

HOUSE BILL 441

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

INTRODUCED BY

Jenifer Jones and Tanya Mirabal Moya and Mark Duncan and
James G. Townsend and Cathrynn N. Brown

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;

.224370.1

underscoring 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

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

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

.224370.1

underscoring 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

underscoring 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

.224370.1

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.