

1 HB52
2 188953-1
3 By Representative Rich
4 RFD: Health
5 First Read: 09-JAN-18
6 PFD: 01/04/2018

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8 SYNOPSIS: Existing law requires abortion providers to
9 provide a woman seeking an abortion with
10 information regarding the abortion process, the
11 participating medical personnel, and the health
12 status of the unborn child prior to performing an
13 abortion.

14 This bill would require abortion providers
15 to inform women of their right to withdraw consent
16 to an abortion before the abortion is performed.

17 This bill would also require abortion
18 providers to refund fees paid for an abortion if a
19 woman withdraws consent to the abortion before it
20 is performed, and would provide civil penalties for
21 failure to provide the refund.

22
23 A BILL
24 TO BE ENTITLED
25 AN ACT
26

1 Relating to abortion; to amend Section 26-23A-4,
2 Code of Alabama 1975, to require abortion providers to inform
3 women of their right to withdraw consent to an abortion before
4 it is performed and to provide a refund if a woman withdraws
5 consent to an abortion before it is performed; to amend
6 Section 26-23A-10, Code of Alabama 1975, to provide civil
7 penalties for failure to provide a refund if a woman withdraws
8 consent to an abortion before it is performed.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. Sections 26-23A-4 and 26-23A-10, Code of
11 Alabama 1975, are amended to read as follows:

12 "§26-23A-4.

13 "(a) 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)~~ (1) a. At least 48 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 by return receipt certified mail
23 restricted delivery, and if by mail, again in person prior to
24 the abortion, ~~a~~ the following:

25 "1. A copy of the printed materials in Section
26 26-23A-5 which list agencies that offer assistance, adoption
27 agencies, development of the unborn child, methods and risks

1 of abortion and childbirth, father's obligations, and
2 alternatives to abortion; and

3 "2. A typed or written notice no smaller than 16
4 point type that states as follows: "YOU HAVE THE RIGHT TO
5 CHANGE YOUR MIND ABOUT HAVING AN ABORTION AT ANY TIME. IF YOU
6 ARE HAVING A SURGICAL ABORTION, YOU MAY CHANGE YOUR MIND AND
7 RECEIVE A FULL REFUND OF FEES YOU HAVE PAID FOR THE PROCEDURE
8 UP UNTIL YOUR UNBORN CHILD IS ABORTED. IF YOU ARE RECEIVING AN
9 ABORTION BY MEDICATION, YOU MAY CHANGE YOUR MIND AND RECEIVE A
10 FULL REFUND OF FEES YOU HAVE PAID UP UNTIL THE TIME YOU LEAVE
11 THE ABORTION FACILITY WITH THE MEDICATIONS."

12 b. Mailing of the materials in ~~Section 26-23A-5~~
13 described in this subdivision may be arranged by telephone.

14 ~~"(b)(2)~~ Prior to an abortion, the physician who is
15 to perform the abortion, the referring physician, or a
16 qualified person has informed the woman in person:

17 ~~"(1)~~a. The name of the physician who will perform
18 the abortion in writing or a business card.

19 ~~"(2)~~b. The nature of the proposed abortion method
20 and associated risks and alternatives that a reasonable
21 patient would consider material to the decision of whether or
22 not to undergo the abortion.

23 ~~"(3)~~c. The probable gestational age of the unborn
24 child at the time the abortion is to be performed, and the
25 probable anatomical and physiological characteristics of the
26 unborn child at the time the abortion is to be performed. If

1 the unborn child is viable or has reached a gestational age of
2 more than 19 weeks, that:

3 "~~a.~~1. The unborn child may be able to survive
4 outside the womb.

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

9 "~~c.~~3. If the unborn child is born alive, the
10 attending physician has the legal obligation to take all
11 reasonable steps necessary to maintain the life and health of
12 the child.

13 "~~(4)~~d. The physician who is to perform the abortion
14 or the referring physician is required to perform an
15 ultrasound on the unborn child before the abortion. The woman
16 has a right to view the ultrasound before an abortion. The
17 woman shall complete a required form to acknowledge that she
18 either saw the ultrasound image of her unborn child or that
19 she was offered the opportunity and rejected it.

20 "~~(5) She~~ e. That she has the right to view the
21 videotape and ultrasound of her unborn child as described in
22 Section 26-23A-6.

23 "~~(6)~~f. Any need for anti-Rh immune globulin therapy,
24 and if she is Rh negative, the likely consequences of refusing
25 such therapy and the cost of the therapy.

