

1 HB418
2 137059-1
3 By Representatives Weaver, Buttram, Hill, Wood, Greer,
4 Wallace, Tuggle, Collins, Sessions, Long, McClurkin, Farley,
5 Rich, Sanderford, Moore (B), Hammon and Williams (J)
6 RFD: Health
7 First Read: 23-FEB-12

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8 SYNOPSIS: This bill would establish the Right to Know
9 and See Act.

10 This bill would require a physician to
11 perform an ultrasound, provide verbal explanation
12 of the ultrasound, and display the images to the
13 pregnant woman before performing an abortion.

14 This bill would not apply to an abortion
15 performed in the case of a medical emergency.

16 This bill would provide criminal penalties
17 and civil remedies for violations.

18 This bill would provide for anonymity for
19 women in court proceedings.

20 Amendment 621 of the Constitution of Alabama
21 of 1901, now appearing as Section 111.05 of the
22 Official Recompilation of the Constitution of
23 Alabama of 1901, as amended, prohibits a general
24 law whose purpose or effect would be to require a
25 new or increased expenditure of local funds from
26 becoming effective with regard to a local
27 governmental entity without enactment by a 2/3 vote

1 unless: it comes within one of a number of
2 specified exceptions; it is approved by the
3 affected entity; or the Legislature appropriates
4 funds, or provides a local source of revenue, to
5 the entity for the purpose.

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

13
14 A BILL
15 TO BE ENTITLED
16 AN ACT
17

18 To establish the Right to Know and See Act; to
19 define terms; to require a physician to perform an ultrasound
20 and display the images to the pregnant woman before performing
21 an abortion; to exclude an abortion in a medical emergency; to
22 provide criminal penalties and civil remedies for violations;
23 to provide anonymity for women in court proceedings; and in
24 connection therewith would have as its purpose or effect the
25 requirement of a new or increased expenditure of local funds
26 within the meaning of Amendment 621 of the Constitution of
27 Alabama of 1901, now appearing as Section 111.05 of the

1 Official Recompilation of the Constitution of Alabama of 1901,
2 as amended.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. This act shall be known and may be cited
5 as the "Right to Know and See Act."

6 Section 2. For the purpose of this act, the
7 following words and phrases shall have the following meanings:

8 (1) ABORTION. The intentional use or prescription of
9 any instrument, medicine, drug, or any other substance or
10 devise or method to terminate the life of an unborn child, to
11 terminate the pregnancy of a woman known to be pregnant with
12 an intention other than to produce a live birth and preserve
13 the life and health of the child after live birth, to remove
14 an ectopic pregnancy, or to remove a dead unborn child who
15 died as the result of natural causes, accidental trauma, or a
16 criminal assault on the pregnant woman or her unborn child.

17 (2) ATTEMPT TO PERFORM AN ABORTION. An act, or an
18 omission of a statutorily required act, that, under the
19 circumstances as the actor believes them to be, constitutes a
20 substantial step in a course of conduct planned to culminate
21 in the performance of an abortion in Alabama in violation of
22 this act.

23 (3) QUALIFIED TECHNICIAN. A Registered Diagnostic
24 Medical Sonographer who is certified in obstetrics and
25 gynecology by the American Registry for Diagnostic Medical
26 Sonography (ARDMS) or a Nurse Midwife or Advance Practice

1 Nurse Practitioner in Obstetrics with certification in
2 obstetrical ultrasonography.

3 (4) UNBORN CHILD and UNBORN CHILDREN. A member or
4 members of the species homo sapiens at any stage of
5 development before birth.

6 (5) WOMAN. A female human being whether or not she
7 has reached the age of majority.

8 Section 3. (a) Any abortion provider who knowingly
9 performs any abortion shall comply with the requirements of
10 this act.

11 (b) Prior to a woman giving informed consent to
12 having any part of an abortion performed or induced, and prior
13 to the administration of any anesthesia or medication in
14 preparation for the abortion on the woman, the physician who
15 is to perform the abortion or a qualified technician shall:

16 (1) Perform an obstetric ultrasound on the pregnant
17 woman, using either a vaginal transducer or an abdominal
18 transducer, whichever would display the embryo or fetus more
19 clearly.

20 (2) Provide a simultaneous verbal explanation of
21 what the ultrasound is depicting, which shall include the
22 presence and location of the unborn child within the uterus
23 and the number of unborn children depicted. If the ultrasound
24 image indicates that fetal demise has occurred, a woman shall
25 be informed of that fact.

26 (3) Display the ultrasound images so that the
27 pregnant woman may view them.

1 (4) Provide a medical description of the ultrasound
2 images, which shall include the dimensions of the embryo or
3 fetus and the presence of external members and internal
4 organs, if present and viewable.

