

1 HB223
2 141186-3
3 By Representatives McClurkin, Collins, Sessions, Long,
4 Nordgren, Johnson (K), Henry, Buttram, Baughn, Roberts, Rich,
5 Greer, Carns, Laird, Bridges and Wood
6 RFD: Health
7 First Read: 08-FEB-12

1 reproductive health centers in Alabama puts abortion patients
2 at unreasonable risk.

3 (b) At abortion or reproductive health centers,
4 patients are often treated in a manner inconsistent with a
5 traditional physician/patient relationship.

6 (c) Abortion or reproductive health centers are not
7 operated in the same manner as ambulatory surgical treatment
8 centers or physician offices.

9 (d) Abortion involves not only a surgical procedure
10 with the usual risks attending surgery, but also involves the
11 taking of human life.

12 (e) Abortion is a highly personal and very sensitive
13 procedure which results in stress and concern for the patient
14 that is unique to the decision to have an abortion.

15 (f) Abortion is a very profitable procedure most
16 often engaged in by stand-alone clinics without many of the
17 safeguards found in a traditional physician/patient
18 relationship or other medical care setting.

19 (g) Because abortion and reproductive health centers
20 do not currently provide the level of personal contact found
21 in many physician/patient relationships and in other medical
22 care settings, it is necessary for the Legislature to mandate
23 the personal presence and participation of the physician in
24 the process.

25 (h) Moreover, because abortion or reproductive
26 health centers have often failed to meet acceptable standards
27 of medical care, it is necessary for Legislature to enact

1 reasonable and medically appropriate health and safety
2 standards for all abortion and reproductive health centers,
3 and to provide effective enforcement mechanisms and
4 disincentives for centers that are unable or unwilling to meet
5 these requirements.

6 Section 2. As used in this act, the following terms
7 shall have the following meanings:

8 (1) ABORTION. The use or prescription of any
9 instrument, medicine, drug, or any other substance or device
10 with the intent to terminate the pregnancy of a woman known to
11 be pregnant with knowledge that the termination by those means
12 will with reasonable likelihood cause the death of the unborn
13 child. Such use or prescription is not an abortion if done
14 with the intent to save the life or preserve the health of an
15 unborn child, remove a dead unborn child, or to deliver the
16 unborn child prematurely in order to preserve the health of
17 both the mother (pregnant woman) and her unborn child. The
18 term "abortion" as used in these rules, does not include a
19 procedure or act to terminate the pregnancy of a woman with an
20 ectopic pregnancy, nor does it include the procedure or act to
21 terminate the pregnancy of a woman when the unborn child has a
22 lethal anomaly. For the purposes of this act, a "lethal
23 anomaly" means that the child would die at birth or be still
24 born. For the purposes of this act, the term, "ectopic
25 pregnancy," means any pregnancy resulting from a fertilized
26 egg that has implanted or attached outside the uterus. The
27 term, "ectopic pregnancy," also includes a pregnancy resulting

1 from a fertilized egg implanted inside the cornu of the
2 uterus.

3 (2) ABORTION INDUCING DRUG. A medicine, drug, or any
4 other substance prescribed or dispensed with the intent of
5 terminating the clinically diagnosable pregnancy of a woman,
6 with the knowledge that the termination will with reasonable
7 likelihood cause the death of the unborn child. Use of such
8 drugs to induce abortion is also known as "medical abortion."
9 This includes off-label use of drugs known to have
10 abortion-inducing properties, which are prescribed
11 specifically with the intent of causing an abortion, such as
12 misoprostol (Cytotec), and methotrexate. This definition does
13 not apply to drugs that may be known to cause an abortion, but
14 which are prescribed for other medical indications, such as
15 chemotherapeutic agents and diagnostic drugs.

16 (3) ABORTION OR REPRODUCTIVE HEALTH CENTER. A
17 facility defined and regulated as an abortion or reproductive
18 health center by the rules of the Alabama State Board of
19 Health.

20 (4) ADMINISTER. To give or apply a pharmacologic or
21 other therapeutic agent to a patient.

22 (5) DISPENSE. To sell, distribute, administer, leave
23 with, give away, dispose of, deliver, or supply a drug or
24 medicine to the ultimate user or the user's agent.

25 (6) PHYSICIAN. A person currently licensed by the
26 Medical Licensure Commission, State of Alabama, to practice

1 medicine or osteopathy pursuant to Section 34-24-50, et seq.,
2 Code of Alabama 1975.

3 (7) PRESCRIPTION. A physician's order for the
4 preparation and administration of a drug or device for a
5 patient.

6 (8) REGISTERED PROFESSIONAL NURSE (RN). A person
7 currently licensed in the State of Alabama pursuant to Section
8 34-21-21, Code of Alabama 1975.

9 Section 3. Only a physician may perform an abortion.

10 Section 4. At all times during procedures in an
11 abortion or reproductive health center, nursing care shall be
12 under the supervision of a registered professional nurse
13 currently licensed in Alabama. At least one registered
14 professional nurse shall be on duty to provide or supervise
15 all nursing care of patients in preparation for and during the
16 abortion procedure, during the recovery period, and through
17 the initial discharge by the attending physician. Other
18 nursing service personnel shall remain on duty as required to
19 meet the needs of each patient.

