SENATE, No. 462

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:
Senator MICHAEL J. DOHERTY
District 23 (Hunterdon, Somerset and Warren)

Co-Sponsored by:
Senators Oroho, Pennacchio and A.M.Bucco

SYNOPSIS

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

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

(Sponsorship Updated As Of: 3/5/2020)

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

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

1. This act shall be known and may be cited as the "New Jersey Born-Alive Abortion Survivors Protection Act.''

2. As used in this act:

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

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

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

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

3. The Legislature finds and declares that:

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

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

4. a. (1) If an abortion or attempted abortion results in a child born alive, any health care professional present at the time the child is born alive shall 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 professional would render to any other child born alive at the same gestational age, and ensure that the child is immediately transported and admitted to a hospital for treatment. A person who violates the provisions of this paragraph shall be guilty of a crime of the third degree. A crime of the third degree is punishable by three to five years imprisonment, a fine of up to $15,000, or both.

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

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

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

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

5. This act shall take effect immediately.

STATEMENT

This bill establishes the "New Jersey Born-Alive Abortion Survivors Protection Act.''

Under the bill, if an abortion or attempted abortion results in a child born alive, any health care professional present at the time the child is born alive is to 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 professional would render to any other child born alive at the same gestational age, and ensure that the child is immediately transported and

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

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

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

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

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