

1 SB363
2 171399-3
3 By Senators Williams, Shelnut, Stutts and Albritton
4 RFD: Health and Human Services
5 First Read: 15-MAR-16

1 SB363

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4 ENROLLED, An Act,

5 To establish the Alabama Unborn Child Protection
6 from Dismemberment Abortion Act; to provide definitions; to
7 prohibit any person from performing or attempting to perform a
8 dismemberment abortion unless necessary to prevent serious
9 health risk to the mother of the unborn child; to provide for
10 a hearing before the State Board of Medical Examiners; to
11 permit injunctive relief; to provide for civil damages; to
12 provide for attorney fees; to provide for criminal penalties;
13 to provide for anonymity of certain individuals in court
14 proceedings; and in connection therewith to have as its
15 purpose or effect the requirement of a new or increased
16 expenditure of local funds within the meaning of Amendment 621
17 of the Constitution of Alabama of 1901, now appearing as
18 Section 111.05 of the Official Recompilation of the
19 Constitution of Alabama of 1901, as amended.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. This act shall be known and may be cited
22 as the Alabama Unborn Child Protection from Dismemberment
23 Abortion Act.

24 Section 2. For the purposes of this act, the
25 following terms shall have the following meanings:

1 (1) ABORTION. The same as defined in Section
2 26-21-2, Code of Alabama 1975.

3 (2) ATTEMPT TO PERFORM AN ABORTION.

4 a. To do or omit to do anything that, under the
5 circumstances as the actor believes them to be, is an act or
6 omission constituting a substantial step in a course of
7 conduct planned to culminate in the actor performing an
8 abortion. Such substantial steps include, but are not limited
9 to, any of the following:

10 1. Agreeing with an individual to perform an
11 abortion on that individual or on some other individual,
12 whether or not the term abortion is used in the agreement, and
13 whether or not the agreement is contingent on another factor,
14 such as receipt of payment or a determination of pregnancy.

15 2. Scheduling or planning a time to perform an
16 abortion on an individual, whether or not the term abortion is
17 used, and whether or not the performance is contingent on
18 another factor, such as receipt of payment or a determination
19 of pregnancy.

20 b. This definition may not be construed to require
21 that an abortion procedure actually be initiated for an
22 attempt to occur.

23 (3) DISMEMBERMENT ABORTION. With the purpose of
24 causing the death of an unborn child, purposely to dismember a
25 living unborn child and extract him or her one piece at a time

1 from the uterus through use of clamps, grasping forceps,
2 tongs, scissors, or similar instruments that, through the
3 convergence of two rigid levers, slice, crush, or grasp, or
4 any combination of the foregoing, a portion of the unborn
5 child's body to cut or rip it off. This definition does not
6 include an abortion which uses suction to dismember the body
7 of the developing unborn child by sucking fetal parts into a
8 collection container. This definition includes an abortion in
9 which a dismemberment abortion is used to cause the death of
10 an unborn child and suction is subsequently used to extract
11 fetal parts after the death of the unborn child.

12 (4) PHYSICIAN. An individual licensed to practice
13 medicine and surgery or osteopathic medicine and surgery, or
14 otherwise legally authorized to perform an abortion in the
15 state.

16 (5) PURPOSELY. An individual acts purposely with
17 respect to a material element of an offense when:

18 a. If the element involves the nature of his or her
19 conduct or a result thereof, it is his or her conscious
20 objective to engage in conduct of that nature or to cause such
21 a result.

22 b. If the element involves the attendant
23 circumstances, he or she is aware of the existence of such
24 circumstances or he or she believes or hopes that they exist.

1 (6) SERIOUS HEALTH RISK TO THE UNBORN CHILD'S
2 MOTHER. In reasonable medical judgment, the child's mother has
3 a condition that so complicates her medical condition that it
4 necessitates the abortion of her pregnancy to avert her death
5 or to avert serious risk of substantial and irreversible
6 physical impairment of a major bodily function, not including
7 psychological or emotional conditions. No such condition may
8 be determined to exist if it is based on a claim or diagnosis
9 that the woman will engage in conduct which she intends to
10 result in her death or in substantial and irreversible
11 physical impairment of a major bodily function.

12 (7) WOMAN. A female human being, whether or not she
13 has reached the age of majority.

14 Section 3. (a) Notwithstanding any other provision
15 of law, it shall be unlawful for any individual to purposely
16 perform or attempt to perform a dismemberment abortion and
17 thereby kill an unborn child unless necessary to prevent
18 serious health risk to the unborn child's mother.

