithstanding any other provision  
18 of law, it shall be unlawful for any individual to purposely  
19 perform or attempt to perform a dismemberment abortion and  
20 thereby kill an unborn child unless necessary to prevent  
21 serious health risk to the unborn child's mother.

22                  (b) An individual accused in any proceeding of  
23 unlawful conduct under subsection (a) may seek a hearing  
24 before the State Board of Medical Examiners on whether the  
25 dismemberment abortion was necessary to prevent serious health  
26 risk to the unborn child's mother. The findings of the board  
27 are admissible on that issue at any trial in which such

1 unlawful conduct is alleged. Upon a motion of the individual  
2 accused, the court shall delay the beginning of the trial for  
3 not more than 30 days to permit the hearing to take place.

4 (c) No woman upon whom an abortion is performed or  
5 attempted to be performed shall be thereby liable for  
6 performing or attempting to perform a dismemberment abortion.  
7 No nurse, technician, secretary, receptionist, or other  
8 employee or agent who is not a physician but who acts at the  
9 direction of a physician, and no pharmacist or other  
10 individual who is not a physician but who fills a prescription  
11 or provides instruments or materials used in an abortion at  
12 the direction of or to a physician, shall be thereby liable  
13 for performing or attempting to perform a dismemberment  
14 abortion.

15 (d) This act does not prevent abortion for any  
16 reason including rape and incest by any other method, unless  
17 otherwise prevented by law.

18 Section 4. (a) A cause of action for injunctive  
19 relief against an individual who has performed or attempted to  
20 perform a dismemberment abortion in violation of Section 3 may  
21 be maintained by any of the following:

22 (1) A woman upon whom a dismemberment abortion was  
23 performed or attempted to be performed.

24 (2) An individual who is the spouse, parent, or  
25 guardian of, or a current or former licensed health care  
26 provider of, a woman upon whom such a dismemberment abortion  
27 was performed or attempted to be performed.

1                   (3) A prosecuting attorney with appropriate  
2 jurisdiction.

3                   (b) The injunction shall prevent the defendant from  
4 performing or attempting to perform further dismemberment  
5 abortions in violation of Section 3.

6                   Section 5. (a) A cause of action for civil damages  
7 against an individual who has performed a dismemberment  
8 abortion in violation of Section 3 may be maintained by any of  
9 the following:

10                   (1) Any woman upon whom a dismemberment abortion has  
11 been performed in violation of Section 3.

12                   (2) The father of the unborn child, if married to  
13 the woman at the time the dismemberment abortion was  
14 performed.

15                   (3) If the woman had not attained the age of 18  
16 years at the time of the dismemberment abortion or has died as  
17 a result of the abortion, the maternal grandparents of the  
18 unborn child.

19                   (b) No damages may be awarded a plaintiff if the  
20 pregnancy resulted from criminal conduct of the plaintiff.

21                   (c) Damages awarded in such an action shall include  
22 all of the following:

23                   (1) Money damages for all injuries, psychological  
24 and physical, occasioned by the dismemberment abortion.

25                   (2) Statutory damages equal to three times the cost  
26 of the dismemberment abortion.



1           Section 6. (a) If judgment is rendered in favor of  
2 the plaintiff in an action described in Section 4 or Section  
3 5, the court shall also render judgment for reasonable  
4 attorney fees in favor of the plaintiff against the defendant.

5           (b) If judgment is rendered in favor of the  
6 defendant in an action described in Section 4 or Section 5,  
7 and the court finds that the plaintiff's suit was frivolous  
8 and brought in bad faith, the court shall render judgment for  
9 reasonable attorney fees in favor of the defendant against the  
10 plaintiff.

11           (c) No attorney fees may be assessed against the  
12 woman upon whom an abortion was performed or attempted to be  
13 performed except in accordance with subsection (b).

14           Section 7. Whoever is found to have violated Section  
15 3 shall be fined ten thousand dollars (\$10,000) or imprisoned  
16 for not more than two years, or both.

17           Section 8. In every civil, criminal, or  
18 administrative proceeding or action brought under this act,  
19 the court shall rule whether the identity of any woman upon  
20 whom an abortion has been performed or attempted to be  
21 performed shall be preserved from public disclosure if she  
22 does not give her consent to such disclosure. The court, upon  
23 motion or sua sponte, shall make such a ruling and, upon  
24 determining that her anonymity should be preserved, shall  
25 issue orders to the parties, witnesses, and counsel and shall  
26 direct the sealing of the record and exclusion of individuals  
27 from courtrooms or hearing rooms to the extent necessary to

1 safeguard her identity from public disclosure. Each order  
2 shall be accompanied by specific written findings explaining  
3 why the anonymity of the woman should be preserved, why the  
4 order is essential to that end, how the order is narrowly  
5 tailored to serve that interest, and why no reasonable less  
6 restrictive alternative exists. In the absence of written  
7 consent of the woman upon whom an abortion has been performed  
8 or attempted to be performed, anyone other than a public  
9 official who brings an action under Section 4 or Section 5  
10 shall do so under a pseudonym. This section may not be  
11 construed to conceal the identity of the plaintiff or of  
12 witnesses from the defendant or from attorneys for the  
13 defendant.

14 Section 9. Nothing in this act shall be construed as  
15 creating or recognizing a right to abortion, nor a right to a  
16 particular method of abortion.

17 Section 10. Although this bill would have as its  
18 purpose or effect the requirement of a new or increased  
19 expenditure of local funds, the bill is excluded from further  
20 requirements and application under Amendment 621, now  
21 appearing as Section 111.05 of the Official Recompilation of  
22 the Constitution of Alabama of 1901, as amended, because the  
23 bill defines a new crime or amends the definition of an  
24 existing crime.

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

