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3 SUBSTITUTE FOR HB491

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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 (7) SERIOUS HEALTH RISK TO THE UNBORN CHILD'S
20 MOTHER. In reasonable medical judgment, the child's mother has
21 a condition that so complicates her medical condition that it
22 necessitates the termination of her pregnancy to avert her
23 death or to avert serious risk of substantial physical
24 impairment of a major bodily function. This term does not
25 include a condition based on a claim that the woman is
26 suffering from an emotional condition or a mental illness
27 which will cause her to engage in conduct that intends to

1 result in her death or the death of her unborn child. However,
2 the condition may exist if a second physician who is licensed
3 in Alabama as a psychiatrist, with a minimum of three years of
4 clinical experience, examines the woman and documents that the
5 woman has a diagnosed serious mental illness and because of
6 it, there is reasonable medical judgment that she will engage
7 in conduct that could result in her death or the death of her
8 unborn child. If the mental health diagnosis and likelihood of
9 conduct is confirmed as provided in this section, and it is
10 determined that a termination of her pregnancy is medically
11 necessary to avoid the conduct, the termination may be
12 performed and shall be only performed by a physician licensed
13 in Alabama in a hospital as defined in the Alabama
14 Administrative Code and to which he or she has admitting
15 privileges.

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

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

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

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

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

25 (f) All of the provisions of this act, including all
26 obligations, duties, and rights created under this act, shall
27 only apply to a physician who performs an abortion or

1 attempted abortion in an abortion or reproductive health
2 center.

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

11 Section 4. This act shall become effective
12 immediately following its passage and approval by the
13 Governor, or its otherwise becoming law.