

1 SB308
2 126492-4
3 By Senators Scofield, Beason, Bussman, Taylor, Allen, Pittman,
4 Holtzclaw, Whatley, Reed, Brewbaker, Williams, McGill and
5 Smith
6 RFD: Health
7 First Read: 31-MAR-11

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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11 To establish the Right to Know and See Act; to
12 define terms; to require a physician to perform an ultrasound
13 and display the images to the pregnant woman before performing
14 an abortion; to exclude an abortion in a medical emergency; to
15 provide criminal penalties and civil remedies for violations;
16 to provide anonymity for women in court proceedings; and in
17 connection therewith would have as its purpose or effect the
18 requirement of a new or increased expenditure of local funds
19 within the meaning of Amendment 621 of the Constitution of
20 Alabama of 1901, now appearing as Section 111.05 of the
21 Official Recompilation of the Constitution of Alabama of 1901,
22 as amended.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. This act shall be known and may be cited
25 as the "Right to Know and See Act."

26 Section 2. For the purpose of this act, the
27 following words and phrases shall have the following meanings:

1 (1) ABORTION. The intentional use or prescription of
2 any instrument, medicine, drug, or any other substance or
3 devise or method to terminate the life of an unborn child, to
4 terminate the pregnancy of a woman known to be pregnant with
5 an intention other than to produce a live birth and preserve
6 the life and health of the child after live birth, to remove
7 an ectopic pregnancy, or to remove a dead unborn child who
8 died as the result of natural causes, accidental trauma, or a
9 criminal assault on the pregnant woman or her unborn child.

10 (2) ATTEMPT TO PERFORM AN ABORTION. An act, or an
11 omission of a statutorily required act, that, under the
12 circumstances as the actor believes them to be, constitutes a
13 substantial step in a course of conduct planned to culminate
14 in the performance of an abortion in Alabama in violation of
15 this act.

16 (3) QUALIFIED TECHNICIAN. A Registered Diagnostic
17 Medical Sonographer who is certified in obstetrics and
18 gynecology by the American Registry for Diagnostic Medical
19 Sonography (ARDMS) or a Nurse Midwife or Advance Practice
20 Nurse Practitioner in Obstetrics with certification in
21 obstetrical ultrasonography.

22 (4) UNBORN CHILD and UNBORN CHILDREN. A member or
23 members of the species homo sapiens at any stage of
24 development before birth.

25 (5) WOMAN. A female human being whether or not she
26 has reached the age of majority.

1 Section 3. (a) Any abortion provider who knowingly
2 performs any abortion shall comply with the requirements of
3 this act.

4 (b) Prior to a woman giving informed consent to
5 having any part of an abortion performed or induced, and prior
6 to the administration of any anesthesia or medication in
7 preparation for the abortion on the woman, the physician who
8 is to perform the abortion or a qualified technician shall:

9 (1) Perform an obstetric ultrasound on the pregnant
10 woman, using either a vaginal transducer or an abdominal
11 transducer, whichever would display the embryo or fetus more
12 clearly.

13 (2) Provide a simultaneous verbal explanation of
14 what the ultrasound is depicting, which shall include the
15 presence and location of the unborn child within the uterus
16 and the number of unborn children depicted. If the ultrasound
17 image indicates that fetal demise has occurred, a woman shall
18 be informed of that fact.

19 (3) Display the ultrasound images so that the
20 pregnant woman may view them.

21 (4) Provide a medical description of the ultrasound
22 images, which shall include the dimensions of the embryo or
23 fetus and the presence of external members and internal
24 organs, if present and viewable.

25 (c) Nothing in this section shall be construed to
26 prevent a pregnant woman from averting her eyes from the
27 ultrasound images required to be provided to and reviewed with

1 her. Neither the physician nor the pregnant woman shall be
2 subject to any penalty if she declines to look at the
3 presented ultrasound images.

4 Section 4. (a) The provisions of Section 3 shall not
5 apply to an abortion provider or facility in the case of a
6 medical emergency.