19 (b) An individual accused in any proceeding of
20 unlawful conduct under subsection (a) may seek a hearing
21 before the State Board of Medical Examiners on whether the
22 dismemberment abortion was necessary to prevent serious health
23 risk to the unborn child's mother. The findings of the board
24 are admissible on that issue at any trial in which such
25 unlawful conduct is alleged. Upon a motion of the individual

1 accused, the court shall delay the beginning of the trial for
2 not more than 30 days to permit the hearing to take place.

3 (c) No woman upon whom an abortion is performed or
4 attempted to be performed shall be thereby liable for
5 performing or attempting to perform a dismemberment abortion.
6 No nurse, technician, secretary, receptionist, or other
7 employee or agent who is not a physician but who acts at the
8 direction of a physician, and no pharmacist or other
9 individual who is not a physician but who fills a prescription
10 or provides instruments or materials used in an abortion at
11 the direction of or to a physician, shall be thereby liable
12 for performing or attempting to perform a dismemberment
13 abortion.

14 (d) This act does not prevent abortion for any
15 reason including rape and incest by any other method, unless
16 otherwise prevented by law.

17 Section 4. (a) A cause of action for injunctive
18 relief against an individual who has performed or attempted to
19 perform a dismemberment abortion in violation of Section 3 may
20 be maintained by any of the following:

21 (1) A woman upon whom a dismemberment abortion was
22 performed or attempted to be performed.

23 (2) An individual who is the spouse, parent, or
24 guardian of, or a current or former licensed health care

1 provider of, a woman upon whom such a dismemberment abortion
2 was performed or attempted to be performed.

3 (3) A prosecuting attorney with appropriate
4 jurisdiction.

5 (b) The injunction shall prevent the defendant from
6 performing or attempting to perform further dismemberment
7 abortions in violation of Section 3.

8 Section 5. (a) A cause of action for civil damages
9 against an individual who has performed a dismemberment
10 abortion in violation of Section 3 may be maintained by any of
11 the following:

12 (1) Any woman upon whom a dismemberment abortion has
13 been performed in violation of Section 3.

14 (2) The father of the unborn child, if married to
15 the woman at the time the dismemberment abortion was
16 performed.

17 (3) If the woman had not attained the age of 18
18 years at the time of the dismemberment abortion or has died as
19 a result of the abortion, the maternal grandparents of the
20 unborn child.

21 (b) No damages may be awarded a plaintiff if the
22 pregnancy resulted from criminal conduct of the plaintiff.

23 (c) Damages awarded in such an action shall include
24 all of the following:

1 (1) Money damages for all injuries, psychological
2 and physical, occasioned by the dismemberment abortion.

3 (2) Statutory damages equal to three times the cost
4 of the dismemberment abortion.

5 Section 6. (a) If judgment is rendered in favor of
6 the plaintiff in an action described in Section 4 or Section
7 5, the court shall also render judgment for reasonable
8 attorney fees in favor of the plaintiff against the defendant.

9 (b) If judgment is rendered in favor of the
10 defendant in an action described in Section 4 or Section 5,
11 and the court finds that the plaintiff's suit was frivolous
12 and brought in bad faith, the court shall render judgment for
13 reasonable attorney fees in favor of the defendant against the
14 plaintiff.

15 (c) No attorney fees may be assessed against the
16 woman upon whom an abortion was performed or attempted to be
17 performed except in accordance with subsection (b).

18 Section 7. Whoever is found to have violated Section
19 3 shall be fined ten thousand dollars (\$10,000) or imprisoned
20 for not more than two years, or both.

21 Section 8. In every civil, criminal, or
22 administrative proceeding or action brought under this act,
23 the court shall rule whether the identity of any woman upon
24 whom an abortion has been performed or attempted to be
25 performed shall be preserved from public disclosure if she

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

20 Section 9. Nothing in this act shall be construed as
21 creating or recognizing a right to abortion, nor a right to a
22 particular method of abortion.

23 Section 10. Although this bill would have as its
24 purpose or effect the requirement of a new or increased
25 expenditure of local funds, the bill is excluded from further

1 requirements and application under Amendment 621, now
2 appearing as Section 111.05 of the Official ReCompilation of
3 the Constitution of Alabama of 1901, as amended, because the
4 bill defines a new crime or amends the definition of an
5 existing crime.

6 Section 11. This act shall become effective on the
7 first day of the third month following its passage and
8 approval by the Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB363

Senate 26-APR-16

I hereby certify that the within Act originated in and passed the Senate.

Patrick Harris
Secretary

House of Representatives
Passed: 04-MAY-16

By: Senator Williams