

1 HB360
2 149586-1
3 By Representative Rich
4 RFD: Health
5 First Read: 28-FEB-13

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8 SYNOPSIS: Under existing law, abortion can be
9 performed with the consent of a pregnant woman.

10 This bill would redefine certain terms in
11 the chapter relating to abortion and add new terms.

12 This bill would require disclosure of
13 additional information prior to the performance of
14 an abortion.

15
16 A BILL
17 TO BE ENTITLED
18 AN ACT

19
20 Relating to abortion; to amend Sections 26-23A-3,
21 26-23A-4, and 26-23A-5, Code of Alabama 1975, to redefine
22 abortion and medical emergency; to add new terms; and to
23 require additional information be provided prior to an
24 abortion procedure.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Sections 26-23A-3, 26-23A-4, and
2 26-23A-5, Code of Alabama 1975, are amended to read as
3 follows:

4 "§26-23A-3.

5 "For the purposes of this chapter, the following
6 terms have the following meanings:

7 "(1) ABORTION. The use or prescription of any
8 instrument, medicine, drug, or any other substance or device
9 with the intent to kill the unborn child of a woman known to
10 be pregnant or with the intent to prematurely terminate the
11 pregnancy of a woman known to be pregnant. Such use or
12 prescription is not an abortion if done with the intent to
13 save the life or preserve the health of an unborn child,
14 remove a dead unborn child, or to deliver an unborn child
15 prematurely in order to preserve the health of both the mother
16 (pregnant woman) and her unborn child.

17 "(2) CONCEPTION. The fusion of a human spermatozoon
18 with a human ovum.

19 "(3) EMANCIPATED MINOR. Any minor who is or has been
20 married or has by court order otherwise been legally freed
21 from the care, custody, and control of her parents.

22 "(4) GESTATIONAL AGE. The time that has elapsed
23 since the first day of the woman's last menstrual period.

24 "(5) MEDICAL EMERGENCY. That condition which, ~~on the~~
25 ~~basis of the physician's good faith clinical judgment~~ in
26 reasonable medical judgment, so complicates the medical
27 condition of a pregnant woman as to necessitate the immediate

1 abortion of her pregnancy to avert her death or ~~in which a~~
2 ~~delay will create serious risk of substantial and irreversible~~
3 ~~impairment of a major bodily function~~ will create serious risk
4 of substantial and irreversible physical impairment of a major
5 bodily function, not including psychological or emotional
6 conditions. No condition shall be deemed a medical emergency
7 if based on a claim or diagnosis that the woman will engage in
8 conduct which she intends to result in her death or in
9 substantial and irreversible physical impairment of a major
10 bodily function.

11 "(6) MINOR. Any person under the age of 18 years.

12 "(7) PHYSICIAN. Any person licensed to practice
13 medicine in this state. The term includes medical doctors and
14 doctors of osteopathy.

15 "(8) PREGNANT or PREGNANCY. The female reproductive
16 condition of having an unborn child in the mother's (woman's)
17 body.

18 "(9) QUALIFIED PERSON. An agent of the physician who
19 is a psychologist, licensed social worker, licensed
20 professional counselor, registered nurse, or physician.

21 "(10) QUALIFIED TECHNICIAN. A registered diagnostic
22 medical sonographer who is certified in obstetrics and
23 gynecology by the American Registry for Diagnostic Sonography
24 (ARDMS) or a nurse midwife or advance practice nurse
25 practitioner in obstetrics with certification in obstetrical
26 ultrasonography.

1 "~~(10)~~(11) UNBORN CHILD. The offspring of any human
2 person from conception until birth.

3 "(12) STABLE INTERNET WEBSITE. A website that, to
4 the extent reasonably practicable, is safeguarded from having
5 its content altered other than by the Department of Public
6 Health.

7 "~~(11)~~(13) VIABLE. That stage of fetal development
8 when the life of the unborn child may be continued
9 indefinitely outside the womb by natural or artificial
10 life-supportive systems.

