HB405
166166-1
By Representatives Collins, Johnson (K), Mooney, Butler, Shedd, Faulkner, Rowe, Harper, South, Weaver, Fridy, Ainsworth, Henry, Sanderford, Rich, Farley, Ledbetter, Whorton (R), Pettus, Greer, Wilcox, Hanes, Lee, Clouse, Ingram, Pringle, Gaston, Boothe, Chesteen, Williams (JW), Carns, Drake, Wingo, Brown, Holmes (M), Sessions, Nordgren, Hammon, Fincher, Harbison, Faust, Davis and Hubbard
RFD: Health
First Read: 02-APR-15
SYNOPSIS: This bill would make it unlawful for a physician to perform an abortion on a pregnant woman after a heartbeat has been detected from the unborn child in accordance with the applicable standards of medical care for determining heartbeats of unborn children. This bill would further require a physician to check for a detectable heartbeat prior to performing an abortion.

This bill would provide for the definition of abortion for the purposes of this bill as well as certain types of exceptions.

This bill would also require written documentation of the procedure used to determine the existence, if any, of a detectable heartbeat in an unborn child and the results thereof.

This bill would provide criminal penalties.

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, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exceptions; it is approved by the affected entity; or the Legislature appropriates funds, or provides a local source of revenue, to the entity for the purpose.

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

A BILL
TO BE ENTITLED
AN ACT

To provide for the Fetal Heartbeat Act; to make it unlawful for a physician to perform an abortion on a pregnant woman after a heartbeat has been detected from the unborn child; to provide for the definition of abortion as referenced herein, as well as certain types of exceptions; to require a
physician to check for a detectable heartbeat from an unborn
cchild prior to performing an abortion as defined herein; to
require written documentation of the procedure used to
determine the existence, if any, of a detectable heartbeat in
an unborn child and the results thereof; to provide criminal
penalties; 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 Fetal Heartbeat Act.

Section 2. An abortion is defined as the use or
prescription of any instrument, medicine, drug, or any other
substance or device with the intent to terminate the pregnancy
of a woman known to be pregnant with knowledge that the
termination by those means will with reasonable likelihood
cause the death of the unborn child. The use or prescription
is not an abortion if done with the intent to save the life or
preserve the health of an unborn child, remove a dead unborn
child, or to deliver the unborn child prematurely in order to
preserve the health of both the mother (pregnant woman) and
her unborn child. The term "abortion" as used in these rules,
does not include a procedure or act to terminate the pregnancy
of a woman with an ectopic pregnancy, nor does it include the
procedure or act to terminate the pregnancy of a woman when
the unborn child has a lethal anomaly. For the purposes of
this act, a "lethal anomaly" means that the child has been
diagnosed before birth with a condition that, with reasonable
medical certainty, will result in the death of the child
within three months after birth, or would die at birth or be
stillborn. For the purposes of this act, the term "ectopic
pregnancy" means any pregnancy resulting from a fertilized egg
that has implanted or attached outside the uterus. The term
"ectopic pregnancy" also includes a pregnancy resulting from a
fertilized egg implanted inside the cornu of the uterus.

Section 3. A physician shall not perform an abortion
on a pregnant woman without first determining if the unborn
child the pregnant woman is carrying has a detectable
heartbeat. The procedure for detecting the heartbeat shall be
pursuant to the applicable medical standard of care.

Section 4. A physician shall not perform an abortion
on a pregnant woman whose unborn child's heartbeat has been
detected according to the requirements of this act.

Section 5. It is not in violation of this act to
perform an abortion on a pregnant woman if a physician has
performed a procedure for the presence of a heartbeat in the
unborn child utilizing the applicable medical standard of care
and that procedure does not reveal a heartbeat in the unborn
child. The physician shall document in writing the procedure
used to determine the existence of the heartbeat in the unborn
child, the date the procedure was performed and the results of
the procedure.

Section 6. Notwithstanding that a detectable
heartbeat has been determined, it shall not be a violation of
this act if an abortion is performed by a physician pursuant
to the applicable medical standard of care for treatment of a
condition that, absent an abortion, is likely to result in the
death of the pregnant woman or is likely to result in
substantial and irreversible impairment of a major bodily
function of the pregnant woman, not including psychological or
emotional conditions.

Section 7. A physician who performs a medical
procedure which results in an abortion, notwithstanding that a
detectable heartbeat has been determined, shall declare in
writing that the medical procedure is necessary, and is
performed pursuant to the applicable medical standard of care
for treatment of a condition that, absent an abortion, is
likely to result in the death of the pregnant woman or is
likely to result in substantial and irreversible impairment of
a major bodily function of the pregnant woman, not including
psychological or emotional conditions. A physician shall
document in the writing the medical condition of the pregnant
woman, the reason why the medical procedure resulting in an
abortion was necessary, and the medical rationale for the
conclusion that the abortion was necessary to prevent the
death of the pregnant woman or substantial and irreversible
impact of a major bodily function of the pregnant woman, not
including psychological or emotional conditions.

Section 8. Documentation required by this act shall be maintained in the same manner as other similar medical records, such as those used to claim medical reimbursement or used to demonstrate compliance with statutory and regulatory requirements. The documentation shall be maintained for a period of not less than seven years, and copies shall be made available to the affected patient, state health regulators, and state licensure authorities upon request. Records and documentation may be created electronically, maintained electronically, or both, so long as the records are readily reproducible in paper format.

Section 9. Nothing in this act shall prohibit the sale, use, prescription, or administration of a measure, drug, or chemical designed for contraceptive purposes.

Section 10. Except for the exemptions provided for herein, and subject to the provisions of Section 26-23A-8, Code of Alabama 1975, it shall be a Class C felony for a physician to fail to perform a procedure to determine the presence of a heartbeat in the unborn child or to perform an abortion on an unborn child whose heartbeat has been determined. The pregnant woman shall not be prosecuted for violation of this act or for conspiracy to violate this act.

Section 11. Except for the exemptions provided for herein, and subject to the provisions of Section 26-23A-8, Code of Alabama 1975, if a physician fails to perform a
procedure to determine the heartbeat of the unborn child or
performs an abortion of a child having established its
heartbeat, he or she shall have his or her license revoked and
shall be subject to such additional disciplinary action as
shall be determined by the appropriate regulatory authority.

Section 12. Although this bill would have as its
purpose or effect the requirement of a new or increased
expenditure of local funds, the bill is excluded from further
requirements and application under Amendment 621, now
appearing as Section 111.05 of the Official Recompilation of
the Constitution of Alabama of 1901, as amended, because the
bill defines a new crime or amends the definition of an
existing crime.

Section 13. The provisions of this act are
severable. If any part of this act is declared invalid or
unconstitutional, that declaration shall not effect the part
which remains.

Section 14. This law shall become effective 30 days
after signing by the Governor, or its otherwise becoming law.