

1 HB237
2 208557-1
3 By Representatives Shaver, Allen, Stadthagen, Kiel, Estes,
4 Oliver, Kitchens, Marques, Robertson, Meadows, Brown (C),
5 Moore (P), Simpson, Sorrells, Baker, Wilcox, Sorrell and
6 Ledbetter
7 RFD: Judiciary
8 First Read: 02-FEB-21
9 PFD: 02/01/2021

8 SYNOPSIS: This bill would require a physician to
9 exercise reasonable care to preserve the life of a
10 child born alive after an abortion or attempted
11 abortion in an abortion or reproductive health
12 center.

13 This bill would establish criminal penalties
14 for violations.

15 This bill would further provide definitions
16 relating to abortion.

17 Amendment 621 of the Constitution of Alabama
18 of 1901, now appearing as Section 111.05 of the
19 Official Recompilation of the Constitution of
20 Alabama of 1901, as amended, prohibits a general
21 law whose purpose or effect would be to require a
22 new or increased expenditure of local funds from
23 becoming effective with regard to a local
24 governmental entity without enactment by a 2/3 vote
25 unless: it comes within one of a number of
26 specified exceptions; it is approved by the
27 affected entity; or the Legislature appropriates

1 funds, or provides a local source of revenue, to
2 the entity for the purpose.

3 The purpose or effect of this bill would be
4 to require a new or increased expenditure of local
5 funds within the meaning of the amendment. However,
6 the bill does not require approval of a local
7 governmental entity or enactment by a 2/3 vote to
8 become effective because it comes within one of the
9 specified exceptions contained in the amendment.

10
11 A BILL
12 TO BE ENTITLED
13 AN ACT
14

15 Relating to abortion; to require a physician to
16 exercise reasonable care to preserve the life of a child who
17 is born alive after an abortion or attempted abortion in an
18 abortion or reproductive health center; to establish criminal
19 penalties for violations; to provide further for definitions
20 relating to abortion; and in connection therewith would have
21 as its purpose or effect the requirement of a new or increased
22 expenditure of local funds within the meaning of Amendment 621
23 of the Constitution of Alabama of 1901, now appearing as
24 Section 111.05 of the Official ReCompilation of the
25 Constitution of Alabama of 1901, as amended.
26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. This act shall be known and may be cited
2 as Gianna's Law.

3 Section 2. (a) A living human child born alive after
4 an abortion or attempted abortion in an abortion or
5 reproductive health center is entitled to the same rights,
6 powers, and privileges as are granted by the laws of this
7 state to any other child born alive at any location in this
8 state.

9 (b) For purposes of this section the following terms
10 shall have the meanings set forth below:

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. The term does not include these activities if done with
17 the intent to save the life or preserve the health of an
18 unborn child, remove a dead unborn child, to deliver the
19 unborn child prematurely to avoid a serious health risk to the
20 unborn child's mother, or to preserve the health of her unborn
21 child. The term does not include a procedure or act to
22 terminate the pregnancy of a woman with an ectopic pregnancy,
23 nor does it include the procedure or act to terminate the
24 pregnancy of a woman when the unborn child has a lethal
25 anomaly.

26 (2) ABORTION OR REPRODUCTIVE HEALTH CENTER. A
27 facility defined and regulated as an abortion or reproductive

1 health center by the rules of the Alabama State Board of
2 Health.

3 (3) BORN ALIVE. The complete expulsion or extraction
4 from its mother of a product of conception, irrespective of
5 the duration of pregnancy, which, after separation, breathes
6 or has a heart beat, pulsation of the umbilical cord, or
7 definite movement of voluntary muscles, whether or not the
8 umbilical cord has been cut or the placenta is attached.

9 (4) ECTOPIC PREGNANCY. Any pregnancy resulting from
10 either a fertilized egg that has implanted or attached outside
11 the uterus or a fertilized egg implanted inside the cornu of
12 the uterus.

13 (5) LETHAL ANOMALY. A condition from which an unborn
14 child would die after birth or shortly thereafter or be
15 stillborn.

16 (6) PHYSICIAN. An individual licensed to practice
17 medicine and surgery or osteopathic medicine and surgery in
18 Alabama.

19 (c) (1) A child born alive after an abortion or
20 attempted abortion in an abortion or reproductive health
21 center shall be entitled to the same physician patient
22 relationship that is currently available for any other
23 individual in need of medical care at any location in this
24 state. Nothing in this section shall be construed to establish
25 a new or separate standard of care for hospitals or physicians
26 and their patients or otherwise modify, amend, or supersede
27 any provision of the Alabama Medical Liability Act of 1987 or

1 the Alabama Medical Liability Act of 1996, or any amendment or
2 judicial interpretation of either act.

3 (2) If a child is born alive following an abortion
4 or attempted abortion in an abortion or reproductive health
5 center, the physician who performed the abortion or attempted
6 the abortion in the abortion or reproductive health center
7 shall exercise the same degree of professional skill, care,
8 and diligence to preserve the life and health of the child as
9 a reasonably diligent and conscientious physician would render
10 to any other child born alive at any other location in this
11 state at the same gestational age. A physician who fails to
12 preserve the life and health of the child in violation of this
13 subdivision shall be guilty of a felony punishable by not less
14 than 20 years in state prison and a fine of not less than one
15 hundred thousand dollars (\$100,000).

16 (3) The Office of the Attorney General may bring an
17 action to enforce this subsection. Any funds collected from
18 fines pursuant to this act shall be deposited in the General
19 Fund.

20 (d) A woman on whom an abortion is performed or
21 attempted to be performed may not be held liable under this
22 section.

23 (e) An individual who has knowledge of failure by a
24 physician to comply with this section shall report this
25 knowledge to the Office of the Attorney General. The identity
26 of the individual making the report shall be kept
27 confidential.

1 (f) All of the provisions of this act, including all
2 obligations, duties, and rights created under this act, shall
3 only apply to a physician who performs an abortion or
4 attempted abortion in an abortion or reproductive health
5 center.

6 Section 3. Although this bill would have as its
7 purpose or effect the requirement of a new or increased
8 expenditure of local funds, the bill is excluded from further
9 requirements and application under Amendment 621, now
10 appearing as Section 111.05 of the Official Recompilation of
11 the Constitution of Alabama of 1901, as amended, because the
12 bill defines a new crime or amends the definition of an
13 existing crime.

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