11 "~~(12)~~(14) WOMAN. Any female person.

12 "§26-23A-4.

13 "Except in the case of a medical emergency, no
14 abortion shall be performed or induced without the voluntary
15 and informed consent of the woman upon whom the abortion is to
16 be performed or induced. Except in the case of a medical
17 emergency, consent to an abortion is voluntary and informed if
18 and only if:

19 "(a) At least 24 hours before the abortion, the
20 physician who is to perform the abortion, the referring
21 physician, or a qualified person has informed and provided the
22 woman in person, or at least by 48 hours before the abortion
23 by return receipt certified mail restricted delivery, and if
24 by mail, again in person prior to the abortion, a copy of the
25 printed materials in Section 26-23A-5 which list agencies that
26 offer assistance, adoption agencies, development of the unborn
27 child, methods and risks of abortion and childbirth, father's

1 obligations, and alternatives to abortion, and informed the
2 woman that she has the right to review the printed materials
3 described in Section 26-23A-5, that these materials are
4 available on a state-sponsored website, and what the website
5 address is. The physician or a qualified person shall orally
6 inform the female that the materials have been provided by the
7 State of Alabama and that they describe the unborn child and
8 list agencies which offer alternatives to abortion. Mailing of
9 the materials in Section 26-23A-5 may be arranged by
10 telephone.

11 "(b) Prior to an abortion, the physician who is to
12 perform the abortion, the referring physician, or a qualified
13 person has informed the woman in person:

14 "(1) The name of the physician who will perform the
15 abortion in writing ~~or a~~ on a printed business card.

16 "(2) The nature of the proposed abortion method and
17 associated risks and alternatives that a reasonable patient
18 would consider material to the decision of whether or not to
19 undergo the abortion.

20 "(3) The probable gestational age of the unborn
21 child at the time the abortion is to be performed, and the
22 probable anatomical and physiological characteristics of the
23 unborn child at the time the abortion is to be performed. If
24 the unborn child is viable or has reached a gestational age of
25 more than 19 weeks, that:

26 "a. The unborn child may be able to survive outside
27 the womb.

1 "b. The woman has the right to request the physician
2 to use the method of abortion that is most likely to preserve
3 the life of the unborn child, provided such abortion is not
4 otherwise prohibited by law.

5 "c. If the unborn child is born alive, the attending
6 physician has the legal obligation to take all reasonable
7 steps necessary to maintain the life and health of the child.

8 "(4) The physician who is to perform the abortion or
9 the referring physician is required to perform an ultrasound
10 on the unborn child before the abortion. The woman has a right
11 to view the ultrasound before an abortion. The woman shall
12 complete a required form to acknowledge that she either saw
13 the ultrasound image of her unborn child or that she ~~was~~
14 ~~offered the opportunity and rejected it~~ chose not to look at
15 the displayed images.

16 "(5) She has the right to view the videotape and
17 ultrasound of her unborn child as described in Section
18 26-23A-6.

19 "(6) Any need for anti-Rh immune globulin therapy,
20 and if she is Rh negative, the likely consequences of refusing
21 such therapy and the cost of the therapy.

22 "(7) She cannot be forced or required by anyone to
23 have an abortion. She is free to withhold or withdraw her
24 consent for an abortion without affecting her right to future
25 care or treatment and without the loss of any state or
26 federally funded benefits to which she might otherwise be
27 entitled.

1 "(8) That she has the right to request a
2 comprehensive list, compiled by the Department of Public
3 Health, of health care providers, facilities, and clinics that
4 offer to have ultrasounds performed by a person at least as
5 qualified as a registered nurse licensed under the Uniform
6 Credentialing Act, including and specifying those that offer
7 to perform such ultrasounds free of charge. The list shall be
8 arranged geographically and shall include the name, address,
9 hours of operation, and telephone number of each entity. If
10 requested by the woman, the physician who is to perform the
11 abortion, the referring physician, or his or her agent, shall
12 provide such a list as compiled by the department.

