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

SEPTEMBER 15, 2015

Mr. FRANKS of Arizona (for himself, Mr. FINCHER, Mr. COLLINS of Georgia, Mr. NEUGEBAUER, Mr. HUIZENGA of Michigan, Mr. PARENTHOLD, Mr. GROTHMAN, Mrs. BLACKBURN, Mr. LOUDERMILK, Mr. SHMKUS, Mr. ADERHOLT, Mr. HUDSON, Mr. PITTENGER, Mr. STEWART, Mr. GOSAR, Mr. SMITH of Texas, Mr. BRADY of Texas, Mr. WESTMORELAND, Mr. SESSIONS, Mr. SAM JOHNSON of Texas, Mr. CHABOT, Mr. KELLY of Mississippi, Mr. ROUZER, Mrs. WAGNER, Mr. CARTER of Georgia, Mr. MULLIN, Mr. BOUSTANY, Mr. ROE of Tennessee, Mr. CRAMER, Mr. SALMON, Mr. MOONEY of West Virginia, Mrs. LOVE, Mr. GIBBS, Mr. KING of Iowa, Mr. OLSON, Mr. CARTER of Texas, Mr. PITTS, Mr. MILLER of Florida, Mr. FLORES, Mr. MEADOWS, Mr. JOHNSON of Ohio, Mr. PEARCE, Mrs. BLACK, Mr. MURPHY of Pennsylvania, Mr. STUTZMAN, Mr. KELLY of Pennsylvania, Mr. FLEMING, Mr. ROTHFUS, Mr. JOYCE, Mr. HUELSKAMP, Mr. BABIN, Mr. DESANTIS, Mr. GUTHRIE, Mr. FORTEBERRY, Mr. SMITH of Nebraska, Mr. ROONEY of Florida, Mr. CONWAY, Mrs. LUMMIS, Mr. GOWDY, Mr. YOHO, Mr. BILIRAKIS, Mr. LABRADOR, Mr. THOMPSON of Pennsylvania, Mrs. HARTZLER, Mr. SCALISE, Mr. POMPEO, Mr. KNIGHT, Mr. AUSTIN SCOTT of Georgia, Mr. YODER, Mr. NEWHOUSE, Mr. SMITH of New Jersey, Mr. CHAFFETZ, Mr. LAMHORN, Mr. LONG, Mr. ROKITA, Mr. JODY B. HICE of Georgia, Mr. BARLETTA, Mr. LIPINSKI, Mr. LUETKEMEYER, Mr. RATCLIFFE, Mr. MESSER, Mr. DUNCAN of Tennessee, and Mr. ABRAHAM) 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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

SEC. 2. FINDINGS.

Congress finds as follows:

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

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

SEC. 3. BORN-Alive INFANTS PROTECTION.

(a) REQUIREMENTS PERTAINING TO BORN-Alive ABORTION SURVIVORS.—Chapter 74 of title 18, United States Code, is amended by inserting after section 1531 the following:
§ 1532. Requirements pertaining to born-alive abortion survivors

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

(1) DEGREE OF CARE REQUIRED; IMMEDIATE ADMISSION TO A HOSPITAL.—Any health care practitioner present at the time the child is born alive shall—

(A) exercise the same degree of professional skill, care, and diligence to preserve the life and health of the child as a reasonably diligent and conscientious health care practitioner would render to any other child born alive at the same gestational age; and

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

(2) MANDATORY REPORTING OF VIOLATIONS.—A health care practitioner or any employee of a hospital, a physician’s office, or an abortion clinic who has knowledge of a failure to comply with the requirements of paragraph (1) shall immediately
report the failure to an appropriate State or Federal law enforcement agency, or to both.

“(b) Penalties.—

“(1) In general.—Whoever violates subsection (a) shall be fined under this title or imprisoned for not more than 5 years, or both.

“(2) Intentional killing of child born alive.—Whoever intentionally performs or attempts to perform an overt act that kills a child born alive described under subsection (a), shall be punished as under section 1111 of this title for intentionally killing or attempting to kill a human being.

“(c) Bar to prosecution.—The mother of a child born alive described under subsection (a) may not be prosecuted under this section, for conspiracy to violate this section, or for an offense under section 3 or 4 of this title based on such a violation.

“(d) Civil remedies.—

“(1) Civil action by a woman on whom an abortion is performed.—If a child is born alive and there is a violation of subsection (a), the woman upon whom the abortion was performed or attempted may, in a civil action against any person who committed the violation, obtain appropriate relief.
“(2) APPROPRIATE RELIEF.—Appropriate relief in a civil action under this subsection includes—

“(A) objectively verifiable money damage for all injuries, psychological and physical, occasioned by the violation of subsection (a);

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

“(C) punitive damages.

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

“(4) ATTORNEY’S FEE FOR DEFENDANT.—If a defendant in a civil action under this subsection prevails and the court finds that the plaintiff’s suit was frivolous, the court shall award a reasonable attorney’s fee in favor of the defendant against the plaintiff.

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

“(1) ABORTION.—The term ‘abortion’ means the use or prescription of any instrument, medicine, drug, or any other substance or device—
“(A) to intentionally kill the unborn child of a woman known to be pregnant; or

“(B) to intentionally terminate the pregnancy of a woman known to be pregnant, with an intention other than—

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

“(ii) to remove a dead unborn child.

“(2) ATTEMPT.—The term ‘attempt’, with respect to an abortion, means conduct that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in performing an abortion.”.

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

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