

1 HB237  
2 208557-2  
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

1 ENGROSSED

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4 A BILL  
5 TO BE ENTITLED  
6 AN ACT  
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8 Relating to abortion; to require a physician to  
9 exercise reasonable care to preserve the life of a child who  
10 is born alive after an abortion or attempted abortion in an  
11 abortion or reproductive health center; to establish criminal  
12 penalties for violations; to provide further for definitions  
13 relating to abortion; and in connection therewith would have  
14 as its purpose or effect the requirement of a new or increased  
15 expenditure of local funds within the meaning of Amendment 621  
16 of the Constitution of Alabama of 1901, now appearing as  
17 Section 111.05 of the Official Recompilation of the  
18 Constitution of Alabama of 1901, as amended.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

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

22 (3) BORN ALIVE. The complete expulsion or extraction  
23 from its mother of a product of conception, irrespective of  
24 the duration of pregnancy, which, after separation, breathes  
25 or has a heart beat, pulsation of the umbilical cord, or  
26 definite movement of voluntary muscles, whether or not the  
27 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  
26 physician's medical judgment, that she will engage in conduct  
27 that could result in her death or the death of her unborn

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

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

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

22 (2) If a child is born alive following an abortion  
23 or attempted abortion in an abortion or reproductive health  
24 center, the physician who performed the abortion or attempted  
25 the abortion in the abortion or reproductive health center  
26 shall exercise the same degree of professional skill, care,  
27 and diligence to preserve the life and health of the child as

1 a reasonably diligent and conscientious physician would render  
2 to any other child born alive at any other location in this  
3 state at the same gestational age. A physician who fails to  
4 preserve the life and health of the child in violation of this  
5 subdivision shall be guilty of a Class A felony. ~~punishable by~~  
6 ~~not less than 20 years in state prison and a fine of not less~~  
7 ~~than one hundred thousand dollars (\$100,000).~~

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

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

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

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

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

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

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

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House of Representatives

Read for the first time and re-  
ferred to the House of Representa-  
tives committee on Judiciary ..... 02-FEB-21

Read for the second time and placed  
on the calendar 2 amendments ..... 24-FEB-21

Read for the third time and passed  
as amended..... 18-MAR-21

Yeas 76, Nays 12, Abstains 10

Jeff Woodard  
Clerk