



SENATE BILL 405: Born-Alive Abortion Survivors Protection Act.

2021-2022 General Assembly

Committee: Senate Rules and Operations of the Senate	Date: May 5, 2021
Introduced by: Sens. Krawiec, Barnes, Galey	Prepared by: Jason Moran-Bates
Analysis of: First Edition	Committee Staff

OVERVIEW: *Senate Bill 405 would require medical providers to employ the same duty of care for children born alive after attempted abortions that they would for any other child of the same gestational age. It would also create criminal penalties for medical providers who fail to exercise that duty of care or who fail to report another medical provider's failure to employ that duty of care to the appropriate authorities. Finally, it would make civil remedies available, and clarify that an intentional, overt act that kills a child born alive after an attempted abortion is punishable as murder.*

CURRENT LAW: The deliberate killing of infants, including those who have survived an attempted abortion, is a criminal offense. While there are currently no laws requiring an affirmative duty of care to preserve the life of infants who survive attempted abortions, under G.S. 14-18, a culpably negligent act or omission that kills another human being is involuntary manslaughter and is punishable as a Class F felony.

BILL ANALYSIS:

Section 1 of the bill would add Article 1M to Chapter 90 of the General Statutes.

- **G.S. 90-21.140. Definitions** would create definitions for "abortion," "attempt to perform an abortion," and "born alive."
- **G.S. 90-21.141. Findings** would state the General Assembly finds that (1) if an abortion results in the birth of a live infant, that infant is a legal person and (2) infants born alive in a hospital, clinic, or other healthcare facilities would have the same claims to protection that any other patient at the facility would have.
- **G.S. 90-21.142. Requirements for health care practitioners** would require health care providers to exercise the same degree of care for an infant born alive after an abortion attempt that they would for any other child born alive at the same gestational age. It would also require providers to ensure that infants born alive after an abortion attempt are immediately transported to a hospital.
- **G.S. 90-21.143. Mandatory reporting of noncompliance** would require healthcare providers to report violations of G.S. 90-21.142 to the appropriate authorities.
- **G.S. 90-21.144. Bar to prosecution of mothers of infants born alive** would prohibit the prosecution of mothers of infants born alive after attempted abortions for violations of G.S. 90-21.142 and G.S. 90-21.143.
- **G.S. 90-21.145. Penalties** would make violations of G.S. 90-21.142 and G.S. 90-21.143 Class 1 misdemeanors, which would include a maximum fine of \$250,000. An overt act that kills a child born alive after an attempted abortion would be punishable as murder under G.S. 14-17(c).

Jeffrey Hudson
Director



Legislative Analysis
Division
919-733-2578

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- **G.S. 90-21.146** would allow a woman upon whom an abortion was attempted in violation of Article 1L to seek civil damages that include objectively verifiable monetary damages, statutory damages equal to three times the cost of the abortion, punitive damages, and attorneys' fees.

Section 2 would amend G.S. 14-17(c) to clarify that murder includes an intentional, overt act that kills a child born alive.

Section 3 would clarify that prosecutions for offenses committed before the act becomes effective are not abated or affected by the act.

EFFECTIVE DATE: Section 2 would become effective September 1, 2021, and apply to offenses committed on or after that date. The remainder of the act would become effective September 1, 2021.

****Jennifer Bedford of the Legislative Analysis Division substantially contributed to this summary.****