

1 HB23
2 214981-2
3 By Representatives Kiel, Shedd, Mooney, Hanes, Standridge,
4 Smith, Estes, Dismukes, Carns, Holmes, Wilcox, Lipscomb,
5 Bedsole, Robertson, Moore (P), Shaver, Sorrells, Allen,
6 Marques, Reynolds, Stadthagen, Sorrell and Whorton
7 RFD: Judiciary
8 First Read: 11-JAN-22
9 PFD: 12/07/2021

8 SYNOPSIS: Under existing law, it is unlawful for any
9 person to intentionally perform or attempt to
10 perform an abortion except where a medical
11 emergency exists.

12 This bill would prohibit a physician from
13 performing an abortion if a fetal heart beat has
14 been detected or if no test for a fetal heartbeat
15 has been performed, except in circumstances where a
16 medical emergency exists.

17 This bill would provide a private cause of
18 action for enforcement of this act by any person
19 who performs or induces an abortion or who
20 knowingly engages in conduct that aids or abets the
21 performance or inducement of an abortion, including
22 paying for or reimbursing costs of an abortion.

23 This bill would provide injunctive relief
24 and provide damages in an amount of not less than
25 \$10,000 for each abortion performed or induced and
26 attorneys' fees.

1 This bill would provide that a defendant
2 against whom a civil action is brought does not
3 have standing to assert the rights of women seeking
4 an abortion as a defense to liability, with certain
5 exceptions based on federal case law.

6 This bill would prohibit a court from
7 allowing, in certain circumstances, as an
8 affirmative defense to a cause of action, that a
9 woman seeking an abortion faces an undue burden.

10 This bill would also provide that any person
11 who seeks declaratory or injunctive relief to
12 prevent this state from enforcing any law that
13 restricts abortion or that limits taxpayer funding
14 of abortions is jointly and severally liable to pay
15 costs and attorneys' fees of the prevailing party.

16
17 A BILL
18 TO BE ENTITLED
19 AN ACT

20
21 Relating to abortion; to prohibit abortions after
22 detection of an unborn child's heartbeat; to authorize a
23 private civil right of action against anyone who performs or
24 aids and abets an abortion procedure; to provide for
25 injunctive relief and damages; to prohibit certain defenses in
26 a cause of action; and to provide that a person challenging a

1 state abortion law pay the costs and attorneys' fees of the
2 prevailing party.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. This act shall be known and may be cited
5 as the Alabama Heartbeat Act.

6 Section 2. For the purposes of this act, the
7 following terms shall have the following meanings:

8 (1) FETAL HEARTBEAT. A cardiac activity or the
9 steady and repetitive rhythmic contraction of the fetal heart
10 within the gestational sac.

11 (2) GESTATIONAL AGE. The amount of time that has
12 elapsed from the first day of a woman's last menstrual period.

13 (3) GESTATIONAL SAC. The structure comprising the
14 extraembryonic membranes that envelop the unborn child and
15 that is typically visible by ultrasound after the fourth week
16 of pregnancy.

17 (4) PHYSICIAN. An individual licensed to practice
18 medicine or osteopathy in this state.

19 (5) PREGNANCY. The human female reproductive
20 condition that:

21 a. Begins with fertilization;

22 b. Occurs when the woman is carrying the developing
23 human offspring; and

24 c. Is calculated from the first day of the woman's
25 last menstrual period.

1 (6) STANDARD MEDICAL PRACTICE. The degree of skill,
2 care, and diligence that an obstetrician of ordinary judgment,
3 learning, and skill would employ in like circumstances.

4 (7) UNBORN CHILD. A human fetus or embryo in any
5 stage of gestation from fertilization until birth.

6 Section 3. The Legislature finds, according to
7 contemporary medical research, all of the following:

8 (1) That a fetal heartbeat has become a key medical
9 predictor that an unborn child will reach live birth.

10 (2) That cardiac activity begins at a biologically
11 identifiable moment in time, normally when the fetal heart is
12 formed in the gestational sac.

13 (3) That this state has compelling interests from
14 the outset of a woman's pregnancy in protecting the health of
15 the woman and the life of the unborn child.

16 (4) That to make an informed choice about whether to
17 continue her pregnancy, the pregnant woman has a compelling
18 interest in knowing the likelihood of her unborn child
19 surviving to full-term birth based on the presence of cardiac
20 activity.

21 Section 4. (a) For the purposes of determining the
22 presence of a fetal heartbeat under this section, "standard
23 medical practice" includes employing the appropriate means of
24 detecting the heartbeat based on the estimated gestational age
25 of the unborn child and the condition of the woman and her
26 pregnancy.

1 (b) Except as provided by Section 6, a physician may
2 not knowingly perform or induce an abortion on a pregnant
3 woman unless the physician has determined, in accordance with
4 this section, whether the woman's unborn child has a
5 detectable fetal heartbeat.

