HB248
203654-2
By Representatives Shaver, Ledbetter, Mooney, Hanes, Wadsworth, Kiel, Estes, Moore (P), Farley, Robertson, Ellis, Treadaway, Weaver, Smith, Pettus, Shedd, Kitchens, Wilcox, Lipscomb, Oliver, Ball, Pringle, Crawford, Whitt, Baker, Greer, Clouse, Carns, Drake, Standridge, Nordgren, Isbell, Holmes, Fincher, Marques, Sorrells, Wingo, Dismukes, Brown (C), Stringer, Sells, Simpson, Meadows, Allen, Blackshear, Sorrell, Gaston, Wood (R), Lee, Fridy, Hurst, South and McCutcheon
RFD: Judiciary
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
funds, or provides a local source of revenue, to
the entity for the purpose.

The purpose or effect of this bill would be
to require a new or increased expenditure of local
funds within the meaning of the amendment. However,
the bill does not require approval of a local
governmental entity or enactment by a 2/3 vote to
become effective because it comes within one of the
specified exceptions contained in the amendment.

A BILL
TO BE ENTITLED
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.

(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.

(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 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. 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 4. 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.