

1 HB248  
2 203654-2  
3 By Representatives Shaver, Ledbetter, Mooney, Hanes,  
4 Wadsworth, Kiel, Estes, Moore (P), Farley, Robertson, Ellis,  
5 Treadaway, Weaver, Smith, Pettus, Shedd, Kitchens, Wilcox,  
6 Lipscomb, Oliver, Ball, Pringle, Crawford, Whitt, Baker,  
7 Greer, Clouse, Carns, Drake, Standridge, Nordgren, Isbell,  
8 Holmes, Fincher, Marques, Sorrells, Wingo, Dismukes, Brown  
9 (C), Stringer, Sells, Simpson, Meadows, Allen, Blackshear,  
10 Sorrell, Gaston, Wood (R), Lee, Fridy, Hurst, South and  
11 McCutcheon  
12 RFD: Judiciary  
13 First Read: 13-FEB-20

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

                  This bill would establish criminal penalties for violations.

                  This bill would further provide definitions relating to abortion.

                  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, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exceptions; it is approved by the 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.