6 (c) In making a determination under subsection (b),
7 the physician must use a test that meets both of the following
8 criteria:

9 (1) Is consistent with the physician's good faith
10 and reasonable understanding of standard medical practice.

11 (2) Is appropriate for the estimated gestational age
12 of the unborn child and the condition of the pregnant woman
13 and her pregnancy.

14 (d) A physician making a determination under
15 subsection (b) shall record in the pregnant woman's medical
16 record all of the following:

17 (1) The estimated gestational age of the unborn
18 child.

19 (2) The method used to estimate the gestational age.

20 (3) The test used for detecting a fetal heartbeat,
21 including the date, time, and results of the test.

22 Section 5. (a) Except as provided by Section 6, a
23 physician may not knowingly perform or induce an abortion on a
24 pregnant woman if the physician detected a fetal heartbeat for
25 the unborn child as required by Section 4 or failed to perform
26 a test to detect a fetal heartbeat.

1 (b) A physician does not violate this section if the
2 physician performed a test for a fetal heartbeat as required
3 by Section 4 and did not detect a fetal heartbeat.

4 (c) This section does not affect either of the
5 following:

6 (1) Any provision of Title 26 that restricts or
7 regulates an abortion by a particular method or during a
8 particular stage of pregnancy.

9 (2) Any other provision of state law that regulates
10 or prohibits abortion.

11 Section 6. (a) Sections 4 and 5 do not apply if a
12 physician believes a medical emergency exists that prevents
13 compliance with this act.

14 (b) A physician who performs or induces an abortion
15 under circumstances described by subsection (a) shall make
16 written notations in the pregnant woman's medical record of
17 both of the following:

18 (1) The physician's belief that a medical emergency
19 necessitated the abortion.

20 (2) The medical condition of the pregnant woman that
21 prevented compliance with this act.

22 (c) A physician performing or inducing an abortion
23 under this section shall maintain in the physician's practice
24 records a copy of the notations made under subsection (b).

25 Section 7. (a) This act does not create or recognize
26 a right to abortion before a fetal heartbeat is detected.

1 (b) This act may not be construed to do either of
2 the following:

3 (1) Authorize the initiation of a cause of action
4 against or the prosecution of a woman on whom an abortion is
5 performed or induced or attempted to be performed or induced
6 in violation of this act.

7 (2) Wholly or partly repeal, either expressly or by
8 implication, any other law that regulates or prohibits
9 abortion.

10 Section 8. (a) Notwithstanding any other law, the
11 requirements of this act shall be enforced exclusively through
12 the private civil actions described in Section 9. No
13 enforcement of this act, in response to violations of this
14 act, may be taken by this state, a political subdivision, a
15 district attorney, or a public official or public employee of
16 this state or a political subdivision against any person,
17 except as provided in Section 9.

18 (b) Subsection (a) may not be construed to:

19 (1) Legalize the conduct prohibited by this act or
20 by Chapter 23H, Title 26, Code of Alabama 1975.

21 (2) Limit in any way or affect the availability of a
22 remedy established in Section 9.

23 (3) Limit the enforceability of any other laws that
24 regulate or prohibit abortion.

25 Section 9. (a) Any person, other than a public
26 official or public employee of a state or political

1 subdivision of this state, may bring a civil action against
2 any person who does any of the following:

3 (1) Performs or induces an abortion in violation of
4 this act.

5 (2) Knowingly engages in conduct that aids or abets
6 the performance or inducement of an abortion, including paying
7 for or reimbursing the costs of an abortion through insurance
8 or otherwise, if the abortion is performed or induced in
9 violation of this act, regardless of whether the person knew
10 or should have known that the abortion would be performed or
11 induced in violation of this act.

12 (3) Intends to engage in the conduct described by
13 subdivision (1) or (2).

14 (b) If a claimant prevails in an action brought
15 under this section, the court shall award all of the
16 following:

17 (1) Injunctive relief sufficient to prevent the
18 defendant from violating this act or engaging in acts that aid
19 or abet violations of this act.

20 (2) Damages in an amount of not less than ten
21 thousand dollars (\$10,000) for each abortion that the
22 defendant performed or induced in violation of this act and
23 for each abortion performed or induced in violation of this
24 act that the defendant aided or abetted.

25 (3) Court costs and attorneys' fees.

26 (c) Notwithstanding subsection (b), a court may not
27 award relief under this section in response to a violation of

1 subdivision (a) (1) or (2) if the defendant demonstrates that
2 the defendant previously paid the full amount of damages under
3 subdivision (b) (2) in a previous action for that particular
4 abortion performed or induced in violation of this act or for
5 the particular conduct that aided or abetted an abortion
6 performed or induced in violation of this act.

