HB237

208557-3

By Representatives Shaver, Allen, Stadthagen, Kiel, Estes, Oliver, Kitchens, Marques, Robertson, Meadows, Brown (C), Moore (P), Simpson, Sorrells, Baker, Wilcox, Sorrell and Ledbetter

RFD: Judiciary

First Read: 02-FEB-21

PFD: 02/01/2021
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) ABORTION. The use or prescription of any instrument, medicine, drug, or any other substance or device with the intent to terminate the pregnancy of a woman known to be pregnant with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. The term does not include these activities if done with the intent to save the life or preserve the health of an unborn child, remove a dead unborn child, to deliver the unborn child prematurely to avoid a serious health risk to the unborn child's mother, or to preserve the health of her unborn child. The term does not include a procedure or act to terminate the pregnancy of a woman with an ectopic pregnancy, nor does it include the procedure or act to terminate the pregnancy of a woman when the unborn child has a lethal anomaly.

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

(3) BORN ALIVE. The complete expulsion or extraction from its mother of a product of conception, irrespective of the duration of pregnancy, which, after separation, breathes or has a heart beat, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.
(4) ECTOPIC PREGNANCY. Any pregnancy resulting from either a fertilized egg that has implanted or attached outside the uterus or a fertilized egg implanted inside the cornu of the uterus.

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

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

(7) SERIOUS HEALTH RISK TO THE UNBORN CHILD'S MOTHER. In reasonable medical judgment, a condition of the child's mother which so complicates her medical condition that it necessitates the termination of her pregnancy to avert her death or to avert serious risk of substantial physical impairment of a major bodily function. The term does not include a condition based on a claim that the woman is suffering from an emotional condition or a mental illness which will cause her to engage in conduct that intends to result in her death or the death of her unborn child. However, the condition may exist if a second physician who is licensed in Alabama as a psychiatrist, with a minimum of three years of clinical experience, examines the woman and documents that the woman has a diagnosed serious mental illness and because of the condition, there is reasonable likelihood, in the
physician's medical judgment, that she will engage in conduct that could result in her death or the death of her unborn child. If the mental health diagnosis and likelihood of conduct is confirmed as provided in this section, and it is determined that a termination of her pregnancy is medically necessary to avoid the conduct, the termination may be performed and shall be only performed by a physician licensed in Alabama in a hospital as defined in the Alabama Administrative Code and to which he or she has admitting privileges.

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

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

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

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

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

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

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

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

Section 4. Although this bill would have as its purpose or effect the requirement of a new or increased expenditure of local funds, the bill is excluded from further requirements and application under Amendment 621, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, because the bill defines a new crime or amends the definition of an existing crime.

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

President and Presiding Officer of the Senate

House of Representatives
I hereby certify that the within Act originated in and was passed by the House 18-MAR-21, as amended.

Jeff Woodard
Clerk

Senate 17-MAY-21 Passed