

# STATE OF NEW YORK

3601

2023-2024 Regular Sessions

## IN ASSEMBLY

February 3, 2023

Introduced by M. of A. MANKTELOW, DeSTEFANO, MORINELLO, BLANKENBUSH, FITZPATRICK, MILLER, BRABENEC, DiPIETRO, REILLY, BYRNES, McDONOUGH, SMITH, MIKULIN, HAWLEY, SMULLEN -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to establishing the born alive abortion survivors' protection act

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The public health law is amended by adding a new section  
2 2599-bb-1 to read as follows:

3 § 2599-bb-1. The born alive abortion survivors' protection act. 1.  
4 Any health care practitioner present at the time the child is born alive  
5 during an abortion or attempted abortion procedure shall:

6 (a) exercise the same degree of professional skill, care, and dili-  
7 gence to preserve the life and health of the child as a reasonably dili-  
8 gent and conscientious health care practitioner would render to any  
9 other child born alive at the same gestational age; and

10 (b) following the exercise of skill, care, and diligence required  
11 under paragraph (a) of this subdivision, ensure that the child born  
12 alive is immediately transported and admitted to a hospital.

13 2. A health care practitioner licensed, certified, or authorized under  
14 title eight of the education law, acting within his or her lawful scope  
15 of practice, who has knowledge of a failure to comply with the require-  
16 ments of subdivision one of this section shall immediately report the  
17 failure to an appropriate state or federal law enforcement agency, or to  
18 both.

19 A violation of this subdivision is a class A misdemeanor.

20 3. An individual that intentionally performs or attempts to perform an  
21 overt act that kills a child born alive described under paragraph (a) of  
22 subdivision one of this section, shall be guilty under section 125.25 or

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 110.05 of the penal law for intentionally killing or attempting to kill  
2 a human being.

3 4. The mother of a child born alive described under subdivision one of  
4 this section may not be prosecuted for a violation of this section, an  
5 attempt to violate this section, a conspiracy to violate this section,  
6 or an offense under subdivision two or three of this section based on  
7 such a violation.

8 5. If a child is born alive and there is a violation of subdivision  
9 one of this section, the mother of the child born alive upon whom the  
10 abortion was performed or attempted may, in a civil action against any  
11 person who committed the violation, obtain appropriate relief, which  
12 shall include:

13 (a) actual money damage for all injuries, psychological and physical,  
14 caused by the violation of subdivision one of this section:

15 (b) statutory damages equal to three times the cost of the abortion or  
16 attempted abortion; and

17 (c) punitive damages.

18 6. If judgment is rendered in favor of the plaintiff in any action  
19 authorized under this section, the court shall also award, as part of  
20 the costs, reasonable attorneys' fees in favor of the plaintiff against  
21 the defendant. If judgment is rendered in favor of the defendant and the  
22 court finds that the plaintiff's suit was frivolous or brought in bad  
23 faith, then the court shall award, as part of the costs, reasonable  
24 attorneys' fees in favor of the defendant against the plaintiff.

25 7. As used in this section:

26 (a) "attempt" means with respect to an abortion, conduct that, under  
27 the circumstances as the actor believes them to be, constitutes a  
28 substantial step in a course of conduct planned to culminate in perform-  
29 ing an abortion.

30 (b) "born alive" has the same meaning as defined in section eight of  
31 title one of the United States Code.

32 § 2. This act shall take effect immediately.