13 "(9) The abortion provider who is to perform or
14 induce the abortion, a certified technician, or another agent
15 of the abortion provider shall make the embryonic or fetal
16 heartbeat of the unborn child audible for the pregnant woman
17 to hear the heartbeat as described in Section 3 of the act
18 adding this amendatory language.

19 (c) The woman shall complete and sign a form that
20 she has received the information of subsections (a) and (b),
21 and does provide her informed consent for an abortion on her
22 unborn child.

23 (d) Prior to the performance of an abortion, the
24 physician who is to perform the abortion or his or her agent
25 shall receive the signed receipt of the certified mail dated
26 24 hours before the abortion, if mailed, and the signed forms
27 that she has received the information of subsections (a) and

1 (b) before the abortion, had the opportunity to view the video
2 and the ultrasound of her unborn child, and provided her
3 informed consent for an abortion. The abortion facility shall
4 retain the signed receipt, signed forms, and the ultrasound in
5 the woman's medical file for the time required by law, but not
6 less than four years.

7 "§26-23A-5.

8 "(a) The Department of Public Health shall publish
9 within 180 days after October 14, 2002, and shall update on an
10 annual basis, the following easily comprehensible printed
11 materials:

12 "(1) Geographically indexed printed materials
13 designed to inform the woman of public and private agencies
14 and services available to provide medical and financial
15 assistance to a woman through pregnancy, prenatal care, upon
16 childbirth, and while her child is dependent. The materials
17 shall include a comprehensive list of the agencies, a
18 description of the services offered, and the telephone numbers
19 and addresses of the agencies.

20 "(2) The printed materials shall include a list of
21 adoption agencies geographically indexed and that the law
22 permits adoptive parents to pay the cost of prenatal care,
23 childbirth, and neonatal care.

24 "(3) Printed materials that inform the pregnant
25 woman of the probable anatomical and physiological
26 characteristics of the unborn child at two-week gestational
27 increments from fertilization to full term. It shall include

1 color photographs of the developing child at each of the
2 two-week gestational increments, a clear description of the
3 unborn child's development, any relevant information on the
4 possibility of the unborn child's survival, and dimensions of
5 the unborn child. The materials shall be realistic, clear,
6 objective, non-judgmental, and designed to convey only
7 accurate scientific information about the unborn child at the
8 various gestational ages.

9 "(4) The materials shall contain objective
10 information describing the methods of abortion procedures
11 commonly employed and the medical risks of each, and the
12 medical risks associated with carrying a child to term.

13 "(5) The printed materials shall list the support
14 obligations of the father of a child who is born alive.

15 "(6) The printed materials shall state that it is
16 unlawful for any individual to coerce a woman to undergo an
17 abortion, that any physician who performs an abortion upon a
18 woman without her informed consent may be liable to her for
19 damages in a civil action at law.

20 "(7) The material shall include the following
21 statement: "There are many public and private agencies willing
22 and able to help you to carry your child to term, and to
23 assist you and your child after your child is born, whether
24 you choose to keep your child or place him or her for
25 adoption. The State of Alabama strongly urges you to contact
26 those agencies before making a final decision about abortion.
27 The law requires that your physician or his or her agent give

1 you the opportunity to call agencies like these before you
2 undergo an abortion."

3 "(8) The material shall include the following
4 statements: "Your chances of getting breast cancer are
5 affected by your pregnancy history. If you have carried a
6 pregnancy to term as a young woman, you may be less likely to
7 get breast cancer in the future. However, you do not get the
8 same protective effect if your pregnancy is ended by an
9 abortion. The risk may be higher if your first pregnancy is
10 aborted." and " If you have a family history of breast cancer
11 or clinical findings of breast disease, you should seek
12 medical advice from your physician before deciding whether to
13 remain pregnant or have an abortion. It is always important to
14 tell your doctor about your complete pregnancy history."

