

1 HB237
2 208557-3
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
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ENROLLED, An Act,

Relating to abortion; to require a physician to exercise reasonable care to preserve the life of a child who is born alive after an abortion or attempted abortion in an abortion or reproductive health center; to establish criminal penalties for violations; to provide further for definitions relating to abortion; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

1 (1) ABORTION. The use or prescription of any
2 instrument, medicine, drug, or any other substance or device
3 with the intent to terminate the pregnancy of a woman known to
4 be pregnant with knowledge that the termination by those means
5 will with reasonable likelihood cause the death of the unborn
6 child. The term does not include these activities if done with
7 the intent to save the life or preserve the health of an
8 unborn child, remove a dead unborn child, to deliver the
9 unborn child prematurely to avoid a serious health risk to the
10 unborn child's mother, or to preserve the health of her unborn
11 child. The term does not include a procedure or act to
12 terminate the pregnancy of a woman with an ectopic pregnancy,
13 nor does it include the procedure or act to terminate the
14 pregnancy of a woman when the unborn child has a lethal
15 anomaly.

16 (2) ABORTION OR REPRODUCTIVE HEALTH CENTER. A
17 facility defined and regulated as an abortion or reproductive
18 health center by the rules of the Alabama State Board of
19 Health.

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

1 (4) ECTOPIC PREGNANCY. Any pregnancy resulting from
2 either a fertilized egg that has implanted or attached outside
3 the uterus or a fertilized egg implanted inside the cornu of
4 the uterus.

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

8 (6) PHYSICIAN. An individual licensed to practice
9 medicine and surgery or osteopathic medicine and surgery in
10 Alabama.

11 (7) SERIOUS HEALTH RISK TO THE UNBORN CHILD'S
12 MOTHER. In reasonable medical judgment, a condition of the
13 child's mother which so complicates her medical condition that
14 it necessitates the termination of her pregnancy to avert her
15 death or to avert serious risk of substantial physical
16 impairment of a major bodily function. The term does not
17 include a condition based on a claim that the woman is
18 suffering from an emotional condition or a mental illness
19 which will cause her to engage in conduct that intends to
20 result in her death or the death of her unborn child. However,
21 the condition may exist if a second physician who is licensed
22 in Alabama as a psychiatrist, with a minimum of three years of
23 clinical experience, examines the woman and documents that the
24 woman has a diagnosed serious mental illness and because of
25 the condition, there is reasonable likelihood, in the

1 physician's medical judgment, that she will engage in conduct
2 that could result in her death or the death of her unborn
3 child. If the mental health diagnosis and likelihood of
4 conduct is confirmed as provided in this section, and it is
5 determined that a termination of her pregnancy is medically
6 necessary to avoid the conduct, the termination may be
7 performed and shall be only performed by a physician licensed
8 in Alabama in a hospital as defined in the Alabama
9 Administrative Code and to which he or she has admitting
10 privileges.

11 (c) (1) A child born alive after an abortion or
12 attempted abortion in an abortion or reproductive health
13 center shall be entitled to the same physician patient
14 relationship that is currently available for any other
15 individual in need of medical care at any location in this
16 state. Nothing in this section shall be construed to establish
17 a new or separate standard of care for hospitals or physicians
18 and their patients or otherwise modify, amend, or supersede
19 any provision of the Alabama Medical Liability Act of 1987 or
20 the Alabama Medical Liability Act of 1996, or any amendment or
21 judicial interpretation of either act.

22 Nothing in this section shall be construed to modify
23 or amend Chapter 22 of Title 26, Code of Alabama 1975.

24 (2) If a child is born alive following an abortion
25 or attempted abortion in an abortion or reproductive health

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

12 (3) The Office of the Attorney General may bring an
13 action to enforce this subsection. Any funds collected from
14 fines pursuant to this act shall be deposited in the General
15 Fund.

16 (d) A woman on whom an abortion is performed or
17 attempted to be performed may not be held liable under this
18 section.

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

24 (f) All of the provisions of this act, including all
25 obligations, duties, and rights created under this act, shall

1 only apply to a physician who performs an abortion or
2 attempted abortion in an abortion or reproductive health
3 center.

4 Section 3. Nothing in this section shall make legal
5 an abortion that is not otherwise legal.

6 Section 4. 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 5. 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.

