

118TH CONGRESS
1ST SESSION

S. 204

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 SENATE OF THE UNITED STATES

FEBRUARY 1, 2023

Mr. THUNE (for himself, Mr. LANKFORD, Mr. COTTON, Mrs. HYDE-SMITH, Mr. JOHNSON, Mr. SULLIVAN, Mr. RUBIO, Mr. BARRASSO, Mr. RISCH, Mr. MARSHALL, and Mr. MORAN) introduced the following bill; which was read twice and 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 the following:

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:

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

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

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

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

18 “(b) PENALTIES.—

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

22 “(2) INTENTIONAL KILLING OF CHILD BORN
23 ALIVE.—Whoever intentionally performs or attempts
24 to perform an overt act that kills a child born alive
25 described under subsection (a), shall be punished as

1 under section 1111 of this title for intentionally kill-
2 ing or attempting to kill a human being.

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

9 “(d) CIVIL REMEDIES.—

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

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

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

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

25 “(C) punitive damages.

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

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

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

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

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

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

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

24 “(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 “(3) BORN ALIVE.—The term ‘born alive’ has
7 the meaning given that term in section 8 of title 1,
8 United States Code (commonly known as the ‘Born-
9 Alive Infants Protection Act’).”.

10 (b) CONFORMING AMENDMENTS.—

11 (1) The table of sections for chapter 74 of title
12 18, United States Code, is amended by adding at
13 the end the following:

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

14 (2) The chapter heading for chapter 74 of title
15 18, United States Code, is amended by striking
16 “**PARTIAL-BIRTH ABORTIONS**” and insert-
17 ing “**ABORTIONS**”.

18 (3) The table of chapters for part I of title 18,
19 United States Code, is amended by striking the item
20 relating to chapter 74 and inserting the following:

 “**74. Abortion 1531**”.

21 **SEC. 4. EFFECTIVE DATE.**

22 This Act shall take effect one day after the date of
23 enactment.

