

1 SB130
2 145710-2
3 By Senator Beason
4 RFD: Health
5 First Read: 05-FEB-13

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

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

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

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

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

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

25 This bill would classify an abortion or
26 reproductive health center as an ambulatory health

1 care occupancy and require certain standards be
2 met.

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

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

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

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

23 The purpose or effect of this bill would be
24 to require a new or increased expenditure of local
25 funds within the meaning of the amendment. However,
26 the bill does not require approval of a local
27 governmental entity or enactment by a 2/3 vote to

1 become effective because it comes within one of the
2 specified exceptions contained in the amendment.

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4 A BILL
5 TO BE ENTITLED
6 AN ACT

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

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

26 (1) That the percentage of abortion or reproductive
27 health centers that have been subject to adverse licensure

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

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

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

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

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

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

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

1 (8) Moreover, because abortion or reproductive
2 health centers have often failed to meet acceptable standards
3 of medical care, it is necessary for Legislature to enact
4 reasonable and medically appropriate health and safety
5 standards for all abortion and reproductive health centers,
6 and to provide effective enforcement mechanisms and
7 disincentives for centers that are unable or unwilling to meet
8 these requirements.

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

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

1 pregnancy," means any pregnancy resulting from a fertilized
2 egg that has implanted or attached outside the uterus. The
3 term, "ectopic pregnancy," also includes a pregnancy resulting
4 from a fertilized egg implanted inside the cornu of the
5 uterus.

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

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

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

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

1 (6) PHYSICIAN. A person currently licensed by the
2 Medical Licensure Commission, State of Alabama, to practice
3 medicine or osteopathy pursuant to Section 34-24-50, et seq.,
4 Code of Alabama 1975.

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

8 (8) REGISTERED PROFESSIONAL NURSE (RN). A person
9 currently licensed in the State of Alabama pursuant to Section
10 34-21-21, Code of Alabama 1975.

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

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

20 (c) Every physician referenced in this section shall
21 have staff privileges at an acute care hospital within the
22 same standard metropolitan statistical area as the facility is
23 located that permit him or her to perform dilation and
24 curettage, laparotomy procedures, hysterectomy, and any other
25 procedures reasonably necessary to treat abortion-related
26 complications.

1 Section 5. At all times during procedures in an
2 abortion or reproductive health center, nursing care shall be
3 under the supervision of a registered professional nurse
4 currently licensed in Alabama. At least one registered
5 professional nurse shall be on duty to provide or supervise
6 all nursing care of patients in preparation for and during the
7 abortion procedure, during the recovery period, and through
8 the initial discharge by the attending physician. Other
9 nursing service personnel shall remain on duty as required to
10 meet the needs of each patient.

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

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

1 in the woman's medical chart, the gestational age and
2 intrauterine location of the pregnancy prior to giving,
3 selling, dispensing, administering, or otherwise providing or
4 prescribing the abortion-inducing drug.

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

15 Section 9. An abortion or reproductive health center
16 shall be classified as ambulatory health care occupancy and
17 shall meet all standards in the NFPA 101 Life Safety Code 2000
18 edition, or such standards in any later edition of the NFPA
19 101 Life Safety Code that the Board of Health may adopt for
20 facilities classified as ambulatory health care occupancy. Not
21 later than 180 days after the effective date of this act, each
22 licensed abortion or reproductive health center shall submit
23 to the Department of Public Health architectural drawings and
24 plans and sprinkler system plans and such other materials as
25 may be required to show compliance or prospective compliance
26 with the applicable life safety code. These shall be submitted
27 and reviewed pursuant to the Board of Health Rules for Plan

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

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

25 (b) In addition to any other abuse reporting
26 requirements that may apply to the staff of an abortion or
27 reproductive health center, if the reported age of the father

1 is two or more years greater than the age of the minor child,
2 the facility shall report the names of the pregnant minor
3 child and the father to both local law enforcement and the
4 county department of human resources. If the pregnant minor
5 child is less than 14 years old, the name of the minor child
6 shall be reported to the Department of Human Resources,
7 regardless of whether the father is two or more years older
8 than the minor child. The receipt of reportable information by
9 any member of a facility staff shall trigger the requirement
10 for the facility to report such information. Nothing in this
11 section shall be construed to constructively repeal any other
12 provisions of law requiring parental consent before an
13 abortion procedure is performed.

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

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

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

1 (c) The administrator of an abortion or reproductive
2 health center who knowingly and willfully permits the facility
3 to be operated in a manner that violates Section 4, Section 5,
4 Section 6, or Section 7 of this act shall be guilty of a Class
5 C felony.

6 (d) The administrator of an abortion or reproductive
7 health center who knowingly and willfully violates Section
8 10(b) of this act shall be guilty of a Class A misdemeanor.

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

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

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

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

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

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

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

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

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

26 Section 18. Any provision of this act held to be
27 invalid or unenforceable by its terms, or as applied to any

1 person or circumstance, shall be construed so as to give it
2 the maximum effect permitted by law, unless such holding shall
3 be one of utter invalidity or unenforceability, in which event
4 such provision shall be deemed severable herefrom and shall
5 not affect the remainder hereof or the application of such
6 provision to other persons not similarly situated or to other,
7 dissimilar circumstances.

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

16 Section 20. This act shall become effective on the
17 first day of the third month following its passage and
18 approval by the Governor, or its otherwise becoming law.