

118TH CONGRESS
1ST SESSION

H. R. 26

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.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 9, 2023

Mrs. WAGNER (for herself, Mr. SCALISE, Mrs. CAMMACK, Ms. STEFANIK, Mrs. FISCHBACH, Mrs. HINSON, Ms. SALAZAR, Ms. MALLIOTAKIS, Mrs. HARSHBARGER, Ms. LETLOW, Ms. VAN DUYN, Mrs. MILLER of West Virginia, Mrs. MCCLAIN, Ms. TENNEY, Mr. CRENSHAW, Mr. ROGERS of Alabama, Mr. COLE, Mr. WITTMAN, Mr. GROTHMAN, Mr. ADERHOLT, Mr. DUNCAN, Mr. THOMPSON of Pennsylvania, Mr. FEENSTRA, Mr. SESSIONS, Mr. MCCLINTOCK, Mr. BOST, Mr. CARL, Mr. RUTHERFORD, Mr. GIMENEZ, Mr. FINSTAD, Mr. PFLUGER, Mr. TIFFANY, Mr. PALMER, Mr. TONY GONZALES of Texas, Mr. RESCHENTHALER, Mr. LATURNER, Mr. BERGMAN, Mr. JACKSON of Texas, Mr. JOYCE of Pennsylvania, Mr. MEUSER, Mr. MOONEY, Mrs. HOUCHIN, Mr. DIAZ-BALART, Mr. BUCK, Mr. FULCHER, Mr. HUDSON, Mr. MURPHY, Mr. WENSTRUP, Mr. BARR, Mr. GUTHRIE, Mr. LAHOOD, Mr. BIGGS, Mr. BUCHANAN, Mr. STRONG, Mr. BISHOP of North Carolina, Mr. BUCSHON, Mr. BURCHETT, Mr. FLEISCHMANN, Mr. ALLEN, Mr. SMITH of Nebraska, Mr. POSEY, Mr. GOODEN of Texas, Mr. MANN, Mr. GUEST, Mr. CLYDE, Mr. MOORE of Utah, Mr. KUSTOFF, Mr. GREEN of Tennessee, Mr. WEBSTER of Florida, Mr. NEWHOUSE, Mr. CLOUD, Mr. JOHNSON of Louisiana, Mr. STAUBER, Mr. SELF, Mr. SMITH of New Jersey, Mr. MAST, Mr. HIGGINS of Louisiana, Mr. CLINE, Mr. ELLZEY, Mr. AUSTIN SCOTT of Georgia, Mr. JOHNSON of Ohio, Mr. MOOLENAAR, Mr. TIMMONS, Mr. LATTA, Mr. SMITH of Missouri, Mr. ARRINGTON, Mrs. LESKO, Mr. HUIZENGA, Mr. GRAVES of Louisiana, Mr. PERRY, Mr. BALDERSON, Mrs. GREENE of Georgia, Mr. PENCE, Mr. BURGESS, Mr. WOMACK, Mr. GOOD of Virginia, Mr. VAN DREW, Mr. ESTES, Mr. SMUCKER, Mr. DAVIDSON, Mr. FITZGERALD, Mr. BILIRAKIS, Mr. BANKS, Mr. HERN, Mr. WEBER of Texas, Mr. WALTZ, Mr. KELLY of Pennsylvania, Mr. CARTER of Georgia, Mr. BABIN, Mr. ISSA, Mr. ROSE, Mr. LUETKEMEYER, Mr. GALLAGHER, Mr. SCHWEIKERT, Mr. VALADAO, Mr. WALBERG, Mr. FALLON, Mr. CURTIS, Mr. JOYCE of Ohio, Mrs. BICE, Mr. FERGUSON, Mr. GAETZ, Mr. SIMPSON, Mr. HARRIS, Mr. AMODEI, Mr. LUCAS, Mrs. KIM of California, Ms. FOXX, Mr. CALVERT, Mr. WILSON of South Carolina, Mr. EZELL, Mr.

LANGWORTHY, Mr. FRY, Mr. WILLIAMS of Texas, Mr. ARMSTRONG, Mrs. MILLER of Illinois, Mr. STEUBE, Mr. GRAVES of Missouri, Mr. ROSENDALE, Mr. GARBARINO, Mr. BACON, Mrs. SPARTZ, Mr. WESTERMAN, Mr. MCHENRY, Ms. MACE, Mr. MOORE of Alabama, Mrs. BOEBERT, Mr. BRECHEEN, Mr. TURNER, and Mr. COMER) introduced the following bill; which was referred to the Committee on the Judiciary

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
 10 under the laws of the United States, and entitled to
 11 all the protections of such laws.

12 (2) Any infant born alive after an abortion or
 13 within a hospital, clinic, or other facility has the
 14 same claim to the protection of the law that would
 15 arise for any newborn, or for any person who comes
 16 to a hospital, clinic, or other facility for screening

1 and treatment or otherwise becomes a patient within
2 its care.

3 (b) CONSTITUTIONAL AUTHORITY.—In accordance
4 with the above findings, Congress enacts the following
5 pursuant to Congress’ power under—

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

9 (2) section 8 of article I to make all laws nec-
10 essary and proper for carrying into execution the
11 powers vested by the Constitution of the United
12 States, including the power to regulate commerce
13 under clause 3 of such section.

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

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

19 **“§ 1532. Requirements pertaining to born-alive abor-**
20 **tion survivors**

21 **“(a) REQUIREMENTS FOR HEALTH CARE PRACTI-**
22 **TIONERS.—**In the case of an abortion or attempted abor-
23 tion that results in a child born alive (as defined in section
24 8 of title 1, United States Code (commonly known as the
25 ‘Born-Alive Infants Protection Act’)):

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

5 “(A) exercise the same degree of profes-
6 sional skill, care, and diligence to preserve the
7 life and health of the child as a reasonably dili-
8 gent and conscientious health care practitioner
9 would render to any other child born alive at
10 the same gestational age; and

11 “(B) following the exercise of skill, care,
12 and diligence required under subparagraph (A),
13 ensure that the child born alive is immediately
14 transported and admitted to a hospital.

15 “(2) MANDATORY REPORTING OF VIOLA-
16 TIONS.—A health care practitioner or any employee
17 of a hospital, a physician’s office, or an abortion
18 clinic who has knowledge of a failure to comply with
19 the requirements of paragraph (1) shall immediately
20 report the failure to an appropriate State or Federal
21 law enforcement agency, or to both.

22 “(b) PENALTIES.—

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

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

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

12 “(d) CIVIL REMEDIES.—

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

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

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

1 “(B) statutory damages equal to 3 times
2 the cost of the abortion or attempted abortion;
3 and

4 “(C) punitive damages.

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

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

15 “(e) DEFINITIONS.—In this section the following
16 definitions apply:

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

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

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

1 “(i) after viability, to produce a live
2 birth and preserve the life and health of
3 the child born alive; or

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

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

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

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

14 (c) CHAPTER HEADING AMENDMENTS.—

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

19 (2) TABLE OF CHAPTERS FOR PART I.—The
20 item relating to chapter 74 in the table of chapters
21 at the beginning of part I of title 18, United States
22 Code, is amended by striking “Partial-Birth Abor-
23 tions” and inserting “Abortions”.

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