

117TH CONGRESS  
1ST SESSION

# H. R. 619

To amend title 18, United States Code, to prohibit a health care practitioner from failing to exercise the proper degree of care in the case of a child who survives an abortion or attempted abortion.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 28, 2021

Mrs. WAGNER (for herself, Mr. SCALISE, Mr. TAYLOR, Mrs. HINSON, Mr. MOORE of Utah, Mr. MOONEY, Mr. GAETZ, Mr. BUDD, Mr. WESTERMAN, Mr. BROOKS, Mr. KELLY of Pennsylvania, Mr. MULLIN, Mr. BURCHETT, Mr. JOYCE of Pennsylvania, Mrs. MILLER of West Virginia, Mr. NEHLS, Mr. DUNCAN, Mr. AUSTIN SCOTT of Georgia, Mr. WILLIAMS of Texas, Mr. MCKINLEY, Mr. HUDSON, Mr. FLEISCHMANN, Mr. BERGMAN, Mr. LONG, Mr. TIMMONS, Mr. ADERHOLT, Mr. GONZALEZ of Ohio, Mr. ROGERS of Alabama, Mr. WILSON of South Carolina, Mr. HILL, Mr. GALLAGHER, Mr. ZELDIN, Mr. SIMPSON, Mr. GROTHMAN, Mr. WALTZ, Mr. POSEY, Mr. ALLEN, Mr. HUIZENGA, Mr. GUTHRIE, Mr. NORMAN, Mr. PALMER, Mr. RESCHENTHALER, Mr. FULCHER, Ms. HERRERA BEUTLER, Mr. WITTMAN, Mr. JOHNSON of South Dakota, Mr. GRAVES of Louisiana, Mr. RODNEY DAVIS of Illinois, Mr. WALBERG, Mrs. RODGERS of Washington, Mr. CARL, Mr. LAMBORN, Mr. BABIN, Mr. SESSIONS, Ms. STEFANIK, Mr. LATTA, Mr. BOST, Mr. DIAZ-BALART, Mr. BAIRD, Mr. BISHOP of North Carolina, Mr. GOHMERT, Mr. DUNN, Ms. FOXX, Mr. BANKS, Mr. WENSTRUP, Mrs. WALORSKI, Mrs. FISCHBACH, Mr. CHABOT, Mr. SMITH of Missouri, Mr. RUTHERFORD, Mr. LUETKEMEYER, Mr. DONALDS, Mr. PFLUGER, Mr. PALAZZO, Miss GONZÁLEZ-COLÓN, Mr. BURGESS, Mr. HERN, Mr. KELLER, Mr. CURTIS, Mr. GARBARINO, Mr. KUSTOFF, Mr. WEBSTER of Florida, Mr. HOLLINGSWORTH, Mr. ROUZER, Mr. SMITH of Nebraska, Mr. FEENSTRA, Mr. JORDAN, Mr. WRIGHT, Mr. ESTES, Mr. MURPHY of North Carolina, Mr. ROSE, Mr. JOHNSON of Ohio, Mr. MOORE of Alabama, Mr. STAUBER, Mr. BUCSHON, Mr. SMITH of New Jersey, Mr. LAMALFA, Mr. JOYCE of Ohio, Mr. MCHENRY, Mr. FALLON, Mrs. HARSHBARGER, Mr. CAWTHORN, Mr. BARR, Mr. BENTZ, Mr. GRAVES of Missouri, Mr. NEWHOUSE, Mr. STEUBE, Ms. HERRELL, Mr. HAGEDORN, Mr. CLOUD, Mr. MCCLINTOCK, Mr. JACKSON, Mr. SCHWEIKERT, Mr. STEWART, Mr. BACON, Mr. PENCE, Mr. BALDERSON, Mr. HARRIS, Mrs. CAMMACK, Mr. GIBBS, Mr. MOOLENAAR, Mrs. GREENE of Georgia, Mr. HICE of Georgia, Mr. MEUSER, Mr. CRAWFORD, Mr. GOODEN of Texas, Mr. BILIRAKIS,

