

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

S

1

SENATE BILL 405

Short Title: Born-Alive Abortion Survivors Protection Act. (Public)

Sponsors: Senators Krawiec, Barnes, and Galey (Primary Sponsors).

Referred to: Rules and Operations of the Senate

March 31, 2021

1 A BILL TO BE ENTITLED
2 AN ACT ESTABLISHING THE BORN-ALIVE ABORTION SURVIVORS PROTECTION
3 ACT.

4 The General Assembly of North Carolina enacts:

5
6 **PART I. TITLE**

7 **SECTION 1.** This act shall be known and may be cited as the "Born-Alive Abortion
8 Survivors Protection Act."

9
10 **PART II. BORN-ALIVE ABORTION SURVIVORS PROTECTION ACT**

11 **SECTION 2.(a)** Chapter 90 of the General Statutes is amended by adding a new
12 Article to read:

13 "Article 1M.

14 "Born-Alive Abortion Survivors Protection Act.

15 **"§ 90-21.140. Definitions.**

16 As used in this Article, the following definitions apply:

- 17 (1) Abortion. – As defined in G.S. 90-21.81.
18 (2) Attempt to perform an abortion. – As defined in G.S. 90-21.81.
19 (3) Born alive. – With respect to a member of the species Homo sapiens, this term
20 means the complete expulsion or extraction from his or her mother of that
21 member, at any stage of development, who after such expulsion or extraction
22 breathes or has a beating heart, pulsation of the umbilical cord, or definite
23 movement of voluntary muscles, regardless of whether the umbilical cord has
24 been cut, and regardless of whether the expulsion or extraction occurs as a
25 result of natural or induced labor, cesarean section, or induced abortion.

26 **"§ 90-21.141. Findings.**

27 The General Assembly makes the following findings:

- 28 (1) If an abortion results in the live birth of an infant, the infant is a legal person
29 for all purposes under the laws of North Carolina and entitled to all the
30 protections of such laws.
31 (2) Any infant born alive after an abortion or within a hospital, clinic, or other
32 facility has the same claim to the protection of the law that would arise for any
33 newborn, or for any person who comes to a hospital, clinic, or other facility
34 for screening and treatment or otherwise becomes a patient within its care.

35 **"§ 90-21.142. Requirements for health care practitioners.**



1 In the case of an abortion or an attempt to perform an abortion that results in a child born
2 alive, any health care practitioner present at the time the child is born alive shall do all of the
3 following:

4 (1) Exercise the same degree of professional skill, care, and diligence to preserve
5 the life and health of the child as a reasonably diligent and conscientious
6 health care practitioner would render to any other child born alive at the same
7 gestational age.

8 (2) Following the exercise of skill, care, and diligence required under subdivision
9 (1) of this section, ensure that the child born alive is immediately transported
10 and admitted to a hospital.

11 **"§ 90-21.143. Mandatory reporting of noncompliance.**

12 A health care practitioner or any employee of a hospital, a physician's office, or an abortion
13 clinic who has knowledge of a failure to comply with the requirements of G.S. 90-21.142 shall
14 immediately report the failure to comply to an appropriate State or federal law enforcement
15 agency, or both.

16 **"§ 90-21.144. Bar to prosecution of mothers of infants born alive.**

17 The mother of a child born alive may not be prosecuted for a violation of, or attempt to or
18 conspiracy to commit a violation of, G.S. 90-21.142 or G.S. 90-21.143 involving the child who
19 was born alive.

20 **"§ 90-21.145. Penalties.**

21 (a) In General. – Except as provided in subsection (b) of this section, unless the conduct
22 is covered under some other provision of law providing greater punishment, a person who
23 violates G.S. 90-21.142 or G.S. 90-21.143 is guilty of a Class 1 misdemeanor, which shall
24 include a fine of not more than two hundred fifty thousand dollars (\$250,000).

25 (b) Unlawful Killing of Child Born Alive. – Any person who intentionally performs or
26 attempts to perform an overt act that kills a child born alive shall be punished as under
27 G.S. 14-17(c) for murder.

28 **"§ 90-21.146. Civil remedies; attorneys' fees.**

29 (a) Civil Remedies. – If a child is born alive and there is a violation of this Article, a
30 claim for damages against any person who has violated a provision of this Article may be sought
31 by the woman upon whom an abortion was performed or attempted in violation of this Article.
32 A claim for damages may include any one or more of the following:

33 (1) Objectively verifiable money damage for all injuries, psychological and
34 physical, occasioned by the violation of this Article.

35 (2) Statutory damages equal to three times the cost of the abortion or attempted
36 abortion.

37 (3) Punitive damages pursuant to Chapter 1D of the General Statutes.

38 (b) Attorneys' Fees. – If judgment is rendered in favor of the plaintiff in any action
39 authorized under this section, the court shall also tax as part of the costs reasonable attorneys'
40 fees in favor of the plaintiff against the defendant. If judgment is rendered in favor of the
41 defendant and the court finds that the plaintiff's suit was frivolous or brought in bad faith, then
42 the court shall tax as part of the costs reasonable attorneys' fees in favor of the defendant against
43 the plaintiff."

44 **SECTION 2.(b)** G.S. 14-17(c) reads as rewritten:

45 "(c) For the purposes of this section, it shall constitute murder where a child is born alive
46 but (i) dies as a result of injuries inflicted prior to the child being born ~~alive~~-alive or (ii) dies as
47 a result of an intentional, overt act performed after the child is born alive. The degree of murder
48 shall be determined as described in subsections (a) and (b) of this section."

49 **SECTION 2.(c)** This section becomes effective September 1, 2021, and applies to
50 offenses committed on or after that date.
51

1 **PART III. SAVINGS CLAUSE**

2 **SECTION 3.** Prosecutions for offenses committed before the effective date of this
3 act are not abated or affected by this act, and the statutes that would be applicable but for this act
4 remain applicable to those prosecutions.

5
6 **PART IV. EFFECTIVE DATE**

7 **SECTION 4.** Except as otherwise provided, this act becomes effective September 1,
8 2021.