SYNOPSIS: Existing law requires abortion providers to provide a woman seeking an abortion with information regarding the abortion process, the participating medical personnel, and the health status of the unborn child prior to performing an abortion.

This bill would require abortion providers to inform women of their right to withdraw consent to an abortion before the abortion is performed.

This bill would also require abortion providers to refund fees paid for an abortion if a woman withdraws consent to the abortion before it is performed, and would provide civil penalties for failure to provide the refund.

A BILL TO BE ENTITLED
AN ACT
Relating to abortion; to amend Section 26-23A-4, Code of Alabama 1975, to require abortion providers to inform women of their right to withdraw consent to an abortion before it is performed and to provide a refund if a woman withdraws consent to an abortion before it is performed; to amend Section 26-23A-10, Code of Alabama 1975, to provide civil penalties for failure to provide a refund if a woman withdraws consent to an abortion before it is performed.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 26-23A-4 and 26-23A-10, Code of Alabama 1975, are amended to read as follows:

"§26-23A-4.

(a) Except in the case of a medical emergency, no abortion shall be performed or induced without the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if:

(a)(1)a. At least 48 hours before the abortion, the physician who is to perform the abortion, the referring physician, or a qualified person has informed and provided the woman in person, or by return receipt certified mail restricted delivery, and if by mail, again in person prior to the abortion, a the following:

1. A copy of the printed materials in Section 26-23A-5 which list agencies that offer assistance, adoption agencies, development of the unborn child, methods and risks
of abortion and childbirth, father's obligations, and
alternatives to abortion;

"2. A typed or written notice no smaller than 16
point type that states as follows: "YOU HAVE THE RIGHT TO
CHANGE YOUR MIND ABOUT HAVING AN ABORTION AT ANY TIME. IF YOU
ARE HAVING A SURGICAL ABORTION, YOU MAY CHANGE YOUR MIND AND
RECEIVE A FULL REFUND OF FEES YOU HAVE PAID FOR THE PROCEDURE
UP UNTIL YOUR UNBORN CHILD IS ABORTED. IF YOU ARE RECEIVING AN
ABORTION BY MEDICATION, YOU MAY CHANGE YOUR MIND AND RECEIVE A
FULL REFUND OF FEES YOU HAVE PAID UP UNTIL THE TIME YOU LEAVE
THE ABORTION FACILITY WITH THE MEDICATIONS."

b. Mailing of the materials in Section 26-23A-5
described in this subdivision may be arranged by telephone.

"(b)(2) Prior to an abortion, the physician who is
to perform the abortion, the referring physician, or a
qualified person has informed the woman in person:

"(1) The name of the physician who will perform
the abortion in writing or a business card.

"(2) The nature of the proposed abortion method
and associated risks and alternatives that a reasonable
patient would consider material to the decision of whether or
not to undergo the abortion.

"(3) 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 the
unborn child at the time the abortion is to be performed. If
the unborn child is viable or has reached a gestational age of
more than 19 weeks, that:

"a.1. The unborn child may be able to survive
outside the womb.

"b.2. The woman has the right to request the
physician to use the method of abortion that is most likely to
preserve the life of the unborn child, provided such abortion
is not otherwise prohibited by law.

"c.3. If the unborn child is born alive, the
attending physician has the legal obligation to take all
reasonable steps necessary to maintain the life and health of
the child.

"d.4. The physician who is to perform the abortion
or the referring physician is required to perform an
ultrasound on the unborn child before the abortion. The woman
has a right to view the ultrasound before an abortion. The
woman shall complete a required form to acknowledge that she
either saw the ultrasound image of her unborn child or that
she was offered the opportunity and rejected it.

"e.5. She e. That she has the right to view the
videotape and ultrasound of her unborn child as described in
Section 26-23A-6.

"f.6. Any need for anti-Rh immune globulin therapy,
and if she is Rh negative, the likely consequences of refusing
such therapy and the cost of the therapy.

