

LFC Requester:

Kelly Klundt

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 2/1/25

Check all that apply:

Bill Number: HB234

Original X Correction
Amendment Substitute

Sponsor: Rep. Jenifer Jones and Rep. Rebecca Dow

Agency Name and Code Number: 305 - New Mexico Department of Justice

Short Title: Medical Care for All Infants Born Alive

Person Writing Analysis: Aletheia Allen
Phone: 505-537-7676
Email: legisfir@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Table with columns: Appropriation (FY25, FY26), Recurring or Nonrecurring, Fund Affected

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Table with columns: Estimated Revenue (FY25, FY26, FY27), Recurring or Nonrecurring, Fund Affected

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

This bill seeks to create a new Act that requires medical care for all infants born alive, defines “born alive” and “infant,” mandates reporting, enacts penalties and civil remedies, and creates a task force to monitor the same.

Section 1 contains two definitions:

“born alive” or “live birth” means the birth of any infant that shows any sign of life, regardless of status of umbilical cord or placenta, whether “expulsion or extraction occurs as a result of natural or induced labor, cesarean section or induced abortion.” Signs of life include breathing, heartbeat, umbilical cord pulsation, or definite movement of voluntary muscles.

“infant” means “a child who has been completely expelled or extracted” from the mother, regardless of stage of gestational development.

Section 2 creates requirements and responsibilities including:

- (A) an infant shall not be deprived of nourishment with the intent to cause or allow the infant’s death;
- (B) an infant shall not be deprived of medically appropriate and reasonable medical care and treatment or surgical care;
- (C) the section does not prevent medical treatment or surgical care, even if not necessary, if parent or guardian consents, even if care or treatment
 - (1) is not necessary to save the infant’s life;
 - (2) has a risk to the infant’s life or health that outweighs the otherwise potential benefit;
 or
 - (3) only temporarily prolongs the infant’s act of dying;
- (D) a health care provider performing an abortion shall nonetheless take all medically appropriate and reasonable steps to preserve the life and health of the born alive infant. If in a hospital, the provider shall provide immediate care to the infant, inform the mother, and request transfer of the infant to another provider to provide medically appropriate and reasonable medical care to the infant. If not in a hospital, the provider shall provide immediate medical care and call 911 for ongoing care and treatment.

(E) if the provider described above is unable to perform those duties because of medical assistance to the mother, another provider shall step in.

(F) Any born alive infant is a legal person with rights to medical treatment and care; birth and, if necessary, death certificates shall therefore be issued according to state law.

(G) born alive infants shall not be used for scientific research or experimentation unless necessary to protect or preserve the life and health of the born alive infant.

Section 3 covers mandatory reporting of violations. A health care practitioner or any employee of a hospital, physician's office, or abortion clinic with knowledge of failure to comply with Section 2 shall immediately report the same to state or federal law enforcement agency or both.

Section 4 addresses criminal penalties. An overt act that kills a born alive infant constitutes a first degree felony resulting in the death of a child, to be sentenced upon conviction under NMSA 1978, Section 31-18-15 (2024). An intentional attempt to perform such an act constitutes a second degree felony, to be sentenced upon conviction under Section 31-8-15.

Section 5 creates civil remedies. If there is a violation of Section 2, the mother may obtain relief through a civil action against the person who committed the violation, including monetary damages for all psychological and physical injuries; statutory damages for three times the cost of the abortion or attempted abortion; and punitive damages and attorney fees.

Section 6 creates a task force and establishes periodic reporting and oversight of the same. The task force will have 5 members, including 2 from the department of health (DOH) and 3 from the Children, Youth & Families Department (CYFD). The task force must (1) create reporting guidelines for infants born alive in an abortion procedure, including when medical treatment or care was provided or 911 was called; and (2) provide a yearly report of findings to the governor and Legislature.

Section 7 provides for monthly inspections and staff interviews by DOH, of any facility in NM that offers elective abortions to determine whether "appropriate measures and care" are being given to each infant born alive in the course of an abortion procedure & whether reporting guidelines are being followed.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

The bill makes no provision for the treatment costs (medical or otherwise) or subsequent care for infants born alive.

The proposed legislation fails to define what is meant by "abortion" or "health care provider." The proposed legislation also does not define or provide any indication of the *scope* of the included signs of life. Such omitted definitions will likely result in ambiguity, vagueness, or overbreadth challenges and could place law enforcement in a difficult position if they were to attempt to enforce this statute. In addition, the failure to define "abortion" is particularly

problematic given that a woman seeking an abortion could be criminally prosecuted under the proposed legislation, in contravention of other state law.

