

ASSEMBLY, No. 5287

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED MAY 13, 2019

Sponsored by:

Assemblyman PARKER SPACE

District 24 (Morris, Sussex and Warren)

Assemblyman HAROLD "HAL" J. WIRTHS

District 24 (Morris, Sussex and Warren)

Assemblywoman BETTYLOU DECROCE

District 26 (Essex, Morris and Passaic)

Co-Sponsored by:

Assemblymen Auth, Dancer, Howarth, DiMaio, Peterson, Webber, Carroll, A.M.Bucco, Assemblywoman Schepisi, Assemblymen Peters, Thomson, S.Kean, Assemblywoman DiMaso, Assemblymen Clifton and DePhillips

SYNOPSIS

Establishes "New Jersey Born-Alive Abortion Survivors Protection Act."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/17/2019)

1 AN ACT concerning protections for abortion survivors and
2 supplementing Title 2C of the New Jersey Statutes.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. This act shall be known and may be cited as the “New Jersey
8 Born-Alive Abortion Survivors Protection Act.”

9

10 2. As used in this act:

11 “Abortion” means the use or prescription of any instrument,
12 medicine, drug, or any other substance, device, or method to
13 intentionally kill the unborn child of a woman known to be pregnant
14 or to intentionally terminate the pregnancy of a woman known to be
15 pregnant with an intention other than: after viability, to produce a
16 live birth and preserve the life and health of the child born alive; or
17 to remove a dead unborn child.

18 “Attempted abortion” means conduct taken by a person that the
19 person believes will constitute a substantial step in a course of
20 conduct planned to culminate in performing an abortion.

21 “Born alive,” with respect to a member of the species homo
22 sapiens, means the complete expulsion or extraction from his or her
23 mother of that member, at any stage of development, who after such
24 expulsion or extraction breathes or has a beating heart, pulsation of
25 the umbilical cord, or definite movement of voluntary muscles,
26 regardless of whether the umbilical cord has been cut, and
27 regardless of whether the expulsion or extraction occurs as a result
28 of natural or induced labor, cesarean section, or induced abortion.

29 “Health care professional” means an individual licensed by this
30 State to administer health care in the ordinary course of business or
31 practice of a profession.

32

33 3. The Legislature finds and declares that:

34 a. If an abortion or attempted abortion results in the live birth
35 of an infant, the infant is a legal person for all purposes under the
36 laws of New Jersey, and is entitled to all protections afforded under
37 State law.

38 b. Any infant born alive after an abortion or within a licensed
39 hospital, clinic or other facility, including a licensed ambulatory
40 care facility, has an identical claim to the protection of the law that
41 would arise for any newborn, or for any person who comes to a
42 licensed hospital, clinic, or other facility, including a licensed
43 ambulatory care facility, for screening and treatment or otherwise
44 becomes a patient within its care.

45

46 4. a. (1) If an abortion or attempted abortion results in a child
47 born alive, any health care professional present at the time the child
48 is born alive shall exercise the same degree of professional skill,

1 care, and diligence to preserve the life and health of the child as a
2 reasonably diligent and conscientious health care professional
3 would render to any other child born alive at the same gestational
4 age, and ensure that the child is immediately transported and
5 admitted to a hospital for treatment. A person who violates the
6 provisions of this paragraph shall be guilty of a crime of the third
7 degree. A crime of the third degree is punishable by three to five
8 years imprisonment, a fine of up to \$15,000, or both.

9 (2) A person who intentionally performs or attempts to perform
10 an overt act that kills a child born alive following an abortion or
11 attempted abortion shall be guilty of violating N.J.S.2C:11-3. A
12 violation of N.J.S.2C:11-3 is punishable by 30 years to life
13 imprisonment.

14 b. A health care professional and any employee of a hospital,
15 physician's office, an abortion clinic, or any licensed facility who
16 has knowledge of a failure to comply with the requirements of this
17 act shall immediately report the failure to an appropriate State or
18 federal law enforcement agency or both. A person who violates this
19 subsection shall be guilty of a crime of the fourth degree. A crime of
20 the fourth degree is punishable by imprisonment for up to 18
21 months, a fine of up to \$10,000, or both.

22 c. The mother of a child born alive following an abortion or
23 attempted abortion as provided in paragraph (1) of subsection a. of
24 this section, shall not be guilty of conspiracy to commit a crime
25 under the provision of this act.

26 d. The mother of a child born alive following an abortion or
27 attempted abortion as provided in paragraph (1) of subsection a. of
28 this section may bring a civil action against any violator of the
29 provisions of this act for damages, including actual damages,
30 equitable relief, and reasonable attorney's fees and court costs.
31 Punitive damages may be awarded when the violation evidences
32 wantonly reckless or intentionally malicious conduct by the person
33 or entity who committed the violation.

34
35 5. This act shall take effect immediately.
36
37

38 STATEMENT

39
40 This bill establishes the "New Jersey Born-Alive Abortion
41 Survivors Protection Act."

42 Under the bill, if an abortion or attempted abortion results in a
43 child born alive, any health care professional present at the time the
44 child is born alive is to exercise the same degree of professional
45 skill, care, and diligence to preserve the life and health of the child
46 as a reasonably diligent and conscientious health care professional
47 would render to any other child born alive at the same gestational
48 age, and ensure that the child is immediately transported and

1 admitted to a hospital for treatment. A person who violates the
2 above provisions is to be guilty of a crime of the third degree. A
3 crime of the third degree is punishable by three to five years
4 imprisonment, a fine of up to \$15,000, or both.

5 Under the bill, “born alive,” with respect to a member of the
6 species homo sapiens, means the complete expulsion or extraction
7 from his or her mother of that member, at any stage of development,
8 who after such expulsion or extraction breathes or has a beating
9 heart, pulsation of the umbilical cord, or definite movement of
10 voluntary muscles, regardless of whether the umbilical cord has
11 been cut, and regardless of whether the expulsion or extraction
12 occurs as a result of natural or induced labor, cesarean section, or
13 induced abortion.

14 The bill provides that a person who intentionally performs or
15 attempts to perform an overt act that kills a child born alive
16 following an abortion or attempted abortion is to be guilty of
17 violating N.J.S.2C:11-3. A violation of N.J.S.2C:11-3 is punishable
18 by 30 years to life imprisonment.

19 Under the bill, a health care professional and any employee who
20 has knowledge of a failure to comply with the requirements of this
21 bill’s provisions is to immediately report the failure to an
22 appropriate State or federal law enforcement agency or both or be
23 guilty of a crime of the fourth degree. A crime of the fourth degree is
24 punishable by imprisonment for up to 18 months, a fine of up to
25 \$10,000, or both.

26 The bill provides that the mother of a child born alive following
27 an abortion or attempted abortion is not to be guilty of conspiracy to
28 commit a crime under the bill’s provisions. Further, the mother of
29 the child born alive may bring a civil action for damages against
30 any violator of the provisions of this bill.