

1 HB317
2 209555-1
3 By Representative Rich
4 RFD: Judiciary
5 First Read: 03-FEB-21

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8 SYNOPSIS: Existing law provides for the administration
9 of abortion-inducing drugs.

10 This bill would require medical
11 professionals to dispense information about the
12 effects of abortion-inducing drugs, as well as
13 information pertaining to the reversal of
14 abortion-inducing drugs and would provide for
15 private causes of action and for criminal and civil
16 penalties.

17 This bill would provide for the creation and
18 maintenance of a website containing information
19 about abortion-inducing drugs.

20 This bill would provide that if a physician
21 determines a medical emergency necessitates an
22 abortion, the physician performing the abortion
23 shall inform the woman upon whom the abortion is to
24 be performed of the basis for his or her medical
25 judgment.

1 This bill would provide that any person who
2 provides or induces an abortion in violation of
3 this act is guilty of a Class C felony.

4 This bill would also provide that if a woman
5 is administered an abortion-inducing drug resulting
6 in an abortion in violation of this bill, the
7 woman, the father of the unborn child, or a
8 grandparent of the unborn child, may maintain an
9 action against the individual who performed the
10 abortion in certain circumstances.

11 Amendment 621 of the Constitution of Alabama
12 of 1901, as amended by Amendment 890, now appearing
13 as Section 111.05 of the Official Recompilation of
14 the Constitution of Alabama of 1901, prohibits a
15 general law whose purpose or effect would be to
16 require a new or increased expenditure of local
17 funds from becoming effective with regard to a
18 local governmental entity without enactment by a
19 2/3 vote unless: it comes within one of a number of
20 specified exceptions; it is approved by the
21 affected entity; or the Legislature appropriates
22 funds, or provides a local source of revenue, to
23 the entity for the purpose.

24 The purpose or effect of this bill would be
25 to require a new or increased expenditure of local
26 funds within the meaning of the amendment. However,
27 the bill does not require approval of a local

1 governmental entity or enactment by a 2/3 vote to
2 become effective because it comes within one of the
3 specified exceptions contained in the amendment.
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5 A BILL
6 TO BE ENTITLED
7 AN ACT
8

9 Relating to abortion; to require that an
10 administrator of an abortion-inducing drug notify a woman that
11 it may be possible to reverse the effects of a chemical
12 abortion if the woman changes her mind about the abortion; to
13 require the Alabama Department of Public Health to maintain a
14 website with information regarding abortion-inducing drugs; to
15 provide a cause of action if this act is violated; to provide
16 for criminal penalties if an abortion is performed or induced
17 in violation of this act; to provide certain family members of
18 women who receive certain abortions with a cause of action in
19 certain circumstances; and in connection therewith would have
20 as its purpose or effect the requirement of a new or increased
21 expenditure of local funds within the meaning of Amendment 621
22 of the Constitution of Alabama of 1901, as amended by
23 Amendment 890, now appearing as Section 111.05 of the Official
24 Recompilation of the Constitution of Alabama of 1901.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

26 Section 1. For the purposes of this act, the
27 following terms have the following meanings:

1 (1) ABORTION. The use or prescription of any
2 instrument, medicine, drug, or any other substance or device
3 intended to terminate the pregnancy of a woman known to be
4 pregnant with knowledge that the use of those means will, with
5 reasonable likelihood, cause the death of the unborn child.
6 Use or prescription of those means is not an abortion if done
7 with the intent to save the life or preserve the health of an
8 unborn child, remove a dead unborn child, or to deliver the
9 unborn child prematurely in order to preserve the health of
10 both the mother and her unborn child. The term does not
11 include a procedure or act to terminate the pregnancy of a
12 woman with an ectopic pregnancy, nor does it include the
13 procedure or act to terminate the pregnancy of a woman when
14 the unborn child has a lethal anomaly.

15 (2) CHEMICAL ABORTION. The use or prescription of an
16 abortion-inducing drug dispensed with the intent to cause the
17 death of the unborn child.

18 (3) ECTOPIC PREGNANCY. Any pregnancy resulting from
19 a fertilized egg that has implanted or attached outside the
20 uterus.

21 (4) LETHAL ANOMALY. Means that the child would die
22 at birth, shortly thereafter, or would be stillborn.

23 (5) MEDICAL EMERGENCY. A condition which, in
24 reasonable medical judgment, so complicates the medical
25 condition of the pregnant woman as to necessitate the
26 immediate abortion of her pregnancy to avert her death, or for
27 which a delay will create serious risk of substantial and

1 irreversible physical impairment of a major bodily function,
2 not including psychological or emotional conditions. No
3 condition is a medical emergency if based on a claim or
4 diagnosis that the woman will engage in conduct which she
5 intends to result in her death or in substantial and
6 irreversible physical impairment of a major bodily function.

7 Section 2. (a) Except in the case of a medical
8 emergency, a chemical abortion involving the two-drug process
9 of dispensing mifepristone first and then misoprostol shall
10 not be performed or induced or attempted to be performed or
11 induced unless the physician who is to administer the drug, a
12 referring physician, or an agent of either physician informs
13 the woman, by telephone or in person, of both of the
14 following:

15 (1) That it may be possible to reverse the effects
16 of a chemical abortion if the woman changes her mind, but time
17 would be of the essence.

