

1 SB211
2 198038-1
3 By Senators Albritton, Roberts, Chambliss, Shelnut, Barfoot,
4 Williams, Chesteen, Sessions, Elliott, Holley and Gudger
5 RFD: Judiciary
6 First Read: 02-APR-19

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8 SYNOPSIS: This bill would make abortion and attempted
9 abortion felony offenses except in cases where
10 abortion is necessary in order to prevent a serious
11 health risk to the unborn child's mother.

12 This bill would provide that a woman who
13 receives an abortion will not be held criminally
14 culpable or civilly liable for receiving the
15 abortion.

16 Amendment 621 of the Constitution of Alabama
17 of 1901, now appearing as Section 111.05 of the
18 Official Recompilation of the Constitution of
19 Alabama of 1901, as amended, prohibits a general
20 law whose purpose or effect would be to require a
21 new or increased expenditure of local funds from
22 becoming effective with regard to a local
23 governmental entity without enactment by a 2/3 vote
24 unless: it comes within one of a number of
25 specified exceptions; it is approved by the
26 affected entity; or the Legislature appropriates

1 funds, or provides a local source of revenue, to
2 the entity for the purpose.

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

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11 A BILL
12 TO BE ENTITLED
13 AN ACT

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15 Relating to abortion; to make abortion and attempted
16 abortion felony offenses except in cases where abortion is
17 necessary in order to prevent a serious health risk to the
18 unborn child's mother; to provide that a woman who receives an
19 abortion will not be held criminally culpable or civilly
20 liable for receiving the abortion; and in connection therewith
21 would have as its purpose or effect the requirement of a new
22 or increased expenditure of local funds within the meaning of
23 Amendment 621 of the Constitution of Alabama of 1901, now
24 appearing as Section 111.05 of the Official Recompilation of
25 the Constitution of Alabama of 1901, as amended.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. This act shall be known as The Alabama
2 Human Life Protection Act.

3 Section 2. Legislative Findings.

4 (a) This state's statute criminalizing abortion,
5 Section 13A-13-7, Code of Alabama 1975, has never been
6 repealed. It has remained unenforceable as a result of the
7 U.S. Supreme Court decision in Roe v. Wade, 410 U.S. 113
8 (1973) and its progeny, which struck down as unconstitutional
9 a Texas statute criminalizing abortion and which effectively
10 repealed by implication and made unenforceable all other state
11 statutes criminalizing abortion.

12 (b) On November 6, 2018, electors in this state
13 approved by a majority vote a constitutional amendment to the
14 Constitution of Alabama of 1901 declaring and affirming the
15 public policy of the state to recognize and support the
16 sanctity of unborn life and the rights of unborn children. The
17 amendment made it clear that the Constitution of Alabama of
18 1901 does not include a right to an abortion or require the
19 funding of abortions using public funds.

20 (c) In present state law, Section 13A-6-1, Code of
21 Alabama 1975, defines a person for homicide purposes to
22 include an unborn child in utero at any stage of development,
23 regardless of viability.

24 (d) In the United States Declaration of
25 Independence, the principle of natural law that "all men are
26 created equal" was articulated. The self-evident truth found
27 in natural law, that all human beings are equal from creation,

1 was at least one of the bases for the anti-slavery movement,
2 the women's suffrage movement, the Nuremberg war crimes
3 trials, and the American civil rights movement. If those
4 movements had not been able to appeal to the truth of
5 universal human equality, they could not have been successful.

6 (e) Abortion advocates speak to women's rights, but
7 they ignore the unborn child, while medical science has
8 increasingly recognized the humanity of the unborn child.

9 (f) Recent medical advances prove a baby's heart
10 starts to beat at around six weeks. At about eight weeks, the
11 heartbeat can be heard through an ultrasound examination. A
12 fetal Doppler can detect a fetal heartbeat as early as 10
13 weeks.

14 (g) Ultrasound imaging shows the developing child in
15 utero.

16 (h) As early as six weeks after fertilization, fetal
17 photography shows the clear development of a human being. The
18 Alabama Department of Public Health publication "Did You Know
19 . . ." demonstrates through actual pictures at two-week
20 intervals throughout the entire pregnancy the clear images of
21 a developing human being.

22 (i) It is estimated that 6,000,000 Jewish people
23 were murdered in German concentration camps during World War
24 II; 3,000,000 people were executed by Joseph Stalin's regime
25 in Soviet gulags; 2,500,000 people were murdered during the
26 Chinese "Great Leap Forward" in 1958; 1,500,000 to 3,000,000
27 people were murdered by the Khmer Rouge in Cambodia during the

1 1970s; and approximately 1,000,000 people were murdered during
2 the Rwandan genocide in 1994. All of these are widely
3 acknowledged to have been crimes against humanity. By
4 comparison, more than 50 million babies have been aborted in
5 the United States since the Roe decision in 1973, more than
6 three times the number who were killed in German death camps,
7 Chinese purges, Stalin's gulags, Cambodian killing fields, and
8 the Rwandan genocide combined.

