

116TH CONGRESS
1ST SESSION

H. R. 962

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

FEBRUARY 5, 2019

Mrs. WAGNER (for herself, Mr. BABIN, Mr. BACON, Mr. BANKS, Mr. BOST, Mr. COLLINS of New York, Mr. COLLINS of Georgia, Mr. DAVIDSON of Ohio, Mr. DUNCAN, Mr. EMMER, Mr. GIBBS, Mr. GOSAR, Mr. HUIZENGA, Mr. JOHNSON of Ohio, Mr. KELLY of Pennsylvania, Mr. LAMBORN, Mr. MOONEY of West Virginia, Mr. MULLIN, Mr. NORMAN, Mr. DAVID P. ROE of Tennessee, Mr. STEWART, Mr. WALKER, Mrs. WALORSKI, Mr. WEBER of Texas, Mr. WITTMAN, Mr. LATTA, Mr. ALLEN, Mr. GREEN of Tennessee, Mr. GIANFORTE, Mr. ROY, Mr. BARR, Mr. WALBERG, Ms. CHENEY, Mr. JOHNSON of Louisiana, Mr. JOYCE of Pennsylvania, Mr. CHABOT, Ms. FOXX of North Carolina, Mr. ABRAHAM, Mr. MARSHALL, Mr. STAUBER, Mr. FERGUSON, Mr. SMUCKER, Mr. HICE of Georgia, Mr. HARRIS, Mr. SCALISE, Mr. MCCARTHY, Mr. JORDAN, Mr. RATCLIFFE, and Mr. TIMMONS) 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,*

1 **SECTION 1. SHORT TITLE.**

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

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

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

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

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

17 (b) CONSTITUTIONAL AUTHORITY.—In accordance
18 with the above findings, Congress enacts the following
19 pursuant to Congress’ power under—

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

23 (2) section 8 of article I to make all laws nec-
24 essary and proper for carrying into execution the
25 powers vested by the Constitution of the United

1 States, including the power to regulate commerce
2 under clause 3 of such section.

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

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

8 **“§ 1532. Requirements pertaining to born-alive abor-**
9 **tion survivors**

10 “(a) REQUIREMENTS FOR HEALTH CARE PRACTI-
11 TIONERS.—In the case of an abortion or attempted abor-
12 tion that results in a child born alive (as defined in section
13 8 of title 1, United States Code (commonly known as the
14 ‘Born-Alive Infants Protection Act’)):

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

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

1 “(B) following the exercise of skill, care,
2 and diligence required under subparagraph (A),
3 ensure that the child born alive is immediately
4 transported and admitted to a hospital.

5 “(2) MANDATORY REPORTING OF VIOLA-
6 TIONS.—A health care practitioner or any employee
7 of a hospital, a physician’s office, or an abortion
8 clinic who has knowledge of a failure to comply with
9 the requirements of paragraph (1) shall immediately
10 report the failure to an appropriate State or Federal
11 law enforcement agency, or to both.

12 “(b) PENALTIES.—

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

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

22 “(c) BAR TO PROSECUTION.—The mother of a child
23 born alive described under subsection (a) may not be pros-
24 ecuted under this section, for conspiracy to violate this

1 section, or for an offense under section 3 or 4 of this title
2 based on such a violation.

3 “(d) CIVIL REMEDIES.—

4 “(1) CIVIL ACTION BY A WOMAN ON WHOM AN
5 ABORTION IS PERFORMED.—If a child is born alive
6 and there is a violation of subsection (a), the woman
7 upon whom the abortion was performed or at-
8 tempted may, in a civil action against any person
9 who committed the violation, obtain appropriate re-
10 lief.

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

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

16 “(B) statutory damages equal to 3 times
17 the cost of the abortion or attempted abortion;
18 and

19 “(C) punitive damages.

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

24 “(4) ATTORNEY’S FEE FOR DEFENDANT.—If a
25 defendant in a civil action under this subsection pre-

1 vails and the court finds that the plaintiff's suit was
2 frivolous, the court shall award a reasonable attor-
3 ney's fee in favor of the defendant against the plain-
4 tiff.

5 “(e) DEFINITIONS.—In this section the following
6 definitions apply:

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

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

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

15 “(i) after viability, to produce a live
16 birth and preserve the life and health of
17 the child born alive; or

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

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

24 (b) CLERICAL AMENDMENT.—The table of sections
25 for chapter 74 of title 18, United States Code, is amended

1 by inserting after the item pertaining to section 1531 the
2 following:

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

3 (c) CHAPTER HEADING AMENDMENTS.—

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

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

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