

1 HB493
2 158666-2
3 By Representative Wallace
4 RFD: Health
5 First Read: 13-FEB-14

1 ENGROSSED

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4 A BILL
5 TO BE ENTITLED
6 AN ACT
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8 To provide for the Perinatal Hospice Information
9 Act; to require that a pregnant woman may not receive an
10 abortion based on a lethal fetal anomaly unless she is made
11 aware of the option of perinatal hospice services; to
12 prescribe civil sanctions and criminal penalties for
13 violations of the act; and in connection therewith would have
14 as its purpose or effect the requirement of a new or increased
15 expenditure of local funds within the meaning of Amendment 621
16 of the Constitution of Alabama of 1901, now appearing as
17 Section 111.05 of the Official Recompilation of the
18 Constitution of Alabama of 1901, as amended.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

20 Section 1. This act may be known as the "Perinatal
21 Hospice Information Act."

22 Section 2. (a) The Legislature hereby finds the
23 following:

24 (1) As prenatal diagnoses improve, increasingly more
25 lethal fetal anomalies are diagnosed earlier in pregnancy.

26 (2) Currently, parents are often given minimal
27 options, to terminate the pregnancy or simply to wait for the

1 child to die. The majority of parents choose to terminate the
2 pregnancy. Only 20 percent of parents decide to continue the
3 pregnancy.

4 (3) Studies indicate that choosing to terminate the
5 pregnancy can pose severe, long-term psychological risks for
6 the woman, including the chance of posttraumatic stress,
7 depression, and anxiety. On the other hand, parents who choose
8 to continue the pregnancy in the supportive, compassionate
9 care of a perinatal hospice team report being emotionally and
10 spiritually prepared for the death of their child.

11 (4) Studies reveal that when given the option, at
12 least 80 to 87 percent of parents choose to continue the
13 pregnancy in the supportive environment of perinatal hospice
14 care.

15 (b) Based on the findings in subsection (a), it is
16 the purpose of this act to:

17 (1) Guarantee that women considering abortion after
18 the diagnosis of a lethal fetal anomaly are presented with
19 information on the option of perinatal hospice care.

20 (2) Ensure that any abortion-related choice made by
21 a woman whose unborn child has been diagnosed with a lethal
22 fetal anomaly has been fully informed.

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

25 (1) ABORTION. The use or prescription of any
26 instrument, medicine, drug, or any other substance or device
27 with the intent to terminate the pregnancy of a woman known to

1 be pregnant with knowledge that the termination by those means
2 will with reasonable likelihood cause the death of the unborn
3 child. Such use or prescription is not an abortion if done
4 with the intent to save the life or preserve the health of an
5 unborn child, remove a dead unborn child, or to deliver the
6 unborn child prematurely in order to preserve the health of
7 both the pregnant woman and her unborn child. The term
8 abortion, as used in this act, does not include a procedure or
9 act to terminate the pregnancy of a woman with an ectopic
10 pregnancy. As used herein, the term ectopic pregnancy means
11 any pregnancy resulting from a fertilized egg that has
12 implanted or attached outside the uterus. The term ectopic
13 pregnancy also includes a pregnancy resulting from a
14 fertilized egg implanted inside the cornu of the uterus.

15 (2) DEPARTMENT. The Department of Public Health of
16 the State of Alabama.

17 (3) LETHAL FETAL ANOMALY. A fetal condition
18 diagnosed before birth that, with reasonable certainty, will
19 result in the death of the unborn child within three months
20 after birth.

21 (4) MEDICAL EMERGENCY. A condition which, on the
22 basis of a physician's good faith clinical judgment, so
23 complicates the medical condition of a pregnant woman as to
24 necessitate the immediate termination of her pregnancy to
25 avert her death or for which a delay will create serious risk
26 of substantial and irreversible impairment of a major bodily
27 function.

1 (5) PERINATAL HOSPICE. Comprehensive support
2 provided to a pregnant woman who has an unborn child that has
3 been diagnosed with a lethal fetal anomaly, as well as to such
4 woman's family, that includes support from the time of
5 diagnosis through the time of birth and death of the infant
6 and through the postpartum period. Supportive care may
7 include, but is not limited to, counseling and medical care by
8 maternal-fetal medical specialists, obstetricians,
9 neonatologists, anesthesia specialists, clergy, social
10 workers, and specialty nurses focused on alleviating fear and
11 ensuring that the woman and her family experience the life and
12 death of their child in a comfortable and supportive
13 environment.