Mr. GOOD of Virginia, Mr. WEBER of Texas, Mr. GOSAR, Mrs. HARTZLER, Mr. KELLY of Mississippi, Mr. TONY GONZALES of Texas, Mr. GUEST, Mr. WOMACK, Mr. C. SCOTT FRANKLIN of Florida, Mr. ARRINGTON, Mrs. LESKO, Mr. AMODEL, Mr. ROY, Mr. FERGUSON, Mrs. BOEBERT, Mr. DAVIDSON, Mr. CARTER of Georgia, Mrs. BICE of Oklahoma, Mr. BUCK, Mr. SMUCKER, Mr. CRENSHAW, Mr. THOMPSON of Pennsylvania, Mr. MANN, Mrs. STEEL, Mr. VAN DREW, Mr. FITZGERALD, Mrs. MILLER-MEEKS, Mr. JACOBS of New York, Mr. BRADY, Mr. BIGGS, Mr. MCCARTHY, Mr. LAHOOD, Mr. YOUNG, Mr. OWENS, Mr. TIFFANY, Mr. GARCIA of California, Mrs. KIM of California, Mr. EMMER, Mr. STIVERS, Mr. VALADAO, Mrs. MILLER of Illinois, Ms. MALLIOTAKIS, Mr. LATURNER, Mr. ROGERS of Kentucky, Mr. ROSENDALE, Mr. ISSA, Mr. KINZINGER, Mr. STEIL, Ms. CHENEY, Mr. JOHNSON of Louisiana, Mr. FORTENBERRY, Mr. CLYDE, Ms. MACE, Mr. PERRY, Mr. LUCAS, Mr. HIGGINS of Louisiana, Mr. GIMENEZ, Mr. MEIJER, Mr. MAST, Mr. ARMSTRONG, Mr. CLINE, Mr. TURNER, Mrs. SPARTZ, Mr. GREEN of Tennessee, and Mr. COLE) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 18, United States Code, to prohibit a health care practitioner from failing to exercise the proper degree of care in the case of a child who survives an abortion or attempted abortion.

1        *Be it enacted by the Senate and House of Representa-*  
 2        *tives of the United States of America in Congress assembled,*

3        **SECTION 1. SHORT TITLE.**

4        This Act may be cited as the “Born-Alive Abortion  
 5        Survivors Protection Act”.

6        **SEC. 2. FINDINGS; CONSTITUTIONAL AUTHORITY.**

7        (a) FINDINGS.—Congress finds as follows:

8                (1) If an abortion results in the live birth of an  
 9        infant, the infant is a legal person for all purposes

1 under the laws of the United States, and entitled to  
2 all the protections of such laws.

3 (2) Any infant born alive after an abortion or  
4 within a hospital, clinic, or other facility has the  
5 same claim to the protection of the law that would  
6 arise for any newborn, or for any person who comes  
7 to a hospital, clinic, or other facility for screening  
8 and treatment or otherwise becomes a patient within  
9 its care.

10 (b) CONSTITUTIONAL AUTHORITY.—In accordance  
11 with the above findings, Congress enacts the following  
12 pursuant to Congress' power under—

13 (1) section 5 of the 14th Amendment, including  
14 the power to enforce the prohibition on government  
15 action denying equal protection of the laws; and

16 (2) section 8 of article I to make all laws nec-  
17 essary and proper for carrying into execution the  
18 powers vested by the Constitution of the United  
19 States, including the power to regulate commerce  
20 under clause 3 of such section.

21 **SEC. 3. BORN-ALIVE INFANTS PROTECTION.**

22 (a) REQUIREMENTS PERTAINING TO BORN-ALIVE  
23 ABORTION SURVIVORS.—Chapter 74 of title 18, United  
24 States Code, is amended by inserting after section 1531  
25 the following:

1 **“§ 1532. Requirements pertaining to born-alive abor-**  
2 **tion survivors**

3 “(a) REQUIREMENTS FOR HEALTH CARE PRACTI-  
4 TIONERS.—In the case of an abortion or attempted abor-  
5 tion that results in a child born alive (as defined in section  
6 8 of title 1, United States Code (commonly known as the  
7 ‘Born-Alive Infants Protection Act’)):

8 “(1) DEGREE OF CARE REQUIRED; IMMEDIATE  
9 ADMISSION TO A HOSPITAL.—Any health care practi-  
10 tioner present at the time the child is born alive  
11 shall—

12 “(A) exercise the same degree of profes-  
13 sional skill, care, and diligence to preserve the  
14 life and health of the child as a reasonably dili-  
15 gent and conscientious health care practitioner  
16 would render to any other child born alive at  
17 the same gestational age; and

18 “(B) following the exercise of skill, care,  
19 and diligence required under subparagraph (A),  
20 ensure that the child born alive is immediately  
21 transported and admitted to a hospital.