9 (j) The cases of Roe v. Wade and its progeny have
10 engendered much civil litigation and legislative attempts to
11 reign in so called abortion rights. Roe v. Wade attempted to
12 define when abortion of an unborn child would be legal. Judges
13 and legal scholars have disagreed and dissented with its
14 finding.

15 Section 3. As used in this act, the following terms
16 shall have the following meanings:

17 (1) ABORTION. The use or prescription of any
18 instrument, medicine, drug, or any other substance or device
19 with the intent to terminate the pregnancy of a woman known to
20 be pregnant with knowledge that the termination by those means
21 will with reasonable likelihood cause the death of the unborn
22 child. The term does not include these activities if done with
23 the intent to save the life or preserve the health of an
24 unborn child, remove a dead unborn child, to deliver the
25 unborn child prematurely to avoid a serious health risk to the
26 unborn child's mother, or to preserve the health of her unborn
27 child. The term does not include a procedure or act to

1 terminate the pregnancy of a woman with an ectopic pregnancy,
2 nor does it include the procedure or act to terminate the
3 pregnancy of a woman when the unborn child has a lethal
4 anomaly.

5 (2) ECTOPIC PREGNANCY. Any pregnancy resulting from
6 either a fertilized egg that has implanted or attached outside
7 the uterus or a fertilized egg implanted inside the cornu of
8 the uterus.

9 (3) LETHAL ANOMALY. A condition from which an unborn
10 child would die after birth or shortly thereafter or be
11 stillborn.

12 (4) MEDICAL EMERGENCY. A condition which, in
13 reasonable medical judgment, so complicates the medical
14 condition of the pregnant woman that her pregnancy must be
15 terminated to avoid a serious health risk as defined in this
16 act.

17 (5) PHYSICIAN. A person licensed to practice
18 medicine and surgery or osteopathic medicine and surgery in
19 Alabama.

20 (6) SERIOUS HEALTH RISK TO THE UNBORN CHILD'S
21 MOTHER. In reasonable medical judgment, the child's mother has
22 a condition that so complicates her medical condition that it
23 necessitates the termination of her pregnancy to avert her
24 death or to avert serious risk of substantial physical
25 impairment of a major bodily function. This term does not
26 include a condition based on a claim that the woman is
27 suffering from an emotional condition or a mental illness

1 which will cause her to engage in conduct that intends to
2 result in her death or the death of her unborn child. However,
3 the condition may exist if a second physician who is licensed
4 in Alabama as a psychiatrist, with a minimum of three years of
5 clinical experience, examines the woman and documents that the
6 woman has a diagnosed serious mental illness and because of
7 it, there is reasonable medical judgment that she will engage
8 in conduct that could result in her death or the death of her
9 unborn child. If the mental health diagnosis and likelihood of
10 conduct is confirmed as provided in this act, and it is
11 determined that a termination of her pregnancy is medically
12 necessary to avoid the conduct, the termination may be
13 performed and shall be only performed by a physician licensed
14 in Alabama in a hospital as defined in the Alabama
15 Administrative Code and to which he or she has admitting
16 privileges.

17 (7) UNBORN CHILD, CHILD or PERSON. A human being,
18 specifically including an unborn child in utero at any stage
19 of development, regardless of viability.

20 (8) WOMAN. A female human being, whether or not she
21 has reached the age of majority.

22 Section 4. (a) It shall be unlawful for any person
23 to intentionally perform or attempt to perform an abortion
24 except as provided for by subsection (b).

25 (b) An abortion shall be permitted if an attending
26 physician licensed in Alabama determines that an abortion is
27 necessary in order to prevent a serious health risk to the

1 unborn child's mother. Except in the case of a medical
2 emergency as defined herein, the physician's determination
3 shall be confirmed in writing by a second physician licensed
4 in Alabama. The confirmation shall occur within 180 days after
5 the abortion is completed and shall be prima facie evidence
6 for a permitted abortion.

7 Section 5. No woman upon whom an abortion is
8 performed or attempted to be performed shall be criminally or
9 civilly liable. Furthermore, no physician confirming the
10 serious health risk to the child's mother shall be criminally
11 or civilly liable for those actions.

12 Section 6. (a) An abortion performed in violation of
13 this act is a Class A felony.

14 (b) An attempted abortion performed in violation of
15 this act is a Class C felony.

16 Section 7. This act shall not apply to a physician
17 licensed in Alabama performing a termination of a pregnancy or
18 assisting in performing a termination of a pregnancy due to a
19 medical emergency as defined by this act.

20 Section 8. The construction of existing statutes and
21 regulations that regulate or recognize abortion in Alabama
22 that are in conflict with or antagonistic to this act shall be
23 repealed as null and void and shall recognize the prohibition
24 of abortion as provided in this act. If this act is challenged
25 and enjoined pending a final judicial decision, the existing
26 statutes and regulations that regulate or recognize abortion
27 shall remain in effect during that time.

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

9 Section 10. This act shall become effective six
10 months following its passage and approval by the Governor, or
11 its otherwise becoming law.