

1 HB295  
2 216483-2  
3 By Representative Kiel  
4 RFD: Judiciary  
5 First Read: 08-FEB-22

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8 SYNOPSIS: Under existing law, it is unlawful for any  
9 person to intentionally perform or attempt to  
10 perform an abortion except where a medical  
11 emergency exists.

12 This bill would prohibit an abortion from  
13 being performed if a fetal heartbeat has been  
14 detected or if no test for a fetal heartbeat has  
15 been performed, except in circumstances where a  
16 medical emergency exists.

17 This bill would provide a private cause of  
18 action for enforcement of this act against any  
19 person who performs or induces an abortion or who  
20 knowingly engages in conduct that aids or abets the  
21 performance or inducement of an abortion, including  
22 paying for or reimbursing costs of an abortion.

23 This bill would provide injunctive relief  
24 and provide damages in an amount of not less than  
25 \$10,000 for each abortion performed or induced and  
26 attorney fees.

1                   This bill would provide that a defendant  
2                   against whom a civil action is brought does not  
3                   have standing to assert the rights of women seeking  
4                   an abortion as a defense to liability, with certain  
5                   exceptions based on federal case law.

6                   This bill would provide for affirmative  
7                   defenses to a cause of action.

8                   This bill would prohibit a court from  
9                   awarding costs or attorney fees to a defendant in  
10                  an action brought against that defendant.

11                  This bill would also provide that any person  
12                  who seeks declaratory or injunctive relief to  
13                  prevent this state from enforcing any law that  
14                  restricts abortion or that limits taxpayer funding  
15                  of abortions is jointly and severally liable to pay  
16                  costs and attorney fees of the prevailing party.

17  
18                                   A BILL  
19                                   TO BE ENTITLED  
20                                   AN ACT

21  
22                  Relating to abortion; to prohibit abortions after  
23                  detection of an unborn child's heartbeat; to authorize a  
24                  private civil right of action against anyone who performs or  
25                  aids and abets an abortion procedure; to provide for  
26                  injunctive relief and damages; to provide for certain defenses  
27                  in a cause of action; to prohibit a court from awarding costs

1 or attorney fees to a defendant under certain circumstances;  
2 and to provide that a person challenging a state abortion law  
3 pay the costs and attorney fees of the prevailing party.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. This act shall be known and may be cited  
6 as the Alabama Heartbeat Act.

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

9 (1) ABORTION. The same meaning as in Section  
10 26-23H-3, Code of Alabama 1975.

11 (2) ECTOPIC PREGNANCY. The same meaning as in  
12 Section 26-23H-3, Code of Alabama 1975.

13 (3) FETAL HEARTBEAT. A cardiac activity or the  
14 steady and repetitive rhythmic contraction of the fetal heart  
15 within the gestational sac.

16 (4) GESTATIONAL AGE. The amount of time that has  
17 elapsed from the first day of a woman's last menstrual period.

18 (5) GESTATIONAL SAC. The structure comprising the  
19 extraembryonic membranes that envelop the unborn child and  
20 that is typically visible by ultrasound after the fourth week  
21 of pregnancy.

22 (6) LETHAL ANOMALY. The same meaning as in Section  
23 26-23H-3, Code of Alabama 1975.

24 (7) PHYSICIAN. An individual licensed to practice  
25 medicine or osteopathy in this state.

26 (8) PREGNANCY. The human female reproductive  
27 condition that:

- 1 a. Begins with fertilization;
- 2 b. Occurs when the woman is carrying the developing
- 3 human offspring; and
- 4 c. Is calculated from the first day of the woman's
- 5 last menstrual period.

6 (9) SERIOUS HEALTH RISK TO THE UNBORN CHILD'S  
7 MOTHER. The same meaning as in Section 26-23H-3, Code of  
8 Alabama 1975.

9 (10) STANDARD MEDICAL PRACTICE. The degree of skill,  
10 care, and diligence that an obstetrician of ordinary judgment,  
11 learning, and skill would employ in like circumstances.

12 (11) UNBORN CHILD. A human fetus or embryo in any  
13 stage of gestation from fertilization until birth.

14 (12) WOMAN. Any individual whose biological sex is  
15 female, including any individual with XX chromosomes and any  
16 individual with a uterus, regardless of any gender identity  
17 that the individual asserts or claims.

18 Section 3. The Legislature finds, according to  
19 contemporary medical research, all of the following:

20 (1) That a fetal heartbeat has become a key medical  
21 predictor that an unborn child will reach live birth.