26 "~~(7) She~~ g. That she cannot be forced or required by
27 anyone to have an abortion. She is free to withhold or

1 withdraw her consent for an abortion without affecting her
2 right to future care or treatment and without the loss of any
3 state or federally funded benefits to which she might
4 otherwise be entitled. If she withholds or withdraws her
5 consent for an abortion at any point before the unborn child
6 is aborted, the abortion procedure must immediately be
7 stopped.

8 "h. That if she withholds or withdraws her consent
9 for an abortion before it is performed, she is entitled to a
10 refund of fees if she does so according to the notice required
11 under subdivision (1) of subsection (a). Before the abortion
12 procedure, this notice must be given again to the woman both
13 orally and in writing in no smaller than 16 point type as
14 follows: "YOU HAVE THE RIGHT TO CHANGE YOUR MIND ABOUT HAVING
15 AN ABORTION AT ANY TIME. IF YOU ARE HAVING A SURGICAL
16 ABORTION, YOU MAY CHANGE YOUR MIND AND RECEIVE A FULL REFUND
17 OF FEES YOU HAVE PAID FOR THE PROCEDURE UP UNTIL YOUR UNBORN
18 CHILD IS ABORTED. IF YOU ARE RECEIVING AN ABORTION BY
19 MEDICATION, YOU MAY CHANGE YOUR MIND AND RECEIVE A FULL REFUND
20 OF FEES YOU HAVE PAID UP UNTIL THE TIME YOU LEAVE THE ABORTION
21 FACILITY WITH THE MEDICATIONS."

22 "(c)(3) The woman shall complete and sign a form
23 that she has received the information of ~~subsections (a) and~~
24 ~~(b)~~ subdivisions (1) and (2) of subsection (a), and does
25 provide her informed consent for an abortion on her unborn
26 child.

1 "~~(d)~~ (4) Prior to the performance of an abortion, the
2 physician who is to perform the abortion or his or her agent
3 shall receive the signed receipt of the certified mail dated
4 48 hours before the abortion, if mailed, and the signed forms
5 that she has received the information of ~~subsections (a) and~~
6 ~~(b)~~ subdivisions (1) and (2) of subsection (a) before the
7 abortion, had the opportunity to view the video and the
8 ultrasound of her unborn child, and provided her informed
9 consent for an abortion. The abortion facility shall retain
10 the signed receipt, signed forms, and the ultrasound in the
11 woman's medical file for the time required by law, but not
12 less than four years.

13 "(b) If a woman withdraws consent to an abortion
14 procedure before it is performed, any fees collected for that
15 procedure shall be refunded to the woman within three business
16 days after the date of cancellation as follows:

17 "(1) For a surgical abortion, fees are refundable
18 until the moment the unborn child is aborted; and

19 "(2) For a medical abortion, fees are refundable
20 until the moment the woman leaves the abortion facility with
21 the dispensed medications.

22 "§26-23A-10.

23 "(a) In addition to whatever remedies are available
24 under the common or statutory law of this state, failure to
25 comply with the requirements of this chapter shall:

26 "(1) Provide a basis for a civil action for
27 compensatory and punitive damages. Any conviction under this

1 chapter shall be admissible in a civil suit as prima facie
2 evidence of a failure to obtain an informed consent or
3 parental or judicial consent. The civil action may be based on
4 a claim that the act was a result of simple negligence, gross
5 negligence, wantonness, willfulness, intention, or other legal
6 standard of care.

7 "(2) Provide a basis for professional disciplinary
8 action under any applicable statutory or regulatory procedure
9 for the suspension or revocation of any license for
10 physicians, psychologists, licensed social workers, licensed
11 professional counselors, registered nurses, or other licensed
12 or regulated persons. Any conviction of any person for any
13 failure to comply with the requirements of this chapter shall
14 result in the automatic suspension of his or her license for a
15 period of at least one year and shall be reinstated after that
16 time only on such conditions as the appropriate regulatory or
17 licensing body shall require to insure compliance with this
18 chapter.

19 "(3) Provide a basis for recovery for the woman for
20 the wrongful death of the child, whether or not the unborn
21 child was viable at the time the abortion was performed or was
22 born alive.

23 "(b) Failure to comply with Section 26-23A-4(b)
24 shall provide a basis for civil action for compensatory and
25 punitive damages not less than ten thousand dollars (\$10,000),
26 as well as for an award of attorney fees. A civil action under

1 this subsection must be instituted within two years of the
2 date of the failure to comply."

3 Section 2. This act shall become effective on the
4 first day of the third month following its passage and
5 approval by the Governor, or its otherwise becoming law.