7 (d) Notwithstanding Title 6, Code of Alabama 1975,
8 or any other law, a person may bring an action under this
9 section not later than four years from the date the cause of
10 action accrues.

11 (e) Notwithstanding any other law, the following are
12 not a defense to an action brought under this section:

13 (1) Ignorance or mistake of law.

14 (2) A defendant's belief that the requirements of
15 this act are unconstitutional or were unconstitutional.

16 (3) A defendant's reliance on any court decision
17 that has been overruled on appeal or by a subsequent court,
18 even if that court decision had not been overruled when the
19 defendant engaged in conduct that violates this act.

20 (4) A defendant's reliance on any state or federal
21 court decision that is not binding on the court in which the
22 action has been brought.

23 (5) Non-mutual issue preclusion or non-mutual claim
24 preclusion.

25 (6) The consent of the unborn child's mother to the
26 abortion.

1 (7) Any claim that the enforcement of this act or
2 the imposition of civil liability against the defendant will
3 violate the constitutional rights of third parties, except as
4 provided by Section 10.

5 (f) It is an affirmative defense to an action under
6 this section if either of the following occur:

7 (1) A person sued under subdivision (a) (2)
8 reasonably believed, after conducting a reasonable
9 investigation, that the physician performing or inducing the
10 abortion had complied or would comply with this act.

11 (2) A person sued under subdivision (a) (3)
12 reasonably believed, after conducting a reasonable
13 investigation, that the physician performing or inducing the
14 abortion will comply with this act.

15 (g) The defendant has the burden of proving an
16 affirmative defense under subdivision (f) (1) or (2) by a
17 preponderance of the evidence.

18 (h) This section may not be construed to impose
19 liability on any speech or conduct protected by the First
20 Amendment of the United States Constitution, as made
21 applicable to the states through the United States Supreme
22 Court's interpretation of the Fourteenth Amendment of the
23 United States Constitution, or by Section 4, Article 1,
24 Constitution of Alabama of 1901.

25 (i) Notwithstanding any other law, this state, a
26 public official of the state or a political subdivision, or a
27 district attorney may not intervene in an action brought under

1 this section. This subsection does not prohibit an individual
2 described in this subsection from filing an amicus curiae
3 brief in the action.

4 (j) Notwithstanding any other law, a court may not
5 award costs or attorneys' fees.

6 (k) Notwithstanding any other law, a civil action
7 under this section may not be brought by a person who
8 impregnated the abortion patient through an act of rape,
9 sexual abuse, incest, or any other sex offense referenced in
10 Section 15-20A-5, Code of Alabama 1975.

11 Section 10. (a) A defendant against whom an action
12 is brought under Section 9 does not have standing to assert
13 the rights of women seeking an abortion as a defense to
14 liability under that section unless either of the following
15 occur:

16 (1) The United States Supreme Court holds that the
17 courts of this state must confer standing on that defendant to
18 assert the third-party rights of women seeking an abortion in
19 state court as a matter of federal constitutional law.

20 (2) The defendant has standing to assert the rights
21 of women seeking an abortion under the tests for third-party
22 standing established by the United States Supreme Court.

23 (b) A defendant in an action brought under Section 9
24 may assert an affirmative defense to liability under this
25 section if both of the following occur:

1 (1) The defendant has standing to assert the
2 third-party rights of a woman or group of women seeking an
3 abortion in accordance with subsection (a).

4 (2) The defendant demonstrates that the relief
5 sought by the claimant will impose an undue burden on that
6 woman or that group of women seeking an abortion.

7 (c) A court may not find an undue burden under
8 subsection (b) unless the defendant introduces evidence
9 proving both of the following:

10 (1) An award of relief will prevent a woman or a
11 group of women from obtaining an abortion.

12 (2) An award of relief will place a substantial
13 obstacle in the path of a woman or a group of women who are
14 seeking an abortion.

15 (d) A defendant may not establish an undue burden
16 under this section by doing either of the following:

17 (1) Merely demonstrating that an award of relief
18 will prevent women from obtaining support or assistance,
19 financial or otherwise, from others in their effort to obtain
20 an abortion.

21 (2) Arguing or attempting to demonstrate that an
22 award of relief against other defendants or other potential
23 defendants will impose an undue burden on women seeking an
24 abortion.

25 (e) The affirmative defense under subsection (b) is
26 not available if the United States Supreme Court overrules *Roe*
27 *v. Wade*, 410 U.S. 113 (1973) or *Planned Parenthood v. Casey*,

1 505 U.S. 833 (1992), regardless of whether the conduct on
2 which the cause of action is based under Section 9 occurred
3 before the Supreme Court overruled either of those decisions.

4 (f) Nothing in this section shall in any way limit
5 or preclude a defendant from asserting the defendant's
6 personal constitutional rights as a defense to liability under
7 Section 9, and a court may not award relief under Section 9 if
8 the conduct for which the defendant has been sued was an
9 exercise of state or federal constitutional rights that
10 personally belong to the defendant.

