

## Calendar No. 2

118TH CONGRESS  
1ST SESSION

# H. R. 26

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IN THE SENATE OF THE UNITED STATES

JANUARY 23 (legislative day, JANUARY 3), 2023

Received; read the first time

JANUARY 25, 2023

Read the second time and placed on the calendar

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## AN ACT

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:

1           (1) If an abortion results in the live birth of an  
2           infant, the infant is a legal person for all purposes  
3           under the laws of the United States, and entitled to  
4           all the protections of such laws.

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

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

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

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

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

24           (a) REQUIREMENTS PERTAINING TO BORN-ALIVE  
25 ABORTION SURVIVORS.—Chapter 74 of title 18, United

1 States Code, is amended by inserting after section 1531  
2 the following:

3 **“§ 1532. Requirements pertaining to born-alive abor-**  
4 **tion survivors**

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

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

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

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

24 “(2) MANDATORY REPORTING OF VIOLA-  
25 TIONS.—A health care practitioner or any employee

1 of a hospital, a physician's office, or an abortion  
2 clinic who has knowledge of a failure to comply with  
3 the requirements of paragraph (1) shall immediately  
4 report the failure to an appropriate State or Federal  
5 law enforcement agency, or to both.

6 “(b) PENALTIES.—

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

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

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

21 “(d) CIVIL REMEDIES.—

22 “(1) CIVIL ACTION BY A WOMAN ON WHOM AN  
23 ABORTION IS PERFORMED.—If a child is born alive  
24 and there is a violation of subsection (a), the woman  
25 upon whom the abortion was performed or at-

1       tempted may, in a civil action against any person  
2       who committed the violation, obtain appropriate re-  
3       lief.

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

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

9                       “(B) statutory damages equal to 3 times  
10      the cost of the abortion or attempted abortion;  
11      and

12                      “(C) punitive damages.

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

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

23               “(e) DEFINITIONS.—In this section the following  
24      definitions apply:

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

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

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

9                           “(i) after viability, to produce a live  
10                          birth and preserve the life and health of  
11                          the child born alive; or

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

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

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

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

22           (c) CHAPTER HEADING AMENDMENTS.—

23                   (1) CHAPTER HEADING IN CHAPTER.—The  
24                   chapter heading for chapter 74 of title 18, United

1 States Code, is amended by striking “**Partial-**  
2 **Birth Abortions**” and inserting “**Abortions**”.

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

Passed the House of Representatives January 11,  
2023.

Attest: CHERYL L. JOHNSON,  
*Clerk.*

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