HB491
201222-2
By Representatives Shaver and Ledbetter
RFD: Health
First Read: 23-APR-19
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.

(7) SERIOUS HEALTH RISK TO THE UNBORN CHILD'S MOTHER. In reasonable medical judgment, the child's mother has a condition that 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. This 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 it, there is reasonable 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.

(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. Failure to preserve the
life and health of the child is a Class B felony and is 
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 immediately following its passage and approval by the Governor, or its otherwise becoming law.
House of Representatives

Read for the first time and referred to the House of Representatives committee on Health ............. 23-APR-19

Read for the second time and placed on the calendar................................. 08-MAY-19

Read for the third time and passed as amended........................................ 21-MAY-19

Yeas 66, Nays 18, Abstains 0

Jeff Woodard
Clerk