11 Section 11. (a) Notwithstanding any other law,
12 including Chapter 3, Title 6, Code of Alabama 1975, a civil
13 action brought under Section 9 shall be brought in one of the
14 following:

15 (1) The county in which all or a substantial part of
16 the events or omissions giving rise to the claim occurred.

17 (2) The county of residence for any one of the
18 natural person defendants at the time the cause of action
19 accrued.

20 (3) The county of the principal office in this state
21 of any one of the defendants that is not a natural person.

22 (4) The county of residence for the claimant if the
23 claimant is a natural person residing in this state.

24 (b) If a civil action is brought under Section 9 in
25 any one of the venues described in subsection (a), the action
26 may not be transferred to a different venue without the
27 written consent of all parties.

1 Section 12. (a) This section prevails over any
2 conflicting law, including the Uniform Declaratory Judgments
3 Act and Title 6, Code of Alabama 1975.

4 (b) This state or a political subdivision has
5 sovereign immunity, and each public official and public
6 employee of this state or a political subdivision shall be
7 immune from liability in any action, claim, or counterclaim or
8 any type of legal or equitable action that challenges the
9 validity of any provision or application of this act, on
10 constitutional grounds or otherwise.

11 (c) A provision of state law may not be construed to
12 waive or abrogate an immunity described in subsection (b)
13 unless it expressly waives immunity under this section.

14 Section 13. (a) Notwithstanding any other law, any
15 person, including an entity, attorney, or law firm, who seeks
16 declaratory or injunctive relief to prevent this state, a
17 political subdivision, any governmental entity or public
18 official in this state, or any person in this state from
19 enforcing any state law, ordinance, rule, or any other type of
20 law that regulates or restricts abortion or that limits
21 taxpayer funding for individuals or entities that perform or
22 promote abortions, in any state or federal court, or that
23 represents any litigant seeking such relief in any state or
24 federal court, is jointly and severally liable to pay the
25 court costs and attorneys' fees of the prevailing party.

1 (b) For purposes of this section, a party is
2 considered a prevailing party if a state or federal court does
3 either of the following:

4 (1) Dismisses any claim or cause of action brought
5 against the party that seeks the declaratory or injunctive
6 relief described by subsection (a), regardless of the reason
7 for the dismissal.

8 (2) Enters judgment in the party's favor on any such
9 claim or cause of action.

10 (c) Regardless of whether a prevailing party sought
11 to recover costs or attorneys' fees in the underlying action,
12 a prevailing party under this section may bring a civil action
13 to recover costs and attorneys' fees against a person,
14 including an entity, attorney, or law firm, that sought
15 declaratory or injunctive relief described by subsection (a)
16 not later than the third anniversary of the date on which, as
17 applicable either of the following:

18 (1) The dismissal or judgment described by
19 subsection (b) becomes final on the conclusion of appellate
20 review.

21 (2) The time for seeking appellate review expires.

22 (d) It is not a defense to an action brought under
23 subsection (c) that any of the following occur:

24 (1) A prevailing party under this section failed to
25 seek recovery of costs or attorneys' fees in the underlying
26 action.

1 (2) The court in the underlying action declined to
2 recognize or enforce the requirements of this section.

3 (3) The court in the underlying action held that any
4 provisions of this section are invalid, unconstitutional, or
5 preempted by federal law, notwithstanding the doctrines of
6 issue or claim preclusion.

7 Section 14. (a) A state law that regulates or
8 prohibits abortion may not be construed to repeal any other
9 law that regulates or prohibits abortion, either wholly or
10 partly, unless the act of the Legislature repealing the law
11 explicitly states that it is repealing the other law.

12 (b) A state law may not be construed to restrict a
13 political subdivision from regulating or prohibiting abortion
14 in a manner that is at least as stringent as the laws of this
15 state unless the statute explicitly states that political
16 subdivisions are prohibited from regulating or prohibiting
17 abortion in the manner described by the state law.

18 (c) Every state law that regulates or prohibits
19 abortion is severable in each of its applications to every
20 person and circumstance. If any law that regulates or
21 prohibits abortion is found by any court to be
22 unconstitutional, either on its face or as applied, then all
23 applications of that law that do not violate the United States
24 Constitution and the Constitution of Alabama of 1901, shall be
25 severed from the unconstitutional applications and shall
26 remain enforceable, notwithstanding any other law, and the
27 statute shall be interpreted as if containing language

1 limiting the statute's application to the persons, group of
2 persons, or circumstances for which the statute's application
3 will not violate the United States Constitution and the
4 Constitution of Alabama of 1901.

5 Section 15. The provisions of this act are
6 severable. If any part of this act is declared invalid or
7 unconstitutional, that declaration shall not affect the part
8 which remains.

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