22 “(2) MANDATORY REPORTING OF VIOLA-  
23 TIONS.—A health care practitioner or any employee  
24 of a hospital, a physician’s office, or an abortion  
25 clinic who has knowledge of a failure to comply with  
26 the requirements of paragraph (1) shall immediately

1 report the failure to an appropriate State or Federal  
2 law enforcement agency, or to both.

3 “(b) PENALTIES.—

4 “(1) IN GENERAL.—Whoever violates subsection  
5 (a) shall be fined under this title or imprisoned for  
6 not more than 5 years, or both.

7 “(2) INTENTIONAL KILLING OF CHILD BORN  
8 ALIVE.—Whoever intentionally performs or attempts  
9 to perform an overt act that kills a child born alive  
10 described under subsection (a), shall be punished as  
11 under section 1111 of this title for intentionally kill-  
12 ing or attempting to kill a human being.

13 “(c) BAR TO PROSECUTION.—The mother of a child  
14 born alive described under subsection (a) may not be pros-  
15 ecuted under this section, for conspiracy to violate this  
16 section, or for an offense under section 3 or 4 of this title  
17 based on such a violation.

18 “(d) CIVIL REMEDIES.—

19 “(1) CIVIL ACTION BY A WOMAN ON WHOM AN  
20 ABORTION IS PERFORMED.—If a child is born alive  
21 and there is a violation of subsection (a), the woman  
22 upon whom the abortion was performed or at-  
23 tempted may, in a civil action against any person  
24 who committed the violation, obtain appropriate re-  
25 lief.

1           “(2) APPROPRIATE RELIEF.—Appropriate relief  
2           in a civil action under this subsection includes—

3                   “(A) objectively verifiable money damage  
4                   for all injuries, psychological and physical, occa-  
5                   sioned by the violation of subsection (a);

6                   “(B) statutory damages equal to 3 times  
7                   the cost of the abortion or attempted abortion;  
8                   and

9                   “(C) punitive damages.

10           “(3) ATTORNEY’S FEE FOR PLAINTIFF.—The  
11           court shall award a reasonable attorney’s fee to a  
12           prevailing plaintiff in a civil action under this sub-  
13           section.

14           “(4) ATTORNEY’S FEE FOR DEFENDANT.—If a  
15           defendant in a civil action under this subsection pre-  
16           vails and the court finds that the plaintiff’s suit was  
17           frivolous, the court shall award a reasonable attor-  
18           ney’s fee in favor of the defendant against the plain-  
19           tiff.

20           “(e) DEFINITIONS.—In this section the following  
21           definitions apply:

22                   “(1) ABORTION.—The term ‘abortion’ means  
23                   the use or prescription of any instrument, medicine,  
24                   drug, or any other substance or device—

1           “(A) to intentionally kill the unborn child  
2 of a woman known to be pregnant; or

3           “(B) to intentionally terminate the preg-  
4 nancy of a woman known to be pregnant, with  
5 an intention other than—

6                   “(i) after viability, to produce a live  
7 birth and preserve the life and health of  
8 the child born alive; or

9                   “(ii) to remove a dead unborn child.

10           “(2) ATTEMPT.—The term ‘attempt’, with re-  
11 spect to an abortion, means conduct that, under the  
12 circumstances as the actor believes them to be, con-  
13 stitutes a substantial step in a course of conduct  
14 planned to culminate in performing an abortion.”.

15           (b) CLERICAL AMENDMENT.—The table of sections  
16 for chapter 74 of title 18, United States Code, is amended  
17 by inserting after the item pertaining to section 1531 the  
18 following:

“1532. Requirements pertaining to born-alive abortion survivors.”.

19           (c) CHAPTER HEADING AMENDMENTS.—

20                   (1) CHAPTER HEADING IN CHAPTER.—The  
21 chapter heading for chapter 74 of title 18, United  
22 States Code, is amended by striking “**Partial-**  
23 **Birth Abortions**” and inserting “**Abortions**”.

24                   (2) TABLE OF CHAPTERS FOR PART I.—The  
25 item relating to chapter 74 in the table of chapters

1 at the beginning of part I of title 18, United States  
2 Code, is amended by striking “Partial-Birth Abor-  
3 tions” and inserting “Abortions”.

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