

“Born Alive” abortion prohibitions, by state. (As of Aug. 20, 2020)
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Washington

The right of medical treatment of an infant born alive in the course of an abortion procedure shall be the same as the right of an infant born prematurely of equal gestational age.

California

The rights to medical treatment of an infant prematurely born alive in the course of an abortion shall be the same as the rights of an infant of similar medical status prematurely born spontaneously.

Nevada

Whenever an abortion results in the birth of an infant capable of sustained survival by natural or artificial supportive systems, the failure to take all reasonable steps, in keeping with good medical practice, to preserve the life and health of the infant subjects the person performing the abortion to the laws of this state governing criminal liability and civil liability for wrongful death and medical malpractice.

Arizona

If an abortion is performed and a human fetus or embryo is delivered alive, it is the duty of any physician performing such an abortion and any additional physician in attendance as required by section 36-2301.01 to see that all available means and medical skills are used to promote, preserve and maintain the life of such a fetus or embryo...A hospital that is not in substantial compliance with the rules or policies and procedures adopted pursuant to this section may be subject to the penalties and sanctions specified in sections 36-427 and 36-431.01.

Montana

50-20-108. Protection of premature infants born alive. (1) A person commits an offense, as defined in 45-5-102 through 45-5-104, if the person purposely, knowingly, or negligently causes the death of a premature infant born alive, if the infant is viable.

(2) Whenever a premature infant that is the subject of abortion is born alive and is viable, it becomes a dependent and neglected child subject to the provisions of state law, unless:

(a) the termination of the pregnancy is necessary to preserve the life of the mother; or

(b) the mother and the mother's spouse or either of them have agreed in writing in advance of the abortion or within 72 hours thereafter to accept the parental rights and responsibilities of the premature infant if it survives the abortion procedure.

(3) A person may not use any premature infant born alive for any type of scientific research or other kind of experimentation except as necessary to protect or preserve the life and health of the premature infant born alive.

(4) A violation of subsection (3) is a felony.

Wyoming

The commonly accepted means of care shall be employed in the treatment of any viable infant aborted alive with any chance of survival.

North Dakota

An abortion of a viable child may be performed only when there is in attendance a physician other than the physician performing the abortion who shall take control and provide immediate medical care for the viable child born as a result of the abortion. The physician performing it, and subsequent to the abortion, the physician required by this section to be in attendance, shall take all reasonable steps in keeping with good medical practice, consistent with the procedure used, to preserve the life and health of the unborn child. Failure to do so is a class C felony...A person is guilty of a class C felony if the person knowingly, or negligently, causes the death of an infant born alive.

South Dakota

All persons born alive, whether in the course of an abortion procedure or not, shall have the same rights to medical treatment and other necessary health care.

Nebraska

In any abortion performed pursuant to section 28-329, all reasonable precautions, in accord with the sound medical judgment of the attending physician and compatible with preserving the life or health of the mother, shall be taken to insure the protection of the viable, unborn child.

...The intentional and knowing violation of section 28-329, 28-330, or 28-331 is a Class IV felony.

Kansas

...If the child is born alive, the attending physician has the legal obligation to take all reasonable steps necessary to maintain the life and health of the child;...

Oklahoma

The rights to medical treatment of an infant prematurely born alive in the course of an abortion shall be the same as the rights of an infant of similar medical status prematurely born.

...A. No person shall purposely take the life of a child born as a result of an abortion or attempted abortion which is alive when partially or totally removed from the uterus of the pregnant woman.

B. No person shall purposely take the life of a viable child who is alive while inside the uterus of the pregnant woman and may be removed alive therefrom without creating any significant danger to her life or health.

C. Any person who performs, induces, or participates in the performance or inducing of an abortion shall take all reasonable measures to preserve the life of a child who is alive when partially or totally removed from the uterus of the pregnant woman, so long as the measures do not create any significant danger to her life or health.

D. Any person violating this section shall be guilty of homicide.

Texas

Sec. 151.002. RIGHTS OF A LIVING CHILD AFTER AN ABORTION OR PREMATURE BIRTH; CIVIL PENALTY; CRIMINAL OFFENSE. (a) A living human child born alive after an abortion or premature birth is entitled to the same rights, powers, and privileges as are granted by the laws of this state to any other child born alive after the normal gestation period.

