

1 HB365
2 197147-1
3 By Representative England
4 RFD: Judiciary
5 First Read: 04-APR-19

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8 SYNOPSIS: Under existing law, parents and legal
9 guardians are required to give written consent for
10 unemancipated minors to have an abortion performed.

11 This bill would require minor children to
12 present certified birth certificates to abortion
13 clinics or reproductive health facilities upon an
14 initial visit, would require health care
15 practitioners and employees of clinics and
16 facilities to report failures to comply with these
17 requirements to the Attorney General, and would
18 provide criminal penalties for violations.

19 This bill would require abortion clinics and
20 reproductive health facilities to rule out criminal
21 victimization of minors when a minor presents to
22 the clinic or facility with a sexually transmitted
23 disease and would require clinics and facilities to
24 report any minor child seeking an abortion or
25 reporting with a sexually transmitted disease to
26 the Department of Human Resources.

1 Also under existing law, any minor under the
2 age of 16 years seeking an abortion must be asked
3 the name and age of the individual who is believed
4 to be the father of the child, and facilities are
5 required to report the name of the minor and the
6 purported father to law enforcement and the
7 Department of Human Resources if the alleged father
8 is at least two years older than the child.

9 This bill would specify that the name of any
10 minor child under the age of 14 years seeking an
11 abortion from an abortion or reproductive health
12 facility must be reported by the clinic or facility
13 to the Department of Human Resources, regardless of
14 the age of the father, would require certain
15 records to be retained by the facility, and would
16 provide criminal penalties for violations.

17 This bill would require abortion clinics and
18 reproductive health facilities to notify the
19 Attorney General if a minor under the age of 16
20 years seeks a second or subsequent abortion and
21 would require clinics and facilities to adopt a
22 plan to implement the reporting requirements,
23 including staff training.

24 Amendment 621 of the Constitution of Alabama
25 of 1901, now appearing as Section 111.05 of the
26 Official Recompilation of the Constitution of
27 Alabama of 1901, as amended, prohibits a general

1 law whose purpose or effect would be to require a
2 new or increased expenditure of local funds from
3 becoming effective with regard to a local
4 governmental entity without enactment by a 2/3 vote
5 unless: it comes within one of a number of
6 specified exceptions; it is approved by the
7 affected entity; or the Legislature appropriates
8 funds, or provides a local source of revenue, to
9 the entity for the purpose.

10 The purpose or effect of this bill would be
11 to require a new or increased expenditure of local
12 funds within the meaning of the amendment. However,
13 the bill does not require approval of a local
14 governmental entity or enactment by a 2/3 vote to
15 become effective because it comes within one of the
16 specified exceptions contained in the amendment.

17
18 A BILL
19 TO BE ENTITLED
20 AN ACT
21

22 Relating to minors; to amend Sections 26-21-3 and
23 26-23E-10, Code of Alabama 1975, to require minor children to
24 present certified birth certificates to abortion clinics or
25 reproductive health facilities upon initial visits; to require
26 abortion clinics and reproductive health facilities to rule
27 out criminal victimization of minors when a minor presents to

1 the clinic or facility with a sexually transmitted disease; to
2 require reporting under certain circumstances; to require
3 abortion clinics and reproductive health facilities to notify
4 the Attorney General if a minor under the age of 16 years
5 seeks a second or subsequent abortion; to require clinics and
6 facilities to adopt a plan to implement the reporting
7 requirements; to require training of employees; to require the
8 implementation of certain document retention procedures; to
9 provide criminal penalties for violations; and in connection
10 therewith to have as its purpose or effect the requirement of
11 a new or increased expenditure of local funds within the
12 meaning of Amendment 621 of the Constitution of Alabama of
13 1901, now appearing as Section 111.05 of the Official
14 Recompilation of the Constitution of Alabama of 1901, as
15 amended.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. This act shall be known and may be cited
18 as the Jane Doe Act.

19 Section 2. Sections 26-21-3 and 26-23E-10, Code of
20 Alabama 1975, are amended to read as follows:

21 "§26-21-3.

22 "(a) Except as otherwise provided in subsections (b)
23 and (d) of this section and Sections 26-21-4 and 26-21-5
24 hereof, no physician shall perform an abortion upon an
25 unemancipated minor unless the physician or his or her agents
26 first obtain the written consent of either parent or the legal
27 guardian of the minor.

