

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 37

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

INTRODUCED BY

Rod Montoya and David M. Gallegos and  
Rick Little and Yvette Herrell

AN ACT

RELATING TO CHILDBIRTH; REQUIRING MEDICAL CARE FOR ALL INFANTS  
WHO ARE BORN ALIVE; DEFINING "BORN ALIVE" AND "INFANT";  
MANDATING REPORTING; ENACTING PENALTIES; ENACTING CIVIL  
REMEDIES; CREATING THE TASK FORCE TO MONITOR BORN ALIVE BIRTHS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** [NEW MATERIAL] DEFINITIONS.--For the purposes  
of Sections 1 through 6 of this act:

A. "born alive" or "live birth" means the birth of  
an infant who, whether or not the umbilical cord has been cut  
or the placenta is attached, and regardless of whether the  
expulsion or extraction occurs as a result of natural or  
induced labor, cesarean section or induced abortion, shows any  
evidence of life, including:

- (1) breathing;

underscoring material = new  
~~[bracketed material] = delete~~

underscored material = new  
[bracketed material] = delete

- 1 (2) a heartbeat;
- 2 (3) umbilical cord pulsation; or
- 3 (4) definite movement of voluntary muscles;

4 and

5 B. "infant" means a child who has been completely  
6 expelled or extracted from the child's mother, regardless of  
7 the stage of gestational development.

8 SECTION 2. [NEW MATERIAL] REQUIREMENTS AND  
9 RESPONSIBILITIES.--

10 A. A person shall not deny or deprive an infant of  
11 nourishment with the intent to cause or allow the death of the  
12 infant for any reason when the infant is born alive by natural  
13 or artificial means.

14 B. A person shall not deprive an infant who is born  
15 alive of medically appropriate and reasonable medical care and  
16 treatment or surgical care.

17 C. The requirements of this section shall not be  
18 construed to prevent an infant's parent or guardian from  
19 refusing to give consent to medical treatment or surgical care  
20 that is not medically necessary or reasonable, including care  
21 or treatment that:

22 (1) is not necessary to save the life of the  
23 infant;

24 (2) has a potential risk to the infant's life  
25 or health that outweighs the potential benefit to the infant of

underscoring material = new  
~~[bracketed material]~~ = delete

1 the treatment or care; or

2 (3) will do no more than temporarily prolong  
3 the act of dying when death is imminent.

4 D. A physician attempting to perform an abortion  
5 shall take all medically appropriate and reasonable steps to  
6 preserve the life and health of a born alive infant. If an  
7 attempt to perform an abortion performed in a hospital results  
8 in a live birth, the physician attending shall provide  
9 immediate medical care to the infant, inform the mother of the  
10 live birth and request transfer of the infant to an on-duty  
11 resident or emergency care physician who shall provide  
12 medically appropriate and reasonable medical care and treatment  
13 to the infant. If an attempt to perform an abortion performed  
14 in a facility other than a hospital results in a live birth, a  
15 physician attending the abortion shall provide immediate  
16 medical care to the infant and call the 911 emergency response  
17 system for an emergency transfer of the infant to a hospital  
18 that shall provide medically appropriate and reasonable care  
19 and treatment to the infant.

20 E. If the physician described in Subsection D of  
21 this section is unable to perform the duties outlined in that  
22 subsection because the physician is assisting the woman on whom  
23 the abortion was to be performed, an attending physician's  
24 assistant, nurse or other health care provider shall assume the  
25 duties outlined in Subsection D of this section.

205443.1

underscored material = new  
[bracketed material] = delete

1           F. Any born alive infant, including one born in the  
2 course of an abortion procedure, shall be treated as a legal  
3 person under state law, with the same rights to medically  
4 appropriate and reasonable care and treatment. Birth and, if  
5 necessary, death certificates shall be issued according to  
6 state law.

7           G. No person may use any born alive infant for any  
8 type of scientific research or other kind of experimentation  
9 except as necessary to protect or preserve the life and health  
10 of the born alive infant.

11           **SECTION 3. [NEW MATERIAL] MANDATORY REPORTING OF**  
12 **VIOLATIONS.--**A health care practitioner or any employee of a  
13 hospital, a physician's office or an abortion clinic who has  
14 knowledge of a failure to comply with the provisions of Section  
15 2 of this act shall immediately report the failure to an  
16 appropriate state or federal law enforcement agency, or to  
17 both.

18           **SECTION 4. [NEW MATERIAL] CRIMINAL PENALTIES.--**

19           A. Whoever intentionally performs an overt act that  
20 kills a born alive infant is guilty of a first degree felony  
21 resulting in the death of a child and shall be sentenced upon  
22 conviction pursuant to the provisions of Section 31-18-15 NMSA  
23 1978.

24           B. Whoever intentionally attempts to perform an  
25 overt act to kill a born alive infant is guilty of a second

underscored material = new  
~~[bracketed material] = delete~~

1 degree felony and shall be sentenced upon conviction pursuant  
2 to the provisions of Section 31-18-15 NMSA 1978.

3 SECTION 5. [NEW MATERIAL] CIVIL REMEDIES.--If a child is  
4 born alive and there is a violation of Section 2 of this act,  
5 the woman upon whom the abortion was performed or attempted may  
6 obtain appropriate relief in a civil action against any person  
7 who committed the violation. Appropriate relief in a civil  
8 action includes:

9 A. money damages for all injuries, psychological  
10 and physical, occasioned by the violation;

11 B. statutory damages equal to three times the cost  
12 of the abortion or attempted abortion; and

13 C. punitive damages and reasonable attorney fees.

14 SECTION 6. [NEW MATERIAL] CREATION OF TASK FORCE--  
15 PERIODIC REPORTING AND OVERSIGHT.--

16 A. The "task force to monitor born alive births" is  
17 created. The task force shall have five members, including two  
18 members from the department of health and three members from  
19 the children, youth and families department.

20 B. The task force shall:

21 (1) create reporting guidelines for each born  
22 alive infant incident that takes place in the state. The  
23 reporting requirements should include, at a minimum, when a  
24 born alive infant was given medical treatment or emergency  
25 medical care or when the 911 emergency response system was

underscoring material = new  
~~[bracketed material] = delete~~

1 called for an emergency transfer pursuant to Subsection D of  
2 Section 2 of this act;

3 (2) assign children, youth and families  
4 department caseworkers to perform monthly inspections and  
5 conduct staff interviews at each facility in the state that  
6 offers elective abortions to determine whether appropriate  
7 measures and care are being given to born alive infants and if  
8 the reporting guidelines are being followed; and

9 (3) provide a yearly report of its findings to  
10 the governor and the legislature.

11 - 6 -  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25