20 Section 5. All patient care in an abortion or
21 reproductive health center must be rendered in accordance with
22 all applicable federal, state, and local laws, State Board of
23 Health rules, State Board of Medical Examiners rules, and
24 current standards of care, including all professional
25 standards of practice.

26 Section 6. ~~(a) During and after an abortion~~
27 ~~procedure performed at an abortion or reproductive health~~

1 center, a physician must remain on the premises until all
2 patients are discharged. This physician must have staff
3 privileges at an acute care hospital within the same standard
4 metropolitan statistical area as the facility is located that
5 permit him or her to perform dilation and curettage,
6 laparotomy procedures, hysterectomy, and any other procedures
7 reasonably necessary to treat abortion-related complications.

8 (b) The discharge order must be signed by the
9 physician. Prior to discharge from the facility, the patient
10 shall be provided with the name and telephone number of the
11 physician who will provide care in the event of complications.

12 Section 7. ~~Only a physician who may give, sell,~~
13 ~~dispense, administer, or otherwise prescribe an~~
14 ~~abortion-inducing drug. Because the failure and complications~~
15 ~~from medical abortion increase with advancing gestational age,~~
16 ~~because the physical symptoms of medical abortion can be~~
17 ~~identical to the symptoms of ectopic pregnancy, and because~~
18 ~~abortion-inducing drugs do not treat ectopic pregnancies but~~
19 ~~rather are contraindicated in ectopic pregnancies, the~~
20 ~~physician giving, selling, dispensing, administering, or~~
21 ~~otherwise providing or prescribing the abortion-inducing drug~~
22 ~~must first examine the pregnant woman in person and document,~~
23 ~~in the woman's medical chart, the gestational age and~~
24 ~~intrauterine location of the pregnancy prior to giving,~~
25 ~~selling, dispensing, administering, or otherwise providing or~~
26 ~~prescribing the abortion-inducing drug.~~

1 Section 8. ~~Physicians performing abortion procedures~~
2 ~~in abortion or reproductive health centers shall conform to~~
3 ~~the rules for office-based surgery of the Alabama State Board~~
4 ~~of Medical Examiners, shall meet the standards prescribed in~~
5 ~~the rules for "office-based procedures - moderate~~
6 ~~sedation/analgesia," and shall meet all other requirements in~~
7 ~~those rules, including the recommended guidelines for~~
8 ~~follow-up care, requirements for recovery area, assessment for~~
9 ~~discharge, reporting requirements, and registration~~
10 ~~requirements.~~

11 Section 9. An abortion or reproductive health center
12 constructed or renovated after the effective date of this act
13 shall comply with all physical environment regulations as
14 specified in Section 420-5-1.04 of the Alabama Administrative
15 Code to be classified as ambulatory health care occupancy and
16 shall meet all standards in the NFPA 101 Life Safety Code 2000
17 edition, or such standards in any later edition of the NFPA
18 101 Life Safety Code that the Board of Health may adopt for
19 facilities classified as ambulatory health care occupancy. Not
20 later than ~~180 days~~ 12 months after the effective date of this
21 act, each licensed abortion or reproductive health center
22 shall submit to the Department of Public Health architectural
23 drawings and plans and sprinkler system plans and such other
24 materials as may be required to show compliance or prospective
25 compliance with the applicable life safety code. These shall
26 be submitted and reviewed pursuant to the Board of Health
27 Rules for Plan Review, including the payment of plan review

1 fees. Not later than ~~12~~ 24 months after the effective date of
2 this act, each abortion or reproductive health center shall
3 obtain from the Department of Public Health a certificate of
4 completion which shall certify that the facility meets all
5 ambulatory health care occupancy standards in the applicable
6 NFPA 101 Life Safety Code, as well as all other life safety
7 and building standards required by law or rule. Any facility
8 that fails to submit architectural drawings and plans,
9 sprinkler system plans, and such other materials as may be
10 required to the Department of Public Health within the
11 deadline for such submission shall have its license revoked.
12 Any facility that fails to obtain a certificate of occupancy
13 within the deadline for obtaining such certificate shall have
14 its license revoked.

15 Nothing in this section shall be construed to impose
16 standards other than those contained in the NFPA 101 Life
17 Safety Code 2000 edition and applicable to ambulatory health
18 care occupancy, or such standards in any later edition of the
19 NFPA 101 Life Safety Code that the Board of Health may adopt
20 for facilities classified as ambulatory health care occupancy.

21 Section 10. (a) Any minor child under the age of 16
22 seeking an abortion from an abortion or reproductive health
23 care facility shall be asked by the physician performing the
24 abortion or his or her agent to state the name and age of the
25 individual who is believed to be the father of the unborn
26 child. While the minor child may refuse to provide the
27 father's name and age, she should be encouraged to do so by

1 the physician or agent consistent with the physician's legal
2 obligation to reduce the incidence of child abuse when there
3 is reason to suspect that it has occurred.

