

1 SB9
2 171521-1
3 By Senator Allen
4 RFD: Health and Human Services
5 First Read: 02-FEB-16
6 PFD: 10/22/2015

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8 SYNOPSIS: This bill would make it unlawful for a
9 physician to perform an abortion on a pregnant
10 woman after a heartbeat has been detected from the
11 unborn child in accordance with the applicable
12 standards of medical care for determining
13 heartbeats of unborn children. This bill would
14 further require a physician to check for a
15 detectable heartbeat prior to performing an
16 abortion.

17 This bill provides for the definition of
18 abortion for the purposes of this bill, as well as
19 certain types of exceptions.

20 This bill also requires written
21 documentation of the procedure used to determine
22 the existence, if any, of a detectable heartbeat in
23 an unborn child and the results thereof.

24 This bill would provide criminal penalties.

25 Amendment 621 of the Constitution of Alabama
26 of 1901, now appearing as Section 111.05 of the
27 Official Recompilation of the Constitution of

1 Alabama of 1901, as amended, prohibits a general
2 law whose purpose or effect would be to require a
3 new or increased expenditure of local funds from
4 becoming effective with regard to a local
5 governmental entity without enactment by a 2/3 vote
6 unless: it comes within one of a number of
7 specified exceptions; it is approved by the
8 affected entity; or the Legislature appropriates
9 funds, or provides a local source of revenue, to
10 the entity for the purpose.

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

18
19 A BILL
20 TO BE ENTITLED
21 AN ACT
22

23 To provide for the Fetal Heartbeat Act; to make it
24 unlawful for a physician to perform an abortion on a pregnant
25 woman after a heartbeat has been detected from the unborn
26 child; to provide for the definition of abortion as referenced
27 herein, as well as certain types of exceptions; to require a

1 physician to check for a detectable heartbeat from an unborn
2 child prior to performing an abortion as defined herein; to
3 require written documentation of the procedure used to
4 determine the existence, if any, of a detectable heartbeat in
5 an unborn child and the results thereof; to provide criminal
6 penalties; and in connection therewith would have as its
7 purpose or effect the requirement of a new or increased
8 expenditure of local funds within the meaning of Amendment 621
9 of the Constitution of Alabama of 1901, now appearing as
10 Section 111.05 of the Official Recompilation of the
11 Constitution of Alabama of 1901, as amended.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. This act shall be known and may be cited
14 as the Fetal Heartbeat Act.

15 Section 2. An abortion is defined as the use or
16 prescription of any instrument, medicine, drug, or any other
17 substance or device with the intent to terminate the pregnancy
18 of a woman known to be pregnant with knowledge that the
19 termination by those means will with reasonable likelihood
20 cause the death of the unborn child. The use or prescription
21 is not an abortion if done with the intent to save the life or
22 preserve the health of an unborn child, remove a dead unborn
23 child, or to deliver the unborn child prematurely in order to
24 preserve the health of both the mother (pregnant woman) and
25 her unborn child. The term "abortion" as used in these rules,
26 does not include a procedure or act to terminate the pregnancy
27 of a woman with an ectopic pregnancy, nor does it include the

1 procedure or act to terminate the pregnancy of a woman when
2 the unborn child has a lethal anomaly. For the purposes of
3 this act, a "lethal anomaly" means that the child has been
4 diagnosed before birth with a condition that, with reasonable
5 medical certainty, will result in the death of the child
6 within three months after birth, or would die at birth or be
7 stillborn. For the purposes of this act, the term "ectopic
8 pregnancy" means any pregnancy resulting from a fertilized egg
9 that has implanted or attached outside the uterus. The term
10 "ectopic pregnancy" also includes a pregnancy resulting from a
11 fertilized egg implanted inside the cornu of the uterus.

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

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

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

1 child, the date the procedure was performed and the results of
2 the procedure.

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

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

1 impact of a major bodily function of the pregnant woman, not
2 including psychological or emotional conditions.

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

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

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

25 Section 11. Except for the exemptions provided for
26 herein, and subject to the provisions of Section 26-23A-8,
27 Code of Alabama 1975, if a physician fails to perform a

1 procedure to determine the heartbeat of the unborn child or
2 performs an abortion of a child having established its
3 heartbeat, he or she shall have his or her license revoked and
4 shall be subject to such additional disciplinary action as
5 shall be determined by the appropriate regulatory authority.

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

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

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