18 (2) That information and assistance regarding the
19 reversal of the effects of the abortion-inducing drug are
20 available on the Alabama Department of Public Health website.

21 (b) After the first drug in the two-drug process is
22 dispensed in a chemical abortion utilizing mifepristone, the
23 physician or an agent of the physician shall provide written
24 medical discharge instructions to the pregnant woman which
25 shall include the following statement: "Recent developing
26 research has indicated that mifepristone alone is not always
27 effective in ending a pregnancy. It may be possible to avoid,

1 cease, or even reverse the intended effects of a chemical
2 abortion using mifepristone if the second pill has not been
3 taken. Please consult with a health care professional
4 immediately."

5 Section 3. When a medical emergency compels the
6 performance of an abortion, the physician shall inform the
7 woman, prior to the abortion if possible, of the medical
8 indications supporting the physician's judgment that an
9 abortion is necessary to avert her death or that a 24-hour
10 delay will create serious risk of substantial and irreversible
11 physical impairment of a major bodily function, not including
12 psychological or emotional conditions. The physician shall
13 document in writing the reasons for his or her determination
14 that a medical emergency exists and shall keep the
15 documentation in the woman's file for at least two years.

16 Section 4. Within 90 days after the enactment of
17 this act, the Alabama Department of Public Health shall
18 publish, in English and in each language that is the primary
19 language of two percent or more of the state's population, and
20 shall make available on the Alabama Department of Public
21 Health website, information that is easily searchable and
22 comprehensible that is designed to inform a woman of the
23 possibility of reversing the effects of a chemical abortion
24 using mifepristone if she changes her mind, and information
25 pertaining to and assistance with the resources that may be
26 available to help reverse the effects of a chemical abortion.

1 Section 5. Any individual who knowingly or
2 recklessly performs or induces or attempts to perform or
3 induce an abortion in violation of this act shall be guilty of
4 a Class C felony.

5 Section 6. (a) If a woman is administered an
6 abortion-inducing drug resulting in an abortion in violation
7 of this act, the woman, the father of the unborn child, or if
8 the female has not yet attained the age of 19 years at the
9 time of the chemical abortion or has died as a result of the
10 chemical abortion, a grandparent of the unborn child, may
11 maintain an action against the individual who performed the
12 abortion for actual and punitive damages. Any woman upon whom
13 an abortion has been attempted in a manner that does not
14 comply with this act may maintain an action against the
15 individual who attempted to perform the abortion in knowing or
16 reckless violation of this act for actual and punitive
17 damages. No damages may be awarded to a plaintiff if the
18 pregnancy resulted from the plaintiff's criminal conduct.

19 (b) If judgment is rendered in favor of the
20 plaintiff in any action described in this act, the court shall
21 also award reasonable attorneys' fees in favor of the
22 plaintiff.

23 (c) A civil action brought pursuant to this section
24 shall be brought within two years of the alleged violation.

25 Section 7. No criminal penalty may be assessed and
26 no civil action may be brought against the woman upon whom the

1 abortion is performed or induced or attempted to be performed
2 or induced.

3 Section 8. In every civil or criminal proceeding or
4 action brought under Chapter 23E of Title 26, Code of Alabama
5 1975, the court shall rule whether the anonymity of any woman
6 upon whom an abortion has been performed or induced, or
7 attempted to be performed or induced, shall be preserved from
8 public disclosure if she does not consent to such disclosure.
9 The court, upon motion or sua sponte, shall make such a ruling
10 and, upon determining that her anonymity should be preserved,
11 shall issue orders to the parties, witnesses, and counsel and
12 shall direct the sealing of the record and exclusion of
13 individuals from courtrooms or hearing rooms to the extent
14 necessary to safeguard her identity from public disclosure.
15 Each order shall be accompanied by specific written findings
16 explaining why the anonymity of the woman should be preserved
17 from public disclosure, why the order is essential to that
18 end, how the order is narrowly tailored to serve that
19 interest, and why no reasonable less restrictive alternative
20 exists. In the absence of written consent of the woman upon
21 whom an abortion has been performed or attempted to be
22 performed, anyone, other than a public official, who brings an
23 action under this act shall do so under a pseudonym. This
24 section shall not be construed to conceal the identity of the
25 plaintiff or of witnesses from the defendant or from attorneys
26 for the defendant.

1 Section 9. Nothing in this act shall be construed to
2 recognize a right to abortion or to make legal an abortion
3 that is otherwise unlawful. Nothing in this act shall be
4 construed to repeal or modify any existing or future law that
5 regulates or prohibits abortion. If abortion becomes
6 prohibited by law, this act shall be void.

7 Section 10. Although this bill would have as its
8 purpose or effect the requirement of a new or increased
9 expenditure of local funds, the bill is excluded from further
10 requirements and application under Amendment 621, as amended
11 by Amendment 890, now appearing as Section 111.05 of the
12 Official Recompilation of the Constitution of Alabama of 1901,
13 as amended, because the bill defines a new crime or amends the
14 definition of an existing crime.

15 Section 11. This act shall become effective on the
16 first day of the third month following its passage and
17 approval by the Governor, or its otherwise becoming law.