

1 HB57  
2 145710-2  
3 By Representative McClurkin  
4 RFD: Health  
5 First Read: 05-FEB-13  
6 PFD: 01/24/2013

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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.

3  
4                           A BILL  
5                           TO BE ENTITLED  
6                           AN ACT

7  
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.