



# SENATE BILL 359: Born-Alive Abortion Survivors Protection Act.

2019-2020 General Assembly

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**Committee:**

**Introduced by:** Sens. Krawiec, Hise, Harrington

**Analysis of:** Ratified

**Date:**

April 30, 2019

**Prepared by:**

Jennifer H. Bedford  
Staff Attorney

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**OVERVIEW:** *Senate Bill 359 would:*

- *Mandate reporting of a medical practitioner who failed to provide care.*
- *Require care by a medical practitioner for a child born alive despite an abortion.*
- *Create two new Class D felonies for violations of the Article.*
- *Create a bar to prosecution of the woman whose child was not cared for.*
- *Create civil penalties for the woman whose child was not cared for.*
- *Amend the current murder statute.*

[As introduced, this bill was identical to H602, as introduced by Reps. McElraft, Conrad, Stevens, Hurley, which is currently in House Health.]

**CURRENT LAW:**

Abortion An abortion is lawful during the first 20 weeks without a medical emergency, and after the first 20 weeks with a determination of a medical emergency. (G. S. 14-45.1)

Death of an unborn child It is a Class D felony to unlawfully cause the death of an unborn child. (G. S. 14-23.1)

Involuntary manslaughter It is a Class F felony to kill another human being by a culpably negligent act or omission. (G. S. 14-18)

Second degree murder It is a Class B2 felony to kill a child born alive, with malice. (G. S. 14-17)

First degree murder It is a Class A felony to kill a child that is born alive, with malice and a specific intent to kill formed after premeditation and deliberation. (G. S. 14-17)

\*It is murder if the child is born alive but dies as the result of injuries inflicted prior to the child being born alive.

**BILL ANALYSIS:**

**Section 1 of Senate Bill 359 would:**

- Add an Article to Chapter 90 of the General Statutes.
- Define terms.
- Publish findings by the General Assembly.
- Require a healthcare practitioner to care for a child born alive despite an abortion.
- Create a Class D felony with a fine of up to \$250,000 for violation of a healthcare practitioner's duty to provide care to a child born alive despite an abortion.
- Require certain people to report a healthcare practitioner who does not care for a child born alive.

Karen Cochrane-Brown  
Director



Legislative Analysis  
Division  
919-733-2578

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- Create a Class D felony with a fine of up to \$250,000 for violation of the requirement to report a healthcare practitioner's failure to provide care to a child despite an abortion.
- Bar prosecution of a mother for not providing medical care or reporting a lack of medical care for a child born alive despite an abortion.
- Create a civil claim for a woman whose child was born alive despite an abortion and the healthcare provider failed to provide care, and if care was not provided and it was not reported by someone required to report.

**Section 2 of Senate Bill 359** would amend the existing murder statute to include "an intentional, overt act performed after the child is born alive".

**Section 3 of Senate Bill 359** would clarify that prosecutions for offenses committed before the act becomes effected are not abated or affected by the act.

**EFFECTIVE DATE:** Section 2 would become effective December 1, 2019, and apply to offenses committed on or after that date. The remainder of the act would become effective December 1, 2019.