

115TH CONGRESS  
1ST SESSION

# H. R. 4712

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

DECEMBER 21, 2017

Mrs. BLACKBURN (for herself, Mr. ABRAHAM, Mr. ADERHOLT, Mr. ARRINGTON, Mr. BABIN, Mr. BACON, Mr. BANKS of Indiana, Mr. BARLETTA, Mr. BOST, Mr. BRADY of Texas, Mr. CHABOT, Mr. COLLINS of New York, Mr. COLLINS of Georgia, Mr. CONAWAY, Mr. CRAMER, Mr. DAVIDSON, Mr. DUNCAN of South Carolina, Mr. FLORES, Ms. FOXX, Mr. GIBBS, Mr. GOODLATTE, Mr. GOSAR, Mr. HARRIS, Mr. JODY B. HICE of Georgia, Mr. HUDSON, Mr. HUIZENGA, Mr. JOHNSON of Ohio, Mr. JONES, Mr. JORDAN, Mr. JOYCE of Ohio, Mr. KELLY of Pennsylvania, Mr. LAMBORN, Mr. LUETKEMEYER, Mr. MARSHALL, Mr. MITCHELL, Mr. MULLIN, Mrs. NOEM, Mr. NORMAN, Mr. OLSON, Mr. PALAZZO, Mr. PITTENGER, Mr. ROE of Tennessee, Mr. ROKITA, Mr. ROSKAM, Mr. ROTHFUS, Mr. SMITH of New Jersey, Mr. STEWART, Mrs. WAGNER, Mr. WALKER, Mrs. WALORSKI, Mr. WEBER of Texas, Mr. WEBSTER of Florida, Mr. WILSON of South Carolina, Mr. WITTMAN, Mr. YODER, Mr. MOOLENAAR, and Mr. EMMER) 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.**

7       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  
17      and treatment or otherwise becomes a patient within  
18      its care.

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

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