22 (2) That cardiac activity begins at a biologically  
23 identifiable moment in time, normally when the fetal heart is  
24 formed in the gestational sac.

25 (3) That this state has compelling interests from  
26 the outset of a woman's pregnancy in protecting the health of  
27 the woman and the life of the unborn child.

1           (4) That to make an informed choice about whether to  
2 continue her pregnancy, the pregnant woman has a compelling  
3 interest in knowing the likelihood of her unborn child  
4 surviving to full-term birth based on the presence of cardiac  
5 activity.

6           Section 4. (a) For the purposes of determining the  
7 presence of a fetal heartbeat under this section, "standard  
8 medical practice" includes employing the appropriate means of  
9 detecting the heartbeat based on the estimated gestational age  
10 of the unborn child and the condition of the woman and her  
11 pregnancy.

12           (b) Except as provided by Sections 6 and 7, an  
13 abortion may not be performed or induced on a pregnant woman  
14 unless a physician has determined, in accordance with this  
15 section, whether the woman's unborn child has a detectable  
16 fetal heartbeat.

17           (c) In making a determination under subsection (b),  
18 the physician must use a test that meets both of the following  
19 criteria:

20           (1) Is consistent with the physician's good faith  
21 and reasonable understanding of standard medical practice.

22           (2) Is appropriate for the estimated gestational age  
23 of the unborn child and the condition of the pregnant woman  
24 and her pregnancy.

25           (d) A physician making a determination under  
26 subsection (b) shall record in the pregnant woman's medical  
27 record all of the following:

1           (1) The estimated gestational age of the unborn  
2 child.

3           (2) The method used to estimate the gestational age.

4           (3) The test used for detecting a fetal heartbeat,  
5 including the date, time, and results of the test.

6           Section 5. (a) Except as provided by Sections 6 and  
7 7, a physician may not knowingly perform or induce an abortion  
8 on a pregnant woman if the physician detected a fetal  
9 heartbeat for the unborn child as required by Section 4 or  
10 failed to perform a test to detect a fetal heartbeat.

11           (b) A physician does not violate this section if the  
12 physician performed a test for a fetal heartbeat as required  
13 by Section 4 and did not detect a fetal heartbeat.

14           (c) This section does not affect any of the  
15 following:

16           (1) Any provision of Title 26 that restricts or  
17 regulates an abortion by a particular method or during a  
18 particular stage of pregnancy.

19           (2) Any other provision of state law that regulates  
20 or prohibits abortion.

21           (3) Physician performance of dilation and curettage  
22 and similar procedures to remove remaining dead tissue or  
23 other products of an abortion after the abortion was  
24 performed.

25           (4) Physician treatment of patients and performance  
26 of procedures associated with in vitro fertilization.

1           Section 6. (a) Sections 4 and 5 do not apply if a  
2 physician believes a medical emergency exists that prevents  
3 compliance with this act.

4           (b) A physician who performs or induces an abortion  
5 under circumstances described by subsection (a) shall make  
6 written notations in the pregnant woman's medical record of  
7 both of the following:

8           (1) The physician's belief that a medical emergency  
9 necessitated the abortion.

10          (2) The medical condition of the pregnant woman that  
11 prevented compliance with this act.

12          (c) A physician performing or inducing an abortion  
13 under this section shall maintain in the physician's practice  
14 records a copy of the notations made under subsection (b).

15          Section 7. Sections 4 and 5 do not apply to an  
16 abortion performed at the behest of federal agencies,  
17 contractors, or employees that are carrying out duties under  
18 federal law, if a prohibition on that abortion would violate  
19 the doctrines of preemption or intergovernmental immunity.

20          Section 8. (a) This act does not create or recognize  
21 a right to abortion before a fetal heartbeat is detected.

22          (b) This act may not be construed to do either of  
23 the following:

24          (1) Authorize the initiation of a cause of action  
25 against or the prosecution of a woman on whom an abortion is  
26 performed or induced or attempted to be performed or induced  
27 in violation of this act.



1           (2) Wholly or partly repeal, either expressly or by  
2           implication, any other law that regulates or prohibits  
3           abortion.

4           Section 9. Notwithstanding any other law, the  
5           requirements of this act shall be enforced exclusively through  
6           the private civil actions described in Section 10. No direct  
7           or indirect enforcement of this act may be taken or threatened  
8           by this state, a political subdivision, a district attorney,  
9           or a public official or public employee of this state or a  
10          political subdivision against any individual or entity, in any  
11          manner whatsoever, except as provided in Section 10, and no  
12          violation of this act may be used to justify or trigger the  
13          enforcement of any other law or any type of adverse  
14          consequence under any other law, except as provided in Section  
15          10, provided, that this section does not preclude enforcement  
16          of any other law or regulation against conduct that is  
17          independently prohibited by the other law or regulation.

