HB183

By Representative Rich

RFD: Health

First Read: 11-FEB-16
SYNOPSIS: Under existing law a physician and other qualified persons must provide certain information to a woman at least 48 hours before performance of an abortion.

This bill would require an abortion provider to privately provide the woman with additional written and oral information including a sonogram portraying the entire body of the unborn child and specific information regarding that child as disclosed by the sonogram.

This bill would impose certain notice requirements and provide penalties for violations.

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 establish specific notice and information requirements by an abortion provider regarding a sonogram of an unborn baby; to provide for penalties for violations; 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 Ultrasound Access Act.

Section 2. The Legislature makes the following findings:

(1) Approximately 61,000,000 abortions have been performed in the United States since the decision in Roe v. Wade.

(2) Abortion is a tragedy that involves the taking of a human life.

(3) Every year tens of thousands of viable unborn children are aborted for no other reason than a minor physical disability or the small inconvenience which would be involved in placing that child in a loving home.

Section 3. For purposes of this act, the following terms shall have the following meanings:

(1) ABORTION. The act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the pregnancy of a woman with knowledge or reason to believe that the termination by those means will cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent of any of the following:

a. Save the life or preserve the health of an unborn child.

b. Remove a dead unborn child who did not die as a result of the doctor's own intentional, knowing, or reckless action to terminate a pregnancy.
c. Remove an ectopic pregnancy.

(2) ABORTION PROVIDER. A person performing or inducing an abortion, or the facility at which the abortion is to be performed or induced.

(3) CONFLICT OF INTEREST DISCLAIMER. A written and oral statement divulging the abortion provider's gross income from the previous fiscal year, as well as the percentage of that income which was obtained from the performance of abortions together with a statement concerning the monetary loss to the abortion provider which would result from the woman's decision to carry the pregnancy to term.

(4) FETAL SAC. The natural membrane surrounding the fetus that can be used to determine if an intrauterine pregnancy exists.

(5) MEDICAL EMERGENCY. A condition that so complicates the medical condition of a pregnant woman that the death of the woman would result from the failure to immediately treat her physical condition even though the treatment may result in the death of her unborn child.

(6) VIABLE PREGNANCY. A pregnancy in which a fetal sac is located inside the uterus and a fetal heartbeat is found with the fetal sac.

Section 4. (a) Notwithstanding any other provision of law, no abortion shall be performed or induced without the voluntary and informed consent of the woman upon whom the abortion is performed or induced. Except in the case of a
medical emergency, consent to an abortion is voluntary and informed only if the following conditions are met:

(1) At least 48 hours before the abortion, the physician who is to perform the abortion has informed the woman, orally and in writing, of all of the following:

a. The name of the physician who will perform the abortion.

b. A thorough and accurate description of the proposed method for performing the abortion, including information on the probable gestational age of the unborn child at the time the abortion is to be performed and the probable anatomical and physiological characteristics of an unborn child at that age.

c. A description of immediate and long-term physical and psychological risks involved in the abortion procedure, including, but not limited to, the risks of infection, hemorrhage, cervical or uterine perforation, risks to subsequent pregnancies, and infertility.

d. A description of alternatives to abortion, including the availability of adoption alternatives and the availability of financial help from adoptive parents and other sources for prenatal care, childbirth, and neonatal care expenses.

e. A description of medical assistance benefits that may be available for prenatal care, childbirth, and neonatal care, together with the names and contact information for individuals and organizations that may be willing to assist
with the costs involved in carrying the pregnancy to term and information of the liability of the father for child support and other expenses.

f. A conflict of interest disclaimer.

g. Any other medical or other information that a reasonable patient would consider material to the decision whether to have an abortion.

(2) At least 48 hours prior to the abortion, the abortion provider has provided the woman in writing and, where applicable, orally:

a. A current sonogram of the unborn child portraying the entire body of the unborn child, including all of the following:

1. A verbal description of all relevant features of the sonogram with audible heartbeat if present.

2. Upon request and without additional charge, a photograph or print of the sonogram, of a quality consistent with the current standard medical practice.

3. A written and verbal description stating whether the woman has a viable pregnancy, the location of the fetal sac, and the presence or absence of a heartbeat. If the pregnancy is not viable, the abortion provider shall advise the woman that she will miscarry with no further intervention unless the abortion provider has evidence to the contrary.

4. In order to provide the possibility of a second opinion, a list of all known sonogram providers within a 10-mile radius of the abortion provider, or if there are no
such sonogram providers within a 10-mile radius of the
abortion provider, a list of all known sonogram providers
within a 50-mile radius of the abortion provider.

5. Nothing in this act shall be construed to prevent
the pregnant woman from not listening to the sounds detected
by the fetal heart monitor, or from not viewing the images
displayed on the ultrasound screen.

b. The probable gestational age of the unborn child,
including provision of color photographs of fetal development
within a four-week increment of the age of the unborn child
and during each succeeding four-week increment during the
pregnancy.

c. A description of the development of the child's
nerve endings and the child's ability to feel pain at each
stage of the development.

d. Relevant information on the potential survival of
the child at his or her current stage of development.

e. A statement that the woman is free to withhold or
withdraw her consent to the abortion at any time without
affecting her right to care or treatment in the future, and
without the loss of any state or federal benefits to which she
might otherwise be entitled.

f. Any other medical or other information that a
reasonable patient would consider material to the decision
whether to have an abortion.

(b) The information provided in subsection (a) shall
be provided individually in a private room, and the woman
shall be provided with an adequate opportunity to ask questions and receive answers she can understand.

(c) If the woman is unable to read the written materials provided to her under the provisions of subsection (a), they shall be read to her and, if necessary, shall be explained in a way understandable to her. If the woman is unable to understand the sonogram image, it shall be explained to her.

(d) The woman shall sign separate statements that the abortion provider has complied with each of the provisions of subsection (a). The abortion provider, under oath under penalty of perjury, shall sign separate statements that he or she has complied with each of the provisions of subdivision (a)(1).

(e) No abortion provider may accept payment, nor may the abortion provider legally or otherwise bind a woman to make a payment, for the performance or inducing of an abortion prior to the expiration of 48 hours from the abortion provider's fulfillment of all of the provisions of subdivision (a)(1).

(f) Whoever intentionally, knowingly, or recklessly violates any provision of this act, or who performs an abortion with reason to believe such an abortion is a violation of this act, shall be imprisoned for up to 10 years, fined not more than one million dollars ($1,000,000) for each violation, or both.
(g) Any person or entity which has been convicted under the provisions of this act shall be referred to the appropriate professional disciplinary authority in Alabama.

Section 5. Whoever is aggrieved by a violation of this act by an abortion provider may bring a cause of action against the abortion provider for damages, punitive damages, treble damages, reasonable attorney fees and expenses, and such equitable remedies as the court may deem appropriate.

Section 6. (a) Nothing contained in this act shall be construed to (1) preempt or supersede any provision of law or any provision of law which is more restrictive than the provisions of this act, or (2) create or recognize any right to an abortion, or to sanction, approve of, or expand in any way the legality of abortion.

(b) This act shall be construed in pari materia with the Woman's Right to Know Act, now codified in Sections 26-23A-1 to 26-23A-13, inclusive, Code of Alabama 1975, and other applicable laws.

Section 7. The provisions of this act are severable. If any provision of this act, or word, phrase, or application thereof, is found to be invalid, that invalidity shall not affect the validity of the provisions or application of the act not found to be invalid.

Section 8. 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 9. This act shall become effective
immediately following its passage and approval by the
Governor, or its otherwise becoming law.