The bill designates CYFD workers to serve on the task force, but caseworkers from CYFD may not have the background or expertise to evaluate medical professionals' provision of care to children.

The bill also adds significant legal risk to providers to perform procedures that are legal in NM. It appears that the bill attempts to change the outcome of an intended abortion from terminating a pregnancy to attempting to save the life of the fetus. This appears to be in conflict with the Reproductive and Gender Affirming Health Care Freedom Act (the Freedom Act), NMSA 1978, §§ 24-34-1 to -5 (2023), and the related Reproductive and Gender-Affirming Health Care Protection Act (the Protection Act), NMSA 1978, §§ 24-35-1 to -8 (2023). This also may render the bill in conflict with the New Mexico Supreme Court's recent opinion ensuring women's right to abortion. *See State ex rel. Torrez v. Bd. of Cnty. Comm'rs for Lea Cnty.*, 2025-NMSC-____ (S-1-SC-39742, Jan. 9, 2025). The bill may also conflict with NMSA 1978, § 24-7A-6.1 (2015), which generally provides that a parent of a minor may make the minor's healthcare decisions, including the decision to withhold or withdraw life-sustaining treatment.

Possible unintended consequences include an increase in prosecutions of women desiring abortions and their caregivers, a decreased level of trust between patients and their abortion-providing caregivers, an exodus of medical providers from the state for these reasons, and a movement of patients to so-called "back-door" abortion providers who would not be prosecuted under this legislation.

Section 4 creates a strict liability criminal penalty for any overt act that kills an infant born alive, regardless of the intention behind the act. This would likely lead New Mexico Courts to read in such an intent requirement. *See State v. Consaul*, 2014-NMSC-030, ¶ 40 (reading recklessness requirement into child abuse statute); *State v. Ortega*, 1991-NMSC-084, ¶ 23, 112 N.M. 554 (noting the "general presumption in our Anglo-American jurisprudence that . . . serious, non-regulatory crimes are generally attended by moral culpability arising from or manifested in a mental state generally characterized as "an evil mind"). Because certain definitions are not fleshed out (e.g., although "infant" means a child who has been completely expelled or extracted from the child's mother, regardless of the state of gestational development, it is unclear when a "child" ceases to be covered by this definition), the penalty could apply to an act that kills a "child" of any age. This could conflict with other laws that otherwise address the killing of individuals.

Certain definitional omissions could result in criminal prosecution of providers who fail to provide certain defined or undefined medical attention to a born alive infant. For example, the bill fails to define "overt act," thereby raising the question of whether this term could encompass failing to provide medical attention to the born alive infant.

Also, given that some parents choose to birth a baby whom they know will not survive, in order to hold and comfort the baby until its death, the bill could subject someone doing so to the Section 5 first degree felony resulting in the death of a child penalty.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

It is unclear if the task force to evaluate all “born alive infants” would evaluate all of the infants born in the state (tens of thousands of live births per year) in addition to all those born alive during an abortion procedure.

OTHER SUBSTANTIVE ISSUES

The definition of “live birth” in NMSA 1978, Section 24-14-2(E) (2009) is similar and includes the same signs of life, but it does not include language regarding how the expulsion or extraction may occur. Other legislation may need to be amended to ensure a lack of conflict in NM law. *See id.* (definitions for vital statistics); NMSA 1978, § 30-3-7 (1985) (injury to pregnant women); NMSA 1978, § 66-8-101.1 (1985) (injury to pregnant woman by vehicle).

It is unclear how the task force would actually operate, how membership would be determined, and which agency would take the lead. The bill requires staff time and resources for participation on the task force, but it provides for no additional funding for either DOH or CYFD. The bill also fails to discuss how any identifiable health information should be handled by the task force.

The bill broadly requires a health care practitioner or *any employee* of a hospital, physician’s office, or abortion clinic *with knowledge* to immediately report violations to state or federal law enforcement or both. The bill does not discuss what the consequence of failure to report would be. Conversely, the provision could place employees in difficult positions without any protection. The bill also fails to discuss the extent or nature of such knowledge, which could create confusion in effecting the bill and/or enforcing it.

The bill provides for civil remedies, but does not provide any limits or guidelines. Psychological and physical injuries deriving from a violation of Section 2 could be rather attenuated, and providers could be subject to inordinate financial claims for performing actions that are otherwise legal under NM law.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A