HB23

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By Representatives Kiel, Shedd, Mooney, Hanes, Standridge, Smith, Estes, Dismukes, Carns, Holmes, Wilcox, Lipscomb, Bedsole, Robertson, Moore (P), Shaver, Sorrells, Allen, Marques, Reynolds, Stadthagen, Sorrell and Whorton

RFD: Judiciary

First Read: 11-JAN-22

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

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

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

This bill would provide injunctive relief and provide damages in an amount of not less than $10,000 for each abortion performed or induced and attorneys' fees.
This bill would provide that a defendant against whom a civil action is brought does not have standing to assert the rights of women seeking an abortion as a defense to liability, with certain exceptions based on federal case law.

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

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

A BILL

TO BE ENTITLED

AN ACT

Relating to abortion; to prohibit abortions after detection of an unborn child's heartbeat; to authorize a private civil right of action against anyone who performs or aids and abets an abortion procedure; to provide for injunctive relief and damages; to prohibit certain defenses in a cause of action; and to provide that a person challenging a
state abortion law pay the costs and attorneys' fees of the prevailing party.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

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

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

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

a. Begins with fertilization;

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

c. Is calculated from the first day of the woman's last menstrual period.
STANDARD MEDICAL PRACTICE. The degree of skill, care, and diligence that an obstetrician of ordinary judgment, learning, and skill would employ in like circumstances.

UNBORN CHILD. A human fetus or embryo in any stage of gestation from fertilization until birth.

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

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

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

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

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

Section 4. (a) For the purposes of determining the presence of a fetal heartbeat under this section, "standard medical practice" includes employing the appropriate means of detecting the heartbeat based on the estimated gestational age of the unborn child and the condition of the woman and her pregnancy.
(b) Except as provided by Section 6, a physician may not knowingly perform or induce an abortion on a pregnant woman unless the physician has determined, in accordance with this section, whether the woman's unborn child has a detectable fetal heartbeat.

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

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

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

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

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

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

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

Section 5. (a) Except as provided by Section 6, a physician may not knowingly perform or induce an abortion on a pregnant woman if the physician detected a fetal heartbeat for the unborn child as required by Section 4 or failed to perform a test to detect a fetal heartbeat.
(b) A physician does not violate this section if the physician performed a test for a fetal heartbeat as required by Section 4 and did not detect a fetal heartbeat.

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

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

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

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

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

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

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

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

Section 7. (a) This act does not create or recognize a right to abortion before a fetal heartbeat is detected.
(b) This act may not be construed to do either of the following:

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

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

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

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

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

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

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

Section 9. (a) Any person, other than a public official or public employee of a state or political
subdivision of this state, may bring a civil action against
any person who does any of the following:

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

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

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

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

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

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

(3) Court costs and attorneys' fees.

(c) Notwithstanding subsection (b), a court may not
award relief under this section in response to a violation of
subdivision (a)(1) or (2) if the defendant demonstrates that
the defendant previously paid the full amount of damages under
subdivision (b)(2) in a previous action for that particular
abortion performed or induced in violation of this act or for
the particular conduct that aided or abetted an abortion
performed or induced in violation of this act.

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

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

(1) Ignorance or mistake of law.

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

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

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

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

(6) The consent of the unborn child's mother to the
abortion.
(7) Any claim that the enforcement of this act or
the imposition of civil liability against the defendant will
violate the constitutional rights of third parties, except as
provided by Section 10.

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

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

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

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

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

(i) Notwithstanding any other law, this state, a
public official of the state or a political subdivision, or a
district attorney may not intervene in an action brought under
this section. This subsection does not prohibit an individual
described in this subsection from filing an amicus curiae
brief in the action.

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

(k) Notwithstanding any other law, a civil action
under this section may not be brought by a person who
impregnated the abortion patient through an act of rape,
sexual abuse, incest, or any other sex offense referenced in

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

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

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

(b) A defendant in an action brought under Section 9
may assert an affirmative defense to liability under this
section if both of the following occur:
(1) The defendant has standing to assert the third-party rights of a woman or group of women seeking an abortion in accordance with subsection (a).

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

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

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

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

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

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

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

(e) The affirmative defense under subsection (b) is not available if the United States Supreme Court overrules Roe v. Wade, 410 U.S. 113 (1973) or Planned Parenthood v. Casey,
505 U.S. 833 (1992), regardless of whether the conduct on which the cause of action is based under Section 9 occurred before the Supreme Court overruled either of those decisions.

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

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

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

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

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

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

(b) If a civil action is brought under Section 9 in any one of the venues described in subsection (a), the action may not be transferred to a different venue without the written consent of all parties.
Section 12. (a) This section prevails over any conflicting law, including the Uniform Declaratory Judgments Act and Title 6, Code of Alabama 1975.

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

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

Section 13. (a) Notwithstanding any other law, any person, including an entity, attorney, or law firm, who seeks declaratory or injunctive relief to prevent this state, a political subdivision, any governmental entity or public official in this state, or any person in this state from enforcing any state law, ordinance, rule, or any other type of law that regulates or restricts abortion or that limits taxpayer funding for individuals or entities that perform or promote abortions, in any state or federal court, or that represents any litigant seeking such relief in any state or federal court, is jointly and severally liable to pay the court costs and attorneys' fees of the prevailing party.
(b) For purposes of this section, a party is considered a prevailing party if a state or federal court does either of the following:

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

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

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

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

(2) The time for seeking appellate review expires.

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

(1) A prevailing party under this section failed to seek recovery of costs or attorneys' fees in the underlying action.
(2) The court in the underlying action declined to recognize or enforce the requirements of this section.

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

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

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

(c) Every state law that regulates or prohibits abortion is severable in each of its applications to every person and circumstance. If any law that regulates or prohibits abortion is found by any court to be unconstitutional, either on its face or as applied, then all applications of that law that do not violate the United States Constitution and the Constitution of Alabama of 1901, shall be severed from the unconstitutional applications and shall remain enforceable, notwithstanding any other law, and the statute shall be interpreted as if containing language
limiting the statute's application to the persons, group of persons, or circumstances for which the statute's application will not violate the United States Constitution and the Constitution of Alabama of 1901.

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

Section 16. 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.