7 (b) For purposes of this section, the following
8 terms shall have the following meanings:

9 (1) MEDICAL EMERGENCY. A condition which, in
10 reasonable medical judgment, so complicates the medical
11 condition of the pregnant woman as to necessitate the
12 immediate abortion of her pregnancy to avert her death or for
13 which a delay will create serious risk of substantial and
14 irreversible physical impairment of a major bodily function,
15 not including psychological or emotional conditions. No
16 condition shall be deemed a medical emergency if based on a
17 claim or diagnosis that the woman will engage in conduct which
18 she intends to result in her death or in substantial and
19 irreversible physical impairment of a major bodily function.

20 (2) REASONABLE MEDICAL JUDGMENT. A medical judgment
21 that would be made by a reasonably prudent physician
22 knowledgeable about the case and the treatment possibilities
23 with respect to the medical conditions involved.

24 (c) (1) Upon a determination by an abortion provider
25 that a medical emergency exists with respect to a pregnant
26 woman, the provider shall certify the specific medical
27 conditions that constitute the emergency.

1 (2) An abortion provider who willfully falsifies a
2 certification shall be subject to all the penalties provided
3 for under this act.

4 Section 5. Any person who knowingly or recklessly
5 performs or attempts to perform an abortion in violation of
6 this act shall be guilty of a Class C felony. No penalty may
7 be assessed against the female upon whom the abortion is
8 performed or attempted to be performed.

9 Section 6. (a) Any person upon whom an abortion has
10 been performed without compliance with this act, the father of
11 the unborn child who was the subject of the abortion, or the
12 grandparent of an unborn child may maintain an action against
13 the person who performed the abortion in knowing or reckless
14 violation of this act for actual and punitive damages. Any
15 person upon whom an abortion has been attempted without
16 compliance with this act may maintain an action against the
17 person who attempted to perform the abortion in knowing or
18 reckless violation of this act for actual and punitive
19 damages.

20 (b) If judgment is rendered in favor of the
21 plaintiff in an action described in this section, the court
22 shall also render judgment for a reasonable attorney's fee in
23 favor of the plaintiff against the defendant. If judgment is
24 rendered in favor of the defendant and the court finds that
25 the plaintiff's suit was frivolous and brought in bad faith,
26 the court shall also render judgment for a reasonable

1 attorney's fee in favor of the defendant against the
2 plaintiff.

3 Section 7. In every civil or criminal proceeding or
4 action brought under this act, the court shall rule whether
5 the anonymity of any female upon whom an abortion has been
6 performed or attempted to be performed shall be preserved from
7 public disclosure if she does not give her consent to such
8 disclosure. The court, upon motion or sua sponte, shall make
9 such a ruling and, upon determining that her anonymity should
10 be preserved, shall issue orders to the parties, witnesses,
11 and counsel and shall direct the sealing of the record and
12 exclusion of individuals from courtrooms or hearing rooms to
13 the extent necessary to safeguard her identity from public
14 disclosure. Each order shall be accompanied by specific
15 written findings explaining why the anonymity of the female
16 should be preserved from public disclosure, why the order is
17 essential to that end, how the order is narrowly tailored to
18 serve that interest, and why no reasonable less restrictive
19 alternative exists. In the absence of written consent of the
20 female upon whom an abortion has been performed or attempted
21 to be performed, anyone, other than a public official, who
22 brings an action under this act shall do so under a pseudonym.
23 This section may not be construed to conceal the identity of
24 the plaintiff or of witnesses from the defendant.

25 Section 8. If any one or more provision, section,
26 subsection, sentence, clause, phrase, or word of this act or
27 the application thereof to any person or circumstance is found

1 to be unconstitutional, the same is hereby declared to be
2 severable and the balance of this act shall remain effective
3 notwithstanding such unconstitutionality. The Legislature
4 hereby declares that it would have passed this act, and each
5 provision, section, subsection, sentence, clause, phrase, or
6 word thereof, irrespective of the fact that any one or more
7 provision, section, subsection, sentence, clause, phrase, or
8 word be declared unconstitutional.

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

17 Section 10. This act shall become effective on the
18 first day of the third month following its passage and
19 approval by the Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate
committee on Health..... 31-MAR-11

Read for the second time and placed on the calen-
dar 1 amendment..... 06-APR-11

Read for the third time and passed as amended 24-MAY-11

Yeas 26
Nays 3

Patrick Harris
Secretary