(b) In this code, "born alive" means the complete expulsion or extraction from its mother of a product of conception, irrespective of the duration of pregnancy, which, after such separation, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached. Each product of the birth is considered born alive.

(c) For purposes of this section, a physician-patient relationship is established between a child born alive after an abortion and the physician who performed or attempted to perform the abortion. The physician must exercise the same degree of

professional skill, care, and diligence to preserve the life and health of the child as a reasonably diligent and conscientious physician would render to any other child born alive at the same gestational age. In this subsection, "professional skill, care, and diligence" includes a requirement that the physician who performed or attempted the abortion ensure that the child born alive be immediately transferred to a hospital.

(d) A woman on whom an abortion, as defined by Section 245.002, Health and Safety Code, is performed or attempted to be performed may not be held liable under this section.

(e) A physician who violates Subsection (c) by failing to provide the appropriate medical treatment to a child born alive after an abortion or an attempted abortion is liable to the state for a civil penalty of not less than \$100,000. The attorney general may bring a suit to collect the penalty. In addition to the civil penalty, the attorney general may recover reasonable attorney's fees. The civil penalty described in this subsection is in addition to any other recovery authorized under other law.

(f) A person who has knowledge of a failure to comply with this section shall report to the attorney general. The identity and any personally identifiable information of the person reporting the failure to comply with this section is confidential under Chapter 552, Government Code.

(g) A physician or health care practitioner who violates Subsection (c) by failing to provide the appropriate medical treatment to a child born alive after an abortion or an attempted abortion commits an offense. An offense under this subsection is a felony of the third degree.

Minnesota

A born alive infant as a result of an abortion shall be fully recognized as a human person, and accorded immediate protection under the law. All reasonable measures consistent with good medical practice, including the compilation of appropriate medical records, shall be taken by the responsible medical personnel to preserve the life and health of the born alive infant...

...Any responsible medical personnel that does not take all reasonable measures consistent with good medical practice to preserve the life and health of the born alive infant, as required by subdivision 1, may be subject to the suspension or revocation of that person's professional license by the professional board with authority over that person. Any person who has performed an abortion and against whom judgment has been rendered pursuant to paragraph (a) shall be subject to an automatic suspension of the person's professional license for at least one year and said license shall be reinstated only after the person's professional board requires compliance with this section by all board licensees.

Iowa

A person who intentionally kills a viable fetus aborted alive shall be guilty of a class "B" felony.

...A person who performs or induces a termination of a human pregnancy and who willfully fails to exercise that degree of professional skill, care, and diligence available to preserve the life and health of a viable fetus shall be guilty of a serious misdemeanor.

Missouri

No physician shall perform or induce an abortion upon a woman when it has been determined that the unborn child is viable unless there is in attendance a physician other than the physician performing or inducing the abortion who shall take control of and provide immediate medical care for a child born as a result of the abortion. During the performance of the abortion, the physician performing it, and subsequent to the abortion, the physician required to be in attendance, shall take all reasonable steps in keeping with good medical practice, consistent with the procedure used, to preserve the life or health of the viable unborn child; provided that it does not pose an increased risk to the life of the woman or does not pose an increased risk of substantial and irreversible physical impairment of a major bodily function of the woman.

3. Any person who knowingly performs or induces an abortion of an unborn child in violation of the provisions of this section is guilty of a class C felony, and, upon a finding of guilt or plea of guilty, shall be imprisoned for a term of not less than one year, and, notwithstanding the provisions of section 560.011, shall be fined not less than ten thousand nor more than fifty thousand dollars.

4. Any physician who pleads guilty to or is found guilty of performing or inducing an abortion of an unborn child in violation of this section shall be subject to suspension or revocation of his or her license to practice medicine in the state of Missouri by the state board of registration for the healing arts under the provisions of sections 334.100 and 334.103.

5. Any hospital licensed in the state of Missouri that knowingly allows an abortion of an unborn child to be performed or induced in violation of this section may be subject to suspension or revocation of its license under the provisions of section 197.070.

6. Any ambulatory surgical center licensed in the state of Missouri that knowingly allows an abortion of an unborn child to be performed or induced in violation of this section may be subject to suspension or revocation of its license under the provisions of section 197.220.

Arkansas

- (f) If a physician described in subsection (e) of this section is unable to perform the duties described in subsection (e) of this section because the physician is assisting the woman who received an abortion, the attending physician's assistant, nurse, or

other healthcare professional shall assume the duties outlined in subsection (e) of this section.