1 "(b) The physician who shall perform the abortion or
2 his or her agents shall obtain or be provided with the written
3 consent from either parent or legal guardian stating the names
4 of the minor, parent, or legal guardian, that he or she is
5 informed that the minor desires an abortion and does consent
6 to the abortion, the date, and the consent shall be signed by
7 either parent or legal guardian. The signatures of the
8 parents, parent, or legal guardian shall be affixed and the
9 information required in this subsection shall be on a form to
10 be provided by, and shall be written in the presence of, the
11 physician who shall perform the abortion or his or her agents.
12 The parents, parent, or legal guardian shall provide to the
13 physician who shall perform the abortion, or his or her
14 agents, evidence of parentage or legal guardianship. For
15 parents or a parent, there shall also be required a certified
16 birth certificate of the minor identifying the minor and the
17 parents or parent. For a legal guardian or adoptive parent,
18 there shall be required a duly certified court order or other
19 official document naming the legal guardian or adoptive parent
20 as such for the minor. If official photographic personal
21 identification has not been issued to any parents, parent, or
22 legal guardian, other official identification shall be
23 acceptable, provided the parents, parent, or legal guardian
24 affirms in writing on the form herein required under oath,
25 with recognition of criminal penalties, that he or she does
26 not possess any photographic identification and that the
27 alternative personal identification provided is his or her

1 identification. The parent, parents, or legal guardian signing
2 the consent shall attest with recognition of criminal
3 penalties that he or she is the parent or legal guardian, has
4 not been deprived of primary custody or joint physical custody
5 of the minor by any court of law, and has not given the child
6 up for adoption or otherwise waived parental rights. If the
7 minor does not have a certified birth certificate, an abortion
8 may be performed only if the physician who shall perform the
9 abortion certifies in writing in the minor's medical record
10 that a medical emergency exists or that there is insufficient
11 time to obtain a certified birth certificate, and provided the
12 minor can provide other government issued identification. The
13 parents, parent, or minor shall obtain a certified birth
14 certificate as soon thereafter as possible and provide a
15 certified copy to the physician who performed the abortion or
16 his or her agents, and if it is not received within 90 days,
17 he or she shall report the failure to the State of Alabama
18 Department of Public Health on a form provided by the
19 department. Any certified document, a photocopy of the
20 personal identification, and any other documentation required
21 by this subsection shall be attached to the completed consent
22 form and shall be kept as a part of the minor's patient file
23 for four years. All signatures required by Sections 26-21-1,
24 26-21-2, 26-21-3, 26-21-4, 26-21-6, 26-21-6.1, and 26-21-7 by
25 the minor, a parent or parents, a legal guardian, physician,
26 or another person shall be attested either by two witnesses,
27 or by a notary public.

1 "(c) If the minor is emancipated, the physician who
2 shall perform the abortion or his or her agents shall obtain a
3 written form stating the name of the emancipated minor, that
4 the minor is emancipated, the type of emancipation, and the
5 date, and the form shall be signed by the emancipated minor.
6 The written form shall be signed in the presence of the
7 physician who shall perform the abortion or his or her agents
8 and witnessed by the physician or the agents. The emancipated
9 minor shall also provide a license or certificate of marriage,
10 judgment, or decree of divorce, order of emancipation or
11 relieving her of the disabilities of nonage, or other court
12 document evidencing her marriage, divorce, or emancipation.
13 Any such document shall be a copy of the original, duly
14 certified by the appropriate court. Such certified document
15 shall be attached to the written form and kept as a part of
16 the minor's patient file for four years.

17 "(d) A minor, including a ward of the state, who
18 elects not to seek or does not or cannot for any reason,
19 including unavailability or refusal by either or both parents
20 or legal guardian, obtain consent from either of her parents
21 or legal guardian under this section, may petition, on her own
22 behalf, the juvenile court, or court of equal standing, in the
23 county in which the minor resides or in the county in which
24 the abortion is to be performed for a waiver of the consent
25 requirement of this section pursuant to the procedure of
26 Section 26-21-4.

1 "(e) A parent, legal guardian, custodian, or any
2 other person, shall not coerce a minor to have an abortion
3 performed.

4 "(f) The Department of Public Health shall propose
5 within 90 days of July 1, 2014, the forms required in
6 subsections (b) and (c).

7 "(g) (1) Except for medical emergencies as provided
8 in subsection (a) and in addition to any other requirements in
9 this section, a minor child shall present a certified birth
10 certificate to the staff or physician of an abortion clinic
11 upon the minor's initial visit to the clinic. Informed consent
12 by a minor, or her parent or guardian, shall be deemed invalid
13 if given prior to the presentation of a certified birth
14 certificate.

15 "(2) If an abortion clinic or reproductive health
16 facility is cited by the Alabama Department of Public Health
17 for deficiencies related to the requirements of this
18 subsection, the department shall promptly share any statements
19 of deficiencies or information with the Attorney General. The
20 department shall verify, within 30 days, whether these
21 deficiencies have been corrected. Any failure to correct the
22 deficiencies within the 30-day time period shall result in the
23 suspension or revocation of the clinic or facility's license.