"g.7. She g. That she cannot be forced or required by
anyone to have an abortion. She is free to withhold or
withdraw her consent for an abortion without affecting her right to future care or treatment and without the loss of any state or federally funded benefits to which she might otherwise be entitled. **If she withholds or withdraws her consent for an abortion at any point before the unborn child is aborted, the abortion procedure must immediately be stopped.**

"h. That if she withholds or withdraws her consent for an abortion before it is performed, she is entitled to a refund of fees if she does so according to the notice required under subdivision (1) of subsection (a). Before the abortion procedure, this notice must be given again to the woman both orally and in writing in no smaller than 16 point type as follows: "YOU HAVE THE RIGHT TO CHANGE YOUR MIND ABOUT HAVING AN ABORTION AT ANY TIME. IF YOU ARE HAVING A SURGICAL ABORTION, YOU MAY CHANGE YOUR MIND AND RECEIVE A FULL REFUND OF FEES YOU HAVE PAID FOR THE PROCEDURE UP UNTIL YOUR UNBORN CHILD IS ABORTED. IF YOU ARE RECEIVING AN ABORTION BY MEDICATION, YOU MAY CHANGE YOUR MIND AND RECEIVE A FULL REFUND OF FEES YOU HAVE PAID UP UNTIL THE TIME YOU LEAVE THE ABORTION FACILITY WITH THE MEDICATIONS."

"(c)(3) The woman shall complete and sign a form that she has received the information of subsections (a) and subdivisions (1) and (2) of subsection (a), and does provide her informed consent for an abortion on her unborn child."
"(d)(4) Prior to the performance of an abortion, the physician who is to perform the abortion or his or her agent shall receive the signed receipt of the certified mail dated 48 hours before the abortion, if mailed, and the signed forms that she has received the information of subsections (a) and (b) subdivisions (1) and (2) of subsection (a) before the abortion, had the opportunity to view the video and the ultrasound of her unborn child, and provided her informed consent for an abortion. The abortion facility shall retain the signed receipt, signed forms, and the ultrasound in the woman's medical file for the time required by law, but not less than four years.

"(b) If a woman withdraws consent to an abortion procedure before it is performed, any fees collected for that procedure shall be refunded to the woman within three business days after the date of cancellation as follows:

"(1) For a surgical abortion, fees are refundable until the moment the unborn child is aborted; and

"(2) For a medical abortion, fees are refundable until the moment the woman leaves the abortion facility with the dispensed medications.

"§26-23A-10.

"(a) In addition to whatever remedies are available under the common or statutory law of this state, failure to comply with the requirements of this chapter shall:

"(1) Provide a basis for a civil action for compensatory and punitive damages. Any conviction under this...
chapter shall be admissible in a civil suit as prima facie
evidence of a failure to obtain an informed consent or
parental or judicial consent. The civil action may be based on
a claim that the act was a result of simple negligence, gross
negligence, wantonness, willfulness, intention, or other legal
standard of care.

"(2) Provide a basis for professional disciplinary
action under any applicable statutory or regulatory procedure
for the suspension or revocation of any license for
physicians, psychologists, licensed social workers, licensed
professional counselors, registered nurses, or other licensed
or regulated persons. Any conviction of any person for any
failure to comply with the requirements of this chapter shall
result in the automatic suspension of his or her license for a
period of at least one year and shall be reinstated after that
time only on such conditions as the appropriate regulatory or
licensing body shall require to insure compliance with this
chapter.

"(3) Provide a basis for recovery for the woman for
the wrongful death of the child, whether or not the unborn
child was viable at the time the abortion was performed or was
born alive.

"(b) Failure to comply with Section 26-23A-4(b)
shall provide a basis for civil action for compensatory and
punitive damages not less than ten thousand dollars ($10,000),
as well as for an award of attorney fees. A civil action under
this subsection must be instituted within two years of the date of the failure to comply."

Section 2. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.