- (g) An infant who is born alive shall be treated as an individual under the laws of this state with the same rights to medically appropriate reasonable care and treatment that an infant born prematurely would have.
- ... (j) Failure to comply with this section shall provide a basis for:
 - (1) A civil action for compensatory and punitive damages;
 - (2) Professional disciplinary action by the appropriate healthcare licensing board for the suspension or revocation of a license for a healthcare professional for at least one (1) year; and
 - (3) Recovery for the parent of the infant or the parent or legal guardian of the pregnant woman, if the pregnant woman is a minor, for the wrongful death of the infant under § 16-62-102.

Louisiana

The intentional failure to sustain the life and health of an aborted viable infant shall be a crime. The intentional failure to sustain the life and health of an aborted viable infant is the intentional failure, by any physician or person performing or inducing an abortion, to exercise that degree of professional care and diligence, and to perform such measures as constitute good medical practice, necessary to sustain the life and health of an aborted viable infant, when the death of the infant results. For purposes of this Section, "viable" means that stage of fetal development when the life of the unborn child may be continued indefinitely outside the womb by natural or artificial life-supporting systems. Any person who commits the crime of intentional failure to sustain the life and health of an aborted viable infant shall be imprisoned at hard labor for not more than twenty-one years.

...

An abortion of a viable unborn child shall be performed or induced only when there is in attendance a physician other than the physician performing or inducing the abortion who shall take control of and provide immediate medical care for an infant born alive as a result of the abortion. During the performance of the abortion, the physician performing it, and subsequent to the abortion, the physician required by this Section to be in attendance, shall take all reasonable steps in keeping with good medical practice, consistent with the procedure used, to preserve the life and health of the viable unborn child and born-alive infant, respectively, provided that it does not pose an increased risk to the life or health of the woman.

Wisconsin

(17) Live birth or circumstance of being born alive.
990.001(17)(a)

- (a) An individual who undergoes a live birth is born alive.
- (b) If a statute or rule refers to a live birth or to the circumstance in which an individual is born alive, the statute or rule shall be construed so that whoever undergoes a live birth as the result of an abortion, as defined in s. 253.10 (2) (a), has the same legal status and legal rights as a human being at any point after the human being undergoes a live birth as the result of natural or induced labor or a cesarean section.

Tennessee

(a) The rights to medical treatment of an infant prematurely born alive in the course of an abortion are the same as the rights of an infant of similar medical status prematurely born spontaneously. Any person who performs or induces an abortion of an infant shall exercise that degree of professional skill, care, and diligence in accordance with good medical practice necessary to preserve the life and health of an infant prematurely born alive in the course of an abortion, except that if it can be determined, through amniocentesis or medical observation, that the fetus is severely malformed, the use of extraneous life support measures need not be attempted.

(b) Any person who violates this section commits a Class E felony.

(c) No cause of action for wrongful death shall be brought which arises out of the death of a fetus or infant during the course of a lawful abortion, whether the fetus or infant is quick or not, so long as the abortion is performed in accordance with this part; however, once an infant is born alive, any person in attendance shall be civilly responsible for providing all reasonable and necessary care reasonable under the circumstances in the general vicinity in which the person in attendance practices.

Mississippi

(1) It shall be unlawful for any physician performing an abortion that results in the delivery of a living child to intentionally allow or cause the child to die.

(2) If the child is viable, such child shall be immediately provided appropriate medical care and comfort care necessary to sustain life. If the child is not viable, such child shall be provided comfort care. The provision of this section shall include, but not be limited to, a child born with physical or mental handicapping conditions which, in the opinion of the parent, the physician or other persons, diminishes the quality of the child's life, a child born alive during the course of an attempted abortion and a child not wanted by the parent.

(3) As used in this section the term “child” includes every infant member of the species homo sapiens who is born alive at any stage of development.

(4) Any person who violates this section shall be guilty of a felony and, upon conviction, be imprisoned for not less than one (1) year nor more than ten (10) years in the State Penitentiary and fined not more than Fifty Thousand Dollars (\$50,000.00) but not less than Twenty-five Thousand Dollars (\$25,000.00).

