

116TH CONGRESS
2D SESSION

H. R. 8923

To amend title 18, United States Code, to ensure a health care practitioner exercises the proper degree of care in the case of a child who survives an abortion or attempted abortion.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 9, 2020

Ms. GABBARD introduced the following bill; which was referred to the
Committee on the Judiciary

A BILL

To amend title 18, United States Code, to ensure a health care practitioner exercises 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 “Protection of Born-
5 Alive Abortion Survivors Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

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

6 (2) Any infant born alive after an abortion has
 7 the same claim to the protection of the law that
 8 would arise for any newborn, or for any person who
 9 comes to a hospital, clinic, or other facility for
 10 screening and treatment or otherwise becomes a pa-
 11 tient within 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.—Any health
 23 care practitioner present at the time the child is
 24 born alive shall exercise the same degree of profes-
 25 sional skill, care, and diligence to preserve the life

1 and health of the child as a reasonably diligent and
2 conscientious health care practitioner would render
3 to any other child born alive at the same gestational
4 age, ensuring the child is receiving the best available
5 care.

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

13 “(b) PENALTIES.—

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

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

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

1 this section, a conspiracy to violate this section, or an of-
2 fense under section 3 or 4 of this title based on such a
3 violation.

4 “(d) CIVIL REMEDIES.—

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

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

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

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

20 “(C) punitive damages.

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

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

7 “(e) DEFINITIONS.—In this section the following
8 definitions apply:

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

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

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

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

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

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

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

5 (b) CONFORMING AMENDMENTS.—

6 (1) The table of sections for chapter 74 of title
 7 18, United States Code, is amended by adding at
 8 the end the following:

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

9 (2) The chapter heading for chapter 74 of title
 10 18, United States Code, is amended by striking
 11 “**PARTIAL-BIRTH ABORTIONS**” and insert-
 12 ing “**ABORTIONS**”.

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

“74. Abortions 1531”.

16 **SEC. 4. EFFECTIVE DATE.**

17 This Act shall take effect one day after the date of
 18 enactment.

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