18          Section 10. (a) Any person, other than this state, a  
19          political subdivision of this state, and any public official  
20          or public employee of this state or political subdivision of  
21          this state, may bring a civil action against any person who  
22          does any of the following:

23                 (1) Performs or induces an abortion in violation of  
24                 this act.

25                 (2) Knowingly engages in conduct that aids or abets  
26                 the performance or inducement of an abortion, including paying  
27                 for or reimbursing the costs of an abortion through insurance

1 or otherwise, if the abortion is performed or induced in  
2 violation of this act, regardless of whether the person knew  
3 or should have known that the abortion would be performed or  
4 induced in violation of this act.

5 (3) Intends to engage in the conduct described by  
6 subdivision (1) or (2).

7 (b) If a claimant prevails in an action brought  
8 under this section, the court shall award all of the  
9 following:

10 (1) Injunctive relief sufficient to prevent the  
11 defendant from violating this act or engaging in acts that aid  
12 or abet violations of this act.

13 (2) Statutory damages in an amount of not less than  
14 ten thousand dollars (\$10,000) for each abortion that the  
15 defendant performed or induced in violation of this act and  
16 for each abortion performed or induced in violation of this  
17 act that the defendant aided or abetted.

18 (3) Nominal and compensatory damages if the  
19 plaintiff has suffered harm from the defendant's conduct,  
20 including, but not limited to, loss of consortium and  
21 emotional distress.

22 (4) Court costs and attorney fees.

23 (c) Notwithstanding subsection (b), a court may not  
24 award relief under subdivision (b) (2) or (4) in response to a  
25 violation of subdivision (a) (1) or (2) if the defendant  
26 demonstrates that the defendant previously paid or has been  
27 ordered to pay the full amount of statutory damages under

1 subdivision (b) (2) in a previous action for that particular  
2 abortion performed or induced in violation of this act or for  
3 the particular conduct that aided or abetted an abortion  
4 performed or induced in violation of this act.

5 (d) Notwithstanding Title 6, Code of Alabama 1975,  
6 or any other law, a person may bring an action under this  
7 section not later than six years from the date the cause of  
8 action accrues.

9 (e) Notwithstanding any other law, the following are  
10 not a defense to an action brought under this section:

11 (1) Ignorance or mistake of law.

12 (2) A defendant's belief that the requirements of  
13 this act are unconstitutional or were unconstitutional.

14 (3) A defendant's reliance on any court decision  
15 that has been overruled on appeal or by a subsequent court,  
16 even if that court decision had not been overruled when the  
17 defendant violated subsection (a).

18 (4) A defendant's reliance on any state or federal  
19 court decision that is not binding on the court in which the  
20 action has been brought.

21 (5) Non-mutual issue preclusion or non-mutual claim  
22 preclusion.

23 (6) The consent of the unborn child's mother to the  
24 abortion.

25 (7) Any claim that the enforcement of this act or  
26 the imposition of civil liability against the defendant will

1 violate the constitutional rights of third parties, except as  
2 provided by Section 11.

3 (f) It is an affirmative defense to an action under  
4 this section if a person sued under subdivision (a)(2) or (3)  
5 reasonably believed, after conducting a reasonable  
6 investigation, that the persons involved with performing or  
7 facilitating the abortion would comply with every requirement  
8 and provision of this act.

9 (g) The defendant has the burden of proving an  
10 affirmative defense under subsection (f) by a preponderance of  
11 the evidence.

12 (h) This section may not be construed to impose  
13 liability on any speech or conduct protected by the First  
14 Amendment of the United States Constitution, as made  
15 applicable to the states through the United States Supreme  
16 Court's interpretation of the Fourteenth Amendment of the  
17 United States Constitution, or by Section 4, Article 1,  
18 Constitution of Alabama of 1901.

19 (i)(1) Notwithstanding any other law, neither this  
20 state, nor its political subdivisions, nor any public official  
21 or employee of this state or its political subdivisions may do  
22 any of the following:

23 a. Act in concert or participation with anyone who  
24 brings suit under this section.

25 b. Establish or attempt to establish any type of  
26 agency or fiduciary relationship with a plaintiff who brings  
27 suit under this section.

1           c. Make any attempt to control or influence a  
2 plaintiff's decision to bring suit under this section or the  
3 plaintiff's conduct of the litigation.

4           d. Intervene in any action brought under this  
5 section.