5 (c) Nothing in this section shall be construed to
6 prevent a pregnant woman from averting her eyes from the
7 ultrasound images required to be provided to and reviewed with
8 her. Neither the physician nor the pregnant woman shall be
9 subject to any penalty if she declines to look at the
10 presented ultrasound images.

11 Section 4. (a) The provisions of Section 3 shall not
12 apply to an abortion provider or facility in the case of a
13 medical emergency.

14 (b) For purposes of this section, the following
15 terms shall have the following meanings:

16 (1) MEDICAL EMERGENCY. A condition which, in
17 reasonable medical judgment, so complicates the medical
18 condition of the pregnant woman as to necessitate the
19 immediate abortion of her pregnancy to avert her death or for
20 which a delay will create serious risk of substantial and
21 irreversible physical impairment of a major bodily function,
22 not including psychological or emotional conditions. No
23 condition shall be deemed a medical emergency if based on a
24 claim or diagnosis that the woman will engage in conduct which
25 she intends to result in her death or in substantial and
26 irreversible physical impairment of a major bodily function.

1 (2) 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 (c) (1) Upon a determination by an abortion provider
6 that a medical emergency exists with respect to a pregnant
7 woman, the provider shall certify the specific medical
8 conditions that constitute the emergency.

9 (2) An abortion provider who willfully falsifies a
10 certification shall be subject to all the penalties provided
11 for under this act.

12 Section 5. Any person who knowingly or recklessly
13 performs or attempts to perform an abortion in violation of
14 this act shall be guilty of a Class C felony. No penalty may
15 be assessed against the female upon whom the abortion is
16 performed or attempted to be performed.

17 Section 6. (a) Any person upon whom an abortion has
18 been performed without compliance with this act, the father of
19 the unborn child who was the subject of the abortion, or the
20 grandparent of an unborn child may maintain an action against
21 the person who performed the abortion in knowing or reckless
22 violation of this act for actual and punitive damages. Any
23 person upon whom an abortion has been attempted without
24 compliance with this act may maintain an action against the
25 person who attempted to perform the abortion in knowing or
26 reckless violation of this act for actual and punitive
27 damages.

1 (b) If judgment is rendered in favor of the
2 plaintiff in an action described in this section, the court
3 shall also render judgment for a reasonable attorney's fee in
4 favor of the plaintiff against the defendant. If judgment is
5 rendered in favor of the defendant and the court finds that
6 the plaintiff's suit was frivolous and brought in bad faith,
7 the court shall also render judgment for a reasonable
8 attorney's fee in favor of the defendant against the
9 plaintiff.

10 Section 7. In every civil or criminal proceeding or
11 action brought under this act, the court shall rule whether
12 the anonymity of any female upon whom an abortion has been
13 performed or attempted to be performed shall be preserved from
14 public disclosure if she does not give her consent to such
15 disclosure. The court, upon motion or sua sponte, shall make
16 such a ruling and, upon determining that her anonymity should
17 be preserved, shall issue orders to the parties, witnesses,
18 and counsel and shall direct the sealing of the record and
19 exclusion of individuals from courtrooms or hearing rooms to
20 the extent necessary to safeguard her identity from public
21 disclosure. Each order shall be accompanied by specific
22 written findings explaining why the anonymity of the female
23 should be preserved from public disclosure, why the order is
24 essential to that end, how the order is narrowly tailored to
25 serve that interest, and why no reasonable less restrictive
26 alternative exists. In the absence of written consent of the
27 female upon whom an abortion has been performed or attempted

1 to be performed, anyone, other than a public official, who
2 brings an action under this act shall do so under a pseudonym.
3 This section may not be construed to conceal the identity of
4 the plaintiff or of witnesses from the defendant.

5 Section 8. If any one or more provision, section,
6 subsection, sentence, clause, phrase, or word of this act or
7 the application thereof to any person or circumstance is found
8 to be unconstitutional, the same is hereby declared to be
9 severable and the balance of this act shall remain effective
10 notwithstanding such unconstitutionality. The Legislature
11 hereby declares that it would have passed this act, and each
12 provision, section, subsection, sentence, clause, phrase, or
13 word thereof, irrespective of the fact that any one or more
14 provision, section, subsection, sentence, clause, phrase, or
15 word be declared unconstitutional.

16 Section 9. Although this bill would have as its
17 purpose or effect the requirement of a new or increased
18 expenditure of local funds, the bill is excluded from further
19 requirements and application under Amendment 621, now
20 appearing as Section 111.05 of the Official Recompilation of
21 the Constitution of Alabama of 1901, as amended, because the
22 bill defines a new crime or amends the definition of an
23 existing crime.

24 Section 10. This act shall become effective on the
25 first day of the third month following its passage and
26 approval by the Governor, or its otherwise becoming law.