Michigan

If an abortion performed in a hospital setting results in a live birth, the physician attending the abortion shall provide immediate medical care to the newborn, inform the mother of the live birth, and request transfer of the newborn to a resident, on-duty, or emergency room physician who shall provide medical care to the newborn. If an abortion performed in other than a hospital setting results in a live birth, a physician attending the abortion shall provide immediate medical care to the newborn and call 9-1-1 for an emergency transfer of the newborn to a hospital that shall provide medical care to the newborn.

Indiana

(c) Any fetus born alive shall be treated as a person under the law, and a birth certificate shall be issued certifying the child's birth even though the child may subsequently die, in which event a death certificate shall be issued. Failure to take all reasonable steps, in keeping with good medical practice, to preserve the life and health of the live born person shall subject the responsible persons to Indiana laws governing homicide, manslaughter, and civil liability for wrongful death and medical malpractice.

Alabama

(c) Abortion regulated. Except in the case of a medical emergency which, in the reasonable medical judgment of the physician performing the abortion, prevents compliance with a particular requirement of this subsection, no abortion which is authorized under subsection (b)(1) shall be performed unless each of the following conditions are met:

...

(5) The physician performing the abortion arranges for the attendance, in the same room in which the abortion is to be completed, of a second physician who shall take control of the child immediately after complete extraction from the mother and shall provide immediate

medical care for the child, taking all reasonable steps necessary to preserve the child's life and health.

(d) Penalty. Any person who violates subsection (a) commits a Class A felony. Any person who violates subsection (c) commits a Class C felony.

Florida

(12) INFANTS BORN ALIVE.—

(a) An infant born alive during or immediately after an attempted abortion is entitled to the same rights, powers, and privileges as are granted by the laws of this state to any other child born alive in the course of natural birth.

(b) If an infant is born alive during or immediately after an attempted abortion, any health care practitioner present at the time shall humanely exercise the same degree of professional skill, care, and diligence to preserve the life and health of the infant as a reasonably diligent and conscientious health care practitioner would render to an infant born alive at the same gestational age in the course of natural birth.

(c) An infant born alive during or immediately after an attempted abortion must be immediately transported and admitted to a hospital pursuant to s. 390.012(3)(c) or rules adopted thereunder.

(d) A health care practitioner or any employee of a hospital, a physician's office, or an abortion clinic who has knowledge of a violation of this subsection must report the violation to the department.

(e) A person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. This subsection shall not be construed as a specific provision of law relating to a particular subject matter that would preclude prosecution of a more general offense, regardless of the penalty.

(f) This subsection does not affirm, deny, expand, or contract any legal status or legal right applicable to any member of the species *Homo sapiens* at any point prior to being born alive as defined in s. 390.011.

1(13) FAILURE TO COMPLY.—Failure to comply with the requirements of this section or s. 390.01112 constitutes grounds for disciplinary action under each respective practice act and under s. 456.072.

Georgia

(2) In any case described in subparagraph (A) or (B) of paragraph (1) of this subsection, the physician shall terminate the pregnancy in the manner which, in reasonable medical judgment, provides the best opportunity for the unborn child to survive unless, in reasonable medical judgment, termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function of the pregnant woman than would another available method. No such greater risk shall be deemed to exist if it is based

on a diagnosis or claim of a mental or emotional condition of the pregnant woman or that the pregnant woman will purposefully engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function. If the child is capable of sustained life, medical aid then available must be rendered.

South Carolina

(B)(1) In determining the meaning of any act or joint resolution of the General Assembly or in a regulation promulgated pursuant to Article 1, Chapter 23, Title 1, unless otherwise defined in the act, joint resolution, or regulation, the words "person", "human being", "child", and "individual" must include every infant member of the species homo sapiens who is born alive at any stage of development.

(2) As used in this subsection, the term "born alive", with respect to a member of the species homo sapiens, means the complete expulsion or extraction from the mother of that member, at any stage of development, who after the expulsion or extraction breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion.

Virginia

Notwithstanding any of the provisions of § 18.2-71 and in addition to the provisions of §§ 18.2-72 and 18.2-73, it shall be lawful for any physician licensed by the Board of Medicine to practice medicine and surgery to terminate or attempt to terminate a human pregnancy or aid or assist in the termination of a human pregnancy by performing an abortion or causing a miscarriage on any woman in a stage of pregnancy subsequent to the second trimester provided the following conditions are met:

...(c) Measures for life support for the product of such abortion or miscarriage must be available and utilized if there is any clearly visible evidence of viability.