6           (2) This subsection does not prohibit an individual  
7 or entity described by this subsection from filing an amicus  
8 curiae brief in the action, so long as that person or entity  
9 does not act in concert or participation with the plaintiff or  
10 plaintiffs who sue under this section or violate any provision  
11 of this subsection.

12           (j) Notwithstanding any other law, a court may not  
13 award costs or attorney's fees to a defendant in an action  
14 brought under this section.

15           (k) Notwithstanding any other law, a civil action  
16 under this section may not be brought in any of the following  
17 ways:

18           (1) Against the woman upon whom an abortion was  
19 performed or induced or attempted to be performed or induced  
20 in violation of this act, or against a pregnant woman who  
21 intends or seeks to abort her unborn child in violation of  
22 this act.

23           (2) Against any person or entity that performs, aids  
24 or abets, or attempts to perform or aid or abet an abortion at  
25 the behest of federal agencies, contractors, or employees that  
26 are carrying out duties under federal law, if a prohibition on

1 that abortion would violate the doctrines of preemption or  
2 intergovernmental immunity.

3 (3) Against any common carrier that transports a  
4 pregnant woman to an abortion provider, if the common carrier  
5 is unaware that the woman intends to abort her unborn child.

6 (4) By any person who impregnated the abortion  
7 patient through an act of rape, sexual abuse, incest, or any  
8 other sex offense referenced in Section 15-20A-5, Code of  
9 Alabama 1975.

10 Section 11. (a) A defendant against whom an action  
11 is brought under Section 10 may assert an affirmative defense  
12 to liability under this section if each of the following  
13 conditions is met:

14 (1) The defendant has standing to assert the rights  
15 of a woman or group of women seeking an abortion under the  
16 tests for third-party standing established by the Supreme  
17 Court of the United States.

18 (2) The imposition of civil liability on the  
19 defendant will result in an undue burden on a woman or group  
20 of women seeking an abortion.

21 (b) The defendant shall bear the burden of proving  
22 the affirmative defense in subsection (a) by a preponderance  
23 of the evidence.

24 (c) The affirmative defense under subsection (a) is  
25 not available if the Supreme Court of the United States  
26 overrules *Roe v. Wade*, 410 U.S. 113 (1973) or *Planned*  
27 *Parenthood v. Casey*, 505 U.S. 833 (1992), regardless of

1 whether the conduct on which the cause of action is based  
2 under Section 10 occurred before the Supreme Court overruled  
3 either of those decisions.

4 (d) Nothing in this section or act shall limit or  
5 preclude a defendant from asserting the defendant's personal  
6 constitutional rights as a defense to liability under Section  
7 10, and a court may not award relief under Section 10 if the  
8 conduct for which the defendant has been sued was an exercise  
9 of state or federal constitutional rights that personally  
10 belong to the defendant.

11 (e) Nothing in this section or act shall limit or  
12 preclude a defendant from asserting the unconstitutionality of  
13 any provision or application of this act as a defense to  
14 liability under Section 10.

15 Section 12. (a) Notwithstanding any other law, the  
16 state shall have sovereign immunity, each of its political  
17 subdivisions shall have governmental immunity, and each  
18 officer and employee of this state or a political subdivision  
19 shall have official immunity in any action, claim,  
20 counterclaim, or any type of legal or equitable action that  
21 challenges the validity of any provision or application of  
22 this act, on constitutional grounds or otherwise, or that  
23 seeks to prevent or enjoin the state, its political  
24 subdivisions, or any officer or employee of this state or a  
25 political subdivision from enforcing any provision or  
26 application of this act, unless that immunity has been

1 abrogated or preempted by federal law in a manner consistent  
2 with the Constitution of the United States.

3 (b) Notwithstanding any other law, no provision of  
4 state law may be construed to waive or abrogate an immunity  
5 described in subsection (a) unless it expressly waives or  
6 abrogates immunity with specific reference to this section.

7 (c) Notwithstanding any other law, no attorney  
8 representing the state, its political subdivisions, or any  
9 officer or employee of this state or a political subdivision  
10 is authorized or permitted to waive an immunity described in  
11 subsection (a) or take any action that would result in a  
12 waiver of that immunity.

13 (d) Notwithstanding any other law, no court of this  
14 state shall have jurisdiction to consider any action, claim,  
15 or counterclaim that seeks declaratory or injunctive relief to  
16 prevent the state, its political subdivisions, any officer or  
17 employee of this state or a political subdivision, or any  
18 person from enforcing any provision or application of this  
19 act, or from filing a civil action under this act.