14 (6) PHYSICIAN. Any person licensed to practice
15 medicine in this state. The term includes medical doctors and
16 doctors of osteopathy.

17 Section 4. (a) No abortion shall be performed or
18 induced, or attempted to be performed or induced, without the
19 voluntary and informed consent of the woman upon whom the
20 abortion is to be performed or induced. Except in the case of
21 a medical emergency, consent to an abortion is voluntary and
22 informed if, and only if, at least 48 hours before the
23 abortion:

24 (1) In the case of a woman seeking an abortion of
25 her unborn child diagnosed with a lethal fetal anomaly, the
26 physician who is to perform the abortion ~~or the referring~~
27 ~~physician~~ has informed the woman, orally and in-person, that

1 perinatal hospice services are available and has offered this
2 care as an alternative to abortion.

3 (2) In the case of a woman seeking an abortion of
4 her unborn child diagnosed with a lethal fetal anomaly, the
5 woman is provided, at no cost, a list of perinatal hospice
6 programs available both in this state and nationally, prepared
7 by the department and organized geographically by location,
8 and the woman is also informed that such materials are
9 available on the department's website.

10 (b) If perinatal hospice services are declined in
11 favor of abortion, the woman must certify in writing both her
12 decision to forgo such services and proceed with the abortion
13 and that she received the materials listed in subdivision (2)
14 of subsection (a).

15 Section 5. The department shall cause to be
16 published the printed materials described in Section 4 within
17 60 days after this act becomes law. The department shall also
18 publish the printed materials described in Section 4 on the
19 department's website within 60 days after this act becomes
20 law. Such materials shall include, but not be limited to, a
21 comprehensive list of the perinatal hospice agencies
22 available, a description of the services such agencies offer,
23 and a description of the manner in which such agencies may be
24 contacted.

25 Section 6. The department may adopt rules and
26 procedures as necessary to implement the provisions and
27 directives of this act.

1 Section 7. (a) Any person who intentionally,
2 knowingly, or recklessly violates or attempts to violate this
3 act shall be guilty on a first offense of a Class B
4 misdemeanor, on a second offense of a Class A misdemeanor, and
5 on a third or subsequent offense of a Class C felony. No
6 penalty under this act may be assessed against the female upon
7 whom the abortion is performed or attempted to be performed.

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

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

18 (2) Provide a basis for professional disciplinary
19 action under any applicable statutory or regulatory procedure
20 for the suspension or revocation of any license for physicians
21 or other applicable regulated persons. A conviction of any
22 person for any failure to comply with the requirements of this
23 act which constitutes a second offense of the provisions of
24 this act shall result in the automatic suspension of his or
25 her license for a period of at least one year and shall be
26 reinstated after that time only on such conditions as the

1 appropriate regulatory or licensing body shall require to
2 insure compliance with this act.

3 (3) If a civil judgment is rendered in favor of a
4 plaintiff in any action described in this act, the court shall
5 award reasonable attorney's fees in favor of the plaintiff. If
6 a civil judgment is rendered in favor of the defendant in any
7 action described in this act, the court shall, upon a
8 determination that the plaintiff's suit was frivolous and
9 brought in bad faith, award reasonable attorney's fees in
10 favor of the defendant.

11 Section 8. The provisions of this act are severable.
12 If any part of this act is declared invalid or
13 unconstitutional, that declaration shall not effect the part
14 which remains.

15 Section 9. Although this bill would have as its
16 purpose or effect the requirement of a new or increased
17 expenditure of local funds, the bill is excluded from further
18 requirements and application under Amendment 621 because the
19 bill defines a new crime or amends the definition of an
20 existing crime.

21 Section 10. This act shall become effective on the
22 first day of the third month following its passage and signing
23 by the Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Health 13-FEB-14

Read for the second time and placed
on the calendar..... 25-FEB-14

Read for the third time and passed
as amended..... 04-MAR-14

Yeas 73, Nays 24, Abstains 0

Jeff Woodard
Clerk