HB57

145710-2

By Representative McClurkin

RFD: Health

First Read: 05-FEB-13

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SYNOPSIS: Under existing law, no provision of law expressly provides comprehensive standards of medical care for abortion or reproductive health centers.

This bill would provide comprehensive standards, define terms, express legislative findings, intent, and declarations.

This bill would require physician involvement in abortion or reproductive health centers.

This bill would require certain standards in nursing care in abortion or reproductive health centers.

This bill would require patients receive all professional standards of practice and care.

This bill would require certain procedures in the administering of follow-up care.

This bill would classify an abortion or reproductive health center as an ambulatory health
care occupancy and require certain standards be met.

This bill would require the center to report the name of the father of the unborn child to law enforcement in certain circumstances.

This bill would require the Board of Health to adopt rules.

This bill would provide criminal and civil penalties for failure to comply.

Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exceptions; it is approved by the affected entity; or the Legislature appropriates funds, or provides a local source of revenue, to the entity for the purpose.

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

A BILL
TO BE ENTITLED
AN ACT

To require physician involvement in an abortion
performed at an abortion or reproductive health center; to
define terms and express legislative intent; to require
certain standards in nursing care, post-operative and
follow-up care; to require the father's name be reported to
law enforcement in certain circumstances; to require the Board
of Health to adopt rules and to provide criminal and civil
penalties for failure to comply; and in connection therewith
would have as its purpose or effect the requirement of a new
or increased expenditure of local funds within the meaning of
Amendment 621 of the Constitution of Alabama of 1901, now
appearing as Section 111.05 of the Official Recompilation of
the Constitution of Alabama of 1901, as amended.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited
as the "Women's Health and Safety Act."

Section 2. (a) The Legislature finds all of the
following:

(1) That the percentage of abortion or reproductive
health centers that have been subject to adverse licensure
action vastly exceeds the percentage of facilities in any other category that have similarly been subject to adverse licensure actions. This alarming level of regulatory non-compliance among abortion and reproductive health centers in Alabama puts abortion patients at unreasonable risk.

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

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

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

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

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

(7) Because abortion and reproductive health centers do not currently provide the level of personal contact found in many physician/patient relationships and in other medical care settings, it is necessary for the Legislature to mandate the personal presence and participation of the physician in the process.
(8) Moreover, because abortion or reproductive health centers have often failed to meet acceptable standards of medical care, it is necessary for Legislature to enact reasonable and medically appropriate health and safety standards for all abortion and reproductive health centers, and to provide effective enforcement mechanisms and disincentives for centers that are unable or unwilling to meet these requirements.

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

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

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

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

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

(5) DISPENSE. To sell, distribute, administer, leave with, give away, dispose of, deliver, or supply a drug or medicine to the ultimate user or the user's agent.
(6) PHYSICIAN. A person currently licensed by the Medical Licensure Commission, State of Alabama, to practice medicine or osteopathy pursuant to Section 34-24-50, et seq., Code of Alabama 1975.

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


Section 4. (a) Only a physician may perform an abortion.

(b) During and after an abortion procedure performed at an abortion or reproductive health center, a physician must remain on the premises until all patients are discharged. The discharge order must be signed by the physician. Prior to discharge from the facility, the patient shall be provided with the name and telephone number of the physician who will provide care in the event of complications.

(c) Every physician referenced in this section shall have staff privileges at an acute care hospital within the same standard metropolitan statistical area as the facility is located that permit him or her to perform dilation and curettage, laparotomy procedures, hysterectomy, and any other procedures reasonably necessary to treat abortion-related complications.
Section 5. At all times during procedures in an abortion or reproductive health center, nursing care shall be under the supervision of a registered professional nurse currently licensed in Alabama. At least one registered professional nurse shall be on duty to provide or supervise all nursing care of patients in preparation for and during the abortion procedure, during the recovery period, and through the initial discharge by the attending physician. Other nursing service personnel shall remain on duty as required to meet the needs of each patient.

Section 6. All patient care in an abortion or reproductive health center must be rendered in accordance with all applicable federal, state, and local laws, State Board of Health rules, State Board of Medical Examiners rules, and current standards of care, including all professional standards of practice.

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

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

Section 9. An abortion or reproductive health center
shall be classified as ambulatory health care occupancy and
shall meet all standards in the NFPA 101 Life Safety Code 2000
edition, or such standards in any later edition of the NFPA
101 Life Safety Code that the Board of Health may adopt for
facilities classified as ambulatory health care occupancy. Not
later than 180 days after the effective date of this act, each
licensed abortion or reproductive health center shall submit
to the Department of Public Health architectural drawings and
plans and sprinkler system plans and such other materials as
may be required to show compliance or prospective compliance
with the applicable life safety code. These shall be submitted
and reviewed pursuant to the Board of Health Rules for Plan
Review, including the payment of plan review fees. Not later than 12 months after the effective date of this act, each abortion or reproductive health center shall obtain from the Department of Public Health a certificate of completion which shall certify that the facility meets all ambulatory health care occupancy standards in the applicable NFPA 101 Life Safety Code, as well as all other life safety and building standards required by law or rule. Any facility that fails to submit architectural drawings and plans, sprinkler system plans, and such other materials as may be required to the Department of Public Health within the deadline for such submission shall have its license revoked. Any facility that fails to obtain a certificate of occupancy within the deadline for obtaining such certificate shall have its license revoked.

Section 10. (a) Any minor child under the age of 16 seeking an abortion from an abortion or reproductive health care facility shall be asked by the physician performing the abortion or his or her agent to state the name and age of the individual who is believed to be the father of the unborn child. While the minor child may refuse to provide the father's name and age, she should be encouraged to do so by the physician or agent consistent with the physician's legal obligation to reduce the incidence of child abuse when there is reason to suspect that it has occurred.

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

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

Section 12. (a) Any person other than a physician who performs or attempts to perform an abortion, including the prescription, dispensing, or administration of abortion-inducing drug, shall be guilty of a Class C felony.

(b) Any person who prescribes, dispenses, or administers an abortion-inducing drug without first examining the patient in person shall be guilty of a Class C felony.
(c) The administrator of an abortion or reproductive health center who knowingly and willfully permits the facility to be operated in a manner that violates Section 4, Section 5, Section 6, or Section 7 of this act shall be guilty of a Class C felony.

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

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

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

(b) Any abortion or reproductive health center that is found to have provided an abortion, in a manner that violates this act or any rule or regulation adopted under the provision of this act, may be subject to adverse licensure action, up to and including license revocation.
Section 15. Upon application by the Department of Public Health, a circuit court or any judge thereof shall have jurisdiction for cause shown, to grant a temporary restraining order, a preliminary injunction, a permanent injunction, or any combination of those remedies, restraining and enjoining any person from violating the provisions of this act and any rules promulgated thereunder. Any temporary restraining order, preliminary injunction, or permanent injunction shall be issued without bond. This remedy is in addition to any other remedies available to the Department of Public Health.

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

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

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

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

Section 17. The Alabama Legislature, by joint resolution, may appoint one or more of its members to intervene as a matter of right in any case in which the constitutionality of this act or any portion thereof is challenged.

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

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

Section 20. 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.