20 (e) Nothing in this section or act shall be  
21 construed to prevent a litigant from asserting the invalidity  
22 or unconstitutionality of any provision or application of this  
23 act as a defense to any action, claim, or counterclaim brought  
24 against that litigant.

25 Section 13. (a) Notwithstanding any other law, any  
26 person, including an entity, attorney, or law firm, who seeks  
27 declaratory or injunctive relief to prevent this state, a



1 political subdivision, any governmental entity or public  
2 official in this state, or any person in this state from  
3 enforcing any state law, ordinance, rule, or any other type of  
4 law that regulates or restricts abortion or that limits  
5 taxpayer funding for individuals or entities that perform or  
6 promote abortions, in any state or federal court, or that  
7 represents any litigant seeking such relief in any state or  
8 federal court, is jointly and severally liable to pay the  
9 court costs and attorney fees of the prevailing party.

10 (b) For purposes of this section, a party is  
11 considered a prevailing party with respect to a particular  
12 claim or cause of action if a state or federal court does  
13 either of the following:

14 (1) Dismisses any claim or cause of action brought  
15 against the party that seeks the declaratory or injunctive  
16 relief described by subsection (a), regardless of the reason  
17 for the dismissal.

18 (2) Enters judgment in the party's favor on any such  
19 claim or cause of action.

20 (c) Regardless of whether a prevailing party sought  
21 to recover costs or attorney fees in the underlying action, a  
22 prevailing party under this section may bring a civil action  
23 to recover costs and attorney fees against a person, including  
24 an entity, attorney, or law firm, that sought declaratory or  
25 injunctive relief described by subsection (a) not later than  
26 the third anniversary of the date on which, as applicable,  
27 either of the following occurs:

1           (1) The dismissal or judgment described by  
2 subsection (b) becomes final on the conclusion of appellate  
3 review.

4           (2) The time for seeking appellate review expires.

5           (d) It is not a defense to an action brought under  
6 subsection (c) that any of the following occur:

7           (1) A prevailing party under this section failed to  
8 seek recovery of costs or attorney fees in the underlying  
9 action.

10          (2) The court in the underlying action declined to  
11 recognize or enforce the requirements of this section.

12          (3) The court in the underlying action held that any  
13 provisions of this section are invalid, unconstitutional, or  
14 preempted by federal law, notwithstanding the doctrines of  
15 issue or claim preclusion.

16          Section 14. (a) A state law that regulates or  
17 prohibits abortion may not be construed to repeal any other  
18 law that regulates or prohibits abortion, either wholly or  
19 partly, unless the act of the Legislature repealing the law  
20 explicitly states that it is repealing the other law.

21          (b) A state law may not be construed to restrict a  
22 political subdivision from regulating or prohibiting abortion  
23 unless the law explicitly states that political subdivisions  
24 are prohibited from regulating or prohibiting abortion in the  
25 manner described by the state law.

26          (c) (1) Every state law that regulates or prohibits  
27 abortion is severable in each of its applications to every

1 person and circumstance. If any law that regulates or  
2 prohibits abortion is found by any court to be  
3 unconstitutional, either on its face or as applied, then all  
4 applications of that law that do not violate federal law, the  
5 United States Constitution, and the Constitution of Alabama of  
6 1901, or impose an undue burden on women seeking abortions,  
7 shall be severed from the unconstitutional applications and  
8 shall remain enforceable, notwithstanding any other law.

9 (2) If any state or federal court disregards the  
10 severability requirement of this subsection, or declares or  
11 finds any provision of state law that regulates or prohibits  
12 abortion to be facially unconstitutional, when there are  
13 discrete applications of that provision that can be enforced  
14 against a person, group of persons, or circumstances without  
15 violating federal law, the United States Constitution, and the  
16 Constitution of Alabama of 1901, or imposing an undue burden  
17 on women seeking abortions, then that provision shall be  
18 interpreted, as a matter of state law, as if the Legislature  
19 had enacted a provision limited to the persons, group of  
20 persons, or circumstances for which the provision's  
21 application will not violate federal law, the federal or state  
22 constitutions, or impose an undue burden on women seeking  
23 abortions, and every court shall adopt this saving  
24 construction of that provision until the court ruling that  
25 pronounced the provision facially unconstitutional is vacated  
26 or overruled.

1                   Section 15. The provisions of this act are  
2                   severable. If any part of this act is declared invalid or  
3                   unconstitutional, that declaration shall not affect the part  
4                   which remains.

5                   Section 16. This act shall become effective on the  
6                   first day of the third month following its passage and  
7                   approval by the Governor, or its otherwise becoming law.