15 "(9) The materials shall include a comprehensive
16 list of health care providers, facilities, and clinics that
17 offer to have ultrasounds performed by a person at least as
18 qualified as a registered nurse licensed under the Uniform
19 Credentialing Act, including and specifying those that offer
20 to perform such ultrasounds free of charge. The list shall be
21 arranged geographically and shall include the name, address,
22 hours of operation, and telephone number of each entity.

23 "(10) The material shall include the following
24 statement: "Abortion terminates the life of a whole, separate,
25 unique, living human being."

26 "(b) The materials in subsection (a) shall be in a
27 bound booklet, shall contain large clear photographs, and

1 shall be printed in a typeface large enough to be clearly
2 legible.

3 "(c) The materials required under this section and
4 the videotape described in Section 26-23A-6 shall be available
5 to the general public, from the Department of Public Health
6 upon request, and appropriate number to any person, facility,
7 or hospital. The department may charge a reasonable fee based
8 on the cost of producing the materials and videotape.

9 "(d) The Department of Public Health shall develop
10 and maintain a stable Internet website to provide the
11 information described under Section 26-23A-5. No information
12 regarding who uses the website shall be collected or
13 maintained. The Department of Public Health shall monitor the
14 website on a daily basis to prevent and correct tampering."

15 Section 2. (a) In order for the pregnant woman to
16 make an informed decision, at least two hours prior to a woman
17 having any part of an abortion performed or induced, and prior
18 to the administration of any anesthesia or medication in
19 preparation for the abortion on the female, the physician who
20 is to perform the abortion, or qualified technician working in
21 conjunction with the physician, shall do the following:

22 (1) Provide a simultaneous explanation of what the
23 ultrasound that is required in Section 26-23A-6(b), Code of
24 Alabama 1975, is depicting, which shall include the presence
25 and location of the unborn child within the uterus and the
26 number of unborn children depicted. If the ultrasound image

1 indicates that fetal demise has occurred, the woman shall be
2 informed of that fact.

3 (2) Simultaneously display the ultrasound images so
4 that the pregnant woman may view them.

5 (3) Provide a medical description of the ultrasound
6 images, which shall include the dimensions of the embryo or
7 fetus and the presence of external members and internal
8 organs, if present and viewable.

9 (4) The specific type of ultrasound procedure used
10 shall be determined with the consent of the woman.

11 (b) Nothing in this section shall be construed to
12 prevent a pregnant woman from averting her eyes from the
13 ultrasound images required to be provided to and reviewed with
14 her. Neither the physician nor the pregnant woman shall be
15 subject to any penalty if she refuses to look at the presented
16 ultrasound images.

17 Section 3. (a) Prior to a woman having any part of
18 an abortion performed or induced, and prior to the
19 administration of any anesthesia or medication in preparation
20 for the abortion on the female, the physician who is to
21 perform the abortion, or qualified technician working in
22 conjunction with the physician, if the pregnancy is at least
23 eight weeks after fertilization, 10 weeks from the first day
24 of the last menstrual period, shall offer the woman an
25 opportunity to hear her unborn child's heartbeat. If the woman
26 indicates that she would like to hear the heartbeat, it shall
27 be made audible by using a handheld Doppler fetal monitor.

1 (b) If the woman has indicated that she would like
2 to hear the unborn child's heartbeat, the physician who is to
3 perform the abortion or the referring physician or a qualified
4 technician working in conjunction with the physician shall not
5 be in violation of subsection (2) if:

6 (1) The physician who is to perform the abortion or
7 the referring physician or a qualified technician working in
8 conjunction with the physician has attempted, consistent with
9 standard medical practice, to make the embryonic or fetal
10 heartbeat of the unborn child audible for the pregnant woman
11 to hear using a handheld Doppler fetal monitor.

12 (2) That attempt does not result in the heartbeat
13 audible.

14 (3) The provider has offered to attempt to make the
15 heartbeat audible at a subsequent date.

16 (c) Nothing in this section shall be construed to
17 prevent the pregnant woman from not listening to the sounds
18 detected by the handheld Doppler fetal monitor.

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