

115TH CONGRESS
1ST SESSION

H. R. 37

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 3, 2017

Mr. FRANKS of Arizona 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.**

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

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

17 **“§ 1532. Requirements pertaining to born-alive abor-**
 18 **tion survivors**

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

24 “(1) DEGREE OF CARE REQUIRED; IMMEDIATE
 25 ADMISSION TO A HOSPITAL.—Any health care practi-

1 tioner present at the time the child is born alive
2 shall—

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

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

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

20 “(b) PENALTIES.—

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

24 “(2) INTENTIONAL KILLING OF CHILD BORN
25 ALIVE.—Whoever intentionally performs or attempts

1 to perform an overt act that kills a child born alive
2 described under subsection (a), shall be punished as
3 under section 1111 of this title for intentionally kill-
4 ing or attempting to kill a human being.

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

10 “(d) CIVIL REMEDIES.—

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

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

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

23 “(B) statutory damages equal to 3 times
24 the cost of the abortion or attempted abortion;
25 and

1 “(C) punitive damages.

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

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

12 “(e) DEFINITIONS.—In this section the following
13 definitions apply:

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

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

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

22 “(i) after viability, to produce a live
23 birth and preserve the life and health of
24 the child born alive; or

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

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

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

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

10 (c) CHAPTER HEADING AMENDMENTS.—

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

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

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