24 "(3) A health care practitioner or any staff member
25 of an abortion clinic or reproductive health facility who has
26 knowledge of a failure to comply with the requirements of this

1 subsection shall immediately report the failure to the
2 Attorney General.

3 "(4) A person who recklessly or willfully violates
4 any provision of this subsection shall be guilty of a Class A
5 misdemeanor.

6 "§26-23E-10.

7 "(a) (1) To rule out criminal victimization, an
8 abortion clinic or reproductive health facility shall conduct
9 a preliminary screening of any minor under the age of 16 years
10 seeking an abortion or presenting with a sexually transmitted
11 disease or suspicion of abuse.

12 "(2) An abortion clinic or reproductive health
13 facility shall timely report to the Department of Human
14 Resources the name of any minor child under the age of 16
15 years seeking an abortion or presenting with a sexual
16 transmitted disease or suspicion of abuse.

17 ~~"(a)~~ (b) Any minor child under the age of 16 seeking
18 an abortion from an abortion or reproductive health care
19 facility shall be asked by the physician performing the
20 abortion or his or her agent to state the name and age of the
21 individual who is believed to be the father of the unborn
22 child. While the minor child may refuse to provide the
23 father's name and age, she should be encouraged to do so by
24 the physician or agent consistent with the physician's legal
25 obligation to reduce the incidence of child abuse when there
26 is reason to suspect that it has occurred. If the name of the
27 father, his age, or both are given, this information should be

1 included in any report to the Department of Human Resources
2 required by this section, regardless of the age of the father.

3 ~~"(b)~~ (c) In addition to any other abuse reporting
4 requirements that may apply to the staff of an abortion or
5 reproductive health center, if the reported age of the father
6 is two or more years greater than the age of the minor child,
7 or if the child is 14 years old or younger, reasonable
8 suspicion shall exist that the child is a victim of criminal
9 activity. ~~the~~ The clinic or facility shall report the names of
10 the pregnant minor child and the father to ~~both local law~~
11 ~~enforcement and the county department of human resources~~ the
12 Attorney General within 72 hours. ~~If the pregnant minor child~~
13 ~~is less than 14 years old, the name of the minor child shall~~
14 ~~be reported to the Department of Human Resources, regardless~~
15 ~~of whether the father is two or more years older than the~~
16 ~~minor child.~~ The receipt of reportable information by any
17 member of a facility staff shall trigger the requirement for
18 the facility to report such information. Nothing in this
19 section shall be construed to constructively repeal any other
20 provisions of law requiring parental consent before an
21 abortion procedure is performed.

22 "(d) If a minor child under the age of 16 years,
23 after having obtained an abortion, again becomes pregnant and
24 seeks an abortion, reasonable suspicion shall exist that the
25 child in question is a victim of criminal activity. The
26 abortion clinic or reproductive health facility shall notify

1 the Attorney General within 72 hours and provide sufficient
2 personally identifying and contact information of the minor.

3 "(e) Every abortion clinic and reproductive health
4 facility shall maintain records for 10 years that would
5 identify the age of any minor clients served, the age of their
6 sexual partner if given, and any reports or notifications made
7 to the Department of Human Resources or to the Attorney
8 General's Office.

9 "(f) If an abortion or reproductive health facility
10 is cited by the Alabama Department of Public Health for
11 deficiencies related to the requirements of this section, the
12 department shall promptly share any statements of deficiencies
13 or information with the Attorney General. The department shall
14 verify, within 30 days, whether these deficiencies have been
15 corrected. Any failure to correct the deficiencies within the
16 30-day time period shall result in the suspension or
17 revocation of the facility's license.

18 "(g) Every abortion clinic and reproductive health
19 facility must establish a plan to implement the reporting
20 requirements of this section and must provide annual training
21 for all personnel with respect to these requirements. Plans
22 should include protocols to identify individuals who are
23 victims of sexual abuse or targets for underage sexual
24 victimization.

25 "(h) A health care practitioner or any staff member
26 of an abortion clinic who has knowledge of a failure to comply

1 with the requirements of this section shall immediately report
2 the failure to the Alabama Attorney General's Office.

3 "(i) A person who recklessly or willfully violates
4 this section shall be guilty of a Class A misdemeanor."

5 Section 3. Although this bill would have as its
6 purpose or effect the requirement of a new or increased
7 expenditure of local funds, the bill is excluded from further
8 requirements and application under Amendment 621, now
9 appearing as Section 111.05 of the Official Recompilation of
10 the Constitution of Alabama of 1901, as amended, because the
11 bill defines a new crime or amends the definition of an
12 existing crime.

13 Section 4. This act shall become effective on the
14 first day of the third month following its passage and
15 approval by the Governor, or its otherwise becoming law.