

HOUSE BILL 468

**56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

INTRODUCED BY

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AN ACT

RELATING TO CHILDBIRTH; ENACTING THE BORN ALIVE ACT; 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] SHORT TITLE.--This act may be  
cited as the "Born Alive Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
Born Alive 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

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1 induced labor, cesarean section or induced abortion, shows any  
2 evidence of life, including:

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

7 and

8 B. "infant" means a child who has been completely  
9 expelled or extracted from the pregnant person, regardless of  
10 the stage of gestational development.

11 SECTION 3. [NEW MATERIAL] REQUIREMENTS AND  
12 RESPONSIBILITIES.--

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

17 B. A person shall not deprive an infant who is born  
18 alive of medically appropriate and reasonable medical care and  
19 treatment or surgical care.

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

- 25 (1) is not necessary to save the life of the

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1 infant;

2 (2) has a potential risk to the infant's life  
3 or health that outweighs the potential benefit to the infant of  
4 the treatment or care; or

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

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

23 E. If the physician described in Subsection D of  
24 this section is unable to perform the duties outlined in that  
25 subsection because the physician is assisting the person on

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1 whom the abortion was to be performed, an attending physician's  
2 assistant, nurse or other health care provider shall assume the  
3 duties outlined in Subsection D of this section.

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

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

14 SECTION 4. [NEW MATERIAL] MANDATORY REPORTING OF  
15 VIOLATIONS.--A health care practitioner or any employee of a  
16 hospital, a physician's office or an abortion clinic who has  
17 knowledge of a failure to comply with the provisions of Section  
18 3 of the Born Alive Act shall immediately report the failure to  
19 an appropriate state or federal law enforcement agency, or to  
20 both.

21 SECTION 5. [NEW MATERIAL] CRIMINAL PENALTIES.--

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

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1 1978.

2 B. Whoever intentionally attempts to perform an  
3 overt act to kill a born alive infant is guilty of a second  
4 degree felony and shall be sentenced upon conviction pursuant  
5 to the provisions of Section 31-18-15 NMSA 1978.

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

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

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

16 C. punitive damages and reasonable attorney fees.

17 SECTION 7. [NEW MATERIAL] CREATION OF TASK FORCE--  
18 PERIODIC REPORTING AND OVERSIGHT.--

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

23 B. The task force shall:

24 (1) create reporting guidelines for each born  
25 alive infant incident that takes place in the state. The

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1 reporting requirements should include, at a minimum, when a  
2 born alive infant was given medical treatment or emergency  
3 medical care or when the 911 emergency response system was  
4 called for an emergency transfer pursuant to Subsection D of  
5 Section 3 of the Born Alive Act;

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

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