4 (b) In addition to any other abuse reporting
5 requirements that may apply to the staff of an abortion or
6 reproductive health center, if the reported age of the father
7 is two or more years greater than the age of the minor child,
8 the facility shall report the names of the pregnant minor
9 child and the father to both local law enforcement and the
10 county department of human resources. If the pregnant minor
11 child is less than 14 years old, the name of the minor child
12 shall be reported to the Department of Human Resources,
13 regardless of whether the father is two or more years older
14 than the minor child. The receipt of reportable information by
15 any member of a facility staff shall trigger the requirement
16 for the facility to report such information. Nothing in this
17 section shall be construed to constructively repeal any other
18 provisions of law requiring parental consent before an
19 abortion procedure is performed.

20 Section 11. The Board of Health shall publish
21 amended rules for abortion and reproductive health care
22 centers that are consistent with this act within 180 days
23 after the effective date of this act. Such rules shall take
24 effect within the timeframe required by the Alabama
25 Administrative Procedure Act.

26 Section 12. (a) Any person other than a physician
27 who performs or attempts to perform an abortion, including the

1 prescription, ~~dispensing, or administration~~ of abortion-
2 inducing drug, shall be guilty of a Class C felony.

3 (b) Any person who prescribes, dispenses, or
4 administers an abortion-inducing drug without first examining
5 the patient in person shall be guilty of a Class C felony.

6 (c) The administrator of an abortion or reproductive
7 health center who knowingly and willfully permits the facility
8 to be operated in a manner that violates Section 3, Section 4,
9 or Section 6(a) of this act shall be guilty of a Class C
10 felony.

11 (d) The administrator of an abortion or reproductive
12 health center who knowingly and willfully violates Section
13 10(b) of this act shall be guilty of a Class A misdemeanor.

14 Section 13. Any person who can demonstrate personal
15 injury, including physical injury, emotional distress, or
16 mental anguish, where such injury has resulted from the
17 failure of an abortion or reproductive health center to
18 conform to the requirements of this act, may maintain a civil
19 action for damages against the abortion or reproductive health
20 center and against the administrator of the facility.

21 Section 14. (a) The failure of any physician, nurse
22 practitioner, physician assistant, registered professional
23 nurse, or licensed practical nurse to conform to the
24 requirements of this act or any rule or regulation adopted
25 under provision of this act may be grounds for adverse
26 licensure action, up to and including license revocation.

1 (b) Any abortion or reproductive health center that
2 is found to have provided an abortion, in a manner that
3 violates this act or any rule or regulation adopted under the
4 provision of this act, may be subject to adverse licensure
5 action, up to and including license revocation.

6 Section 15. Upon application by the Department of
7 Public Health, a circuit court or any judge thereof shall have
8 jurisdiction for cause shown, to grant a temporary restraining
9 order, a preliminary injunction, a permanent injunction, or
10 any combination of those remedies, restraining and enjoining
11 any person from violating the provisions of this act and any
12 rules promulgated thereunder. Any temporary restraining order,
13 preliminary injunction, or permanent injunction shall be
14 issued without bond. This remedy is in addition to any other
15 remedies available to the Department of Public Health.

16 Section 16. (a) Nothing in this act shall be
17 construed as creating or recognizing a right to abortion.

18 (b) It is not the intention of this act to make
19 lawful an abortion that is currently unlawful.

20 (c) The provisions of this act shall be construed in
21 pari materia with other statutes governing abortions.

22 (d) Nothing in this act shall be construed to
23 modify, supersede, or constructively repeal any provisions of
24 the Alabama Medical Liability Act of 1987, the Alabama Medical
25 Liability Act of 1996, or any amendments thereto.

26 Section 17. The Alabama Legislature, by joint
27 resolution, may appoint one or more of its members to

1 intervene as a matter of right in any case in which the
2 constitutionality of this act or any portion thereof is
3 challenged.

4 Section 18. Any provision of this act held to be
5 invalid or unenforceable by its terms, or as applied to any
6 person or circumstance, shall be construed so as to give it
7 the maximum effect permitted by law, unless such holding shall
8 be one of utter invalidity or unenforceability, in which event
9 such provision shall be deemed severable herefrom and shall
10 not affect the remainder hereof or the application of such
11 provision to other persons not similarly situated or to other,
12 dissimilar circumstances.

13 Section 19. Although this bill would have as its
14 purpose or effect the requirement of a new or increased
15 expenditure of local funds, the bill is excluded from further
16 requirements and application under Amendment 621, now
17 appearing as Section 111.05 of the Official Recompilation of
18 the Constitution of Alabama of 1901, as amended, because the
19 bill defines a new crime or amends the definition of an
20 existing crime.

21 Section 20. This act shall become effective on the
22 first day of the third month following its passage and
23 approval 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 08-FEB-12

Read for the second time and placed
on the calendar with 1 substitute
and..... 02-MAY-12

Read for the third time and passed
as amended..... 09-MAY-12

Yeas 92, Nays 1, Abstains 0

Motion to reconsider adopted by Voice Vote.....09-MAY-12

Read for the third time and passed
as amended..... 09-MAY-12

Yeas 93, Nays 4, Abstains 1

Greg Pappas
Clerk