West Virginia

(b) Prohibition. —

(1) If a physician performs or attempts to perform an abortion that results in a child being born alive the physician shall:

(A) Exercise the same degree of reasonable medical judgment to preserve the life and health of the child as a physician would render to any other child born alive at the same gestational age; and

(B) Ensure that the child born alive is immediately transported and admitted to a hospital.

(2) A person who has knowledge of a failure to comply with the requirements of this subsection shall report the failure to the applicable licensing board.

(c) Enforcement. —

(1) Any physician or other licensed medical professional who knowingly and willingly violates subsection (b) of this section is considered to have breached the standard of care owed to patients, and is subject to discipline from the applicable licensure board for that conduct, including, but not limited to, loss of professional license to practice.

(2) Any person, not subject to subdivision (1) of this subsection, who knowingly and willfully violates subsection (b) of this section is guilty of the unauthorized practice of medicine in violation of §30-3-13 of this code, and, upon conviction thereof, is subject to the penalties contained in that section.

Ohio

(A) No person shall purposely take the life of a child born by attempted abortion who is alive when removed from the uterus of the pregnant woman.

(B) No person who performs an abortion shall fail to take the measures required by the exercise of medical judgment in light of the attending circumstances to preserve the life of a child who is alive when removed from the uterus of the pregnant woman.

(C) Whoever violates this section is guilty of abortion manslaughter, a felony of the first degree.

Pennsylvania

3212. Infanticide.

(a) Status of fetus.--The law of this Commonwealth shall not be construed to imply that any human being born alive in the course of or as a result of an abortion or pregnancy termination, no matter what may be that human being's chance of survival, is not a person under the Constitution and laws of this Commonwealth.

(b) Care required.--All physicians and licensed medical personnel attending a child who is born alive during the course of an abortion or premature delivery, or after being carried to term, shall provide such child that type and degree of care and treatment which, in the good faith judgment of the physician, is commonly and customarily provided to any other person under similar conditions and circumstances. Any individual who intentionally, knowingly or recklessly violates the provisions of this subsection commits a felony of the third degree.

(c) Obligation of physician.--Whenever the physician or any other person is prevented by lack of parental or guardian consent from fulfilling his obligations under subsection (b), he shall nonetheless fulfill said obligations and immediately notify the juvenile court of the facts of the case. The juvenile court shall immediately institute an inquiry and, if it finds that the lack of parental or guardian consent is preventing treatment required under subsection (b), it shall immediately grant injunctive relief to require such treatment.

Delaware

(a) In the event an abortion or an attempted abortion results in the live birth of a child, the person performing or inducing such abortion or attempted abortion and all persons rendering medical care to the child after its birth must exercise that degree of medical skill, care and diligence which would be rendered to a child who is born alive as the result of a natural birth.(b) Nothing found in this section shall be deemed to preclude prosecution under any other applicable section of the Delaware Code for knowing or reckless conduct which is detrimental to the life or health of an infant born as a result of a procedure designed to terminate pregnancy. Anyone who knowingly violates this section shall be guilty of a class A misdemeanor.

Rhode Island

Any physician, nurse, or other licensed medical person who knowingly and intentionally fails to provide reasonable medical care and treatment to an infant born alive in the course of an abortion shall be guilty of a felony and upon conviction shall be fined not exceeding five thousand dollars (\$5,000), or imprisoned not exceeding five (5) years, or both. Any physician, nurse, or other licensed medical person who knowingly and intentionally fails to provide reasonable medical care and treatment to an infant born alive in the course of an abortion, and, as a result of that failure, the infant dies, shall be guilty of the crime of manslaughter.

Massachusetts

Section 12P. If an abortion is performed pursuant to section twelve M, the physician performing the abortion shall take all reasonable steps, both during and subsequent to the

abortion, in keeping with good medical practice, consistent with the procedure being used, to preserve the life and health of the aborted child. Such steps shall include the presence of life-supporting equipment, as defined by the department of public health, in the room where the abortion is to be performed.

New Hampshire

132:23 Definition. –

I. In this subdivision "live-birth" means the complete expulsion or extraction from its mother of a product of a human conception, irrespective of the duration of the pregnancy, which after such expulsion or extraction, breathes, or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.

II. The definition under paragraph I shall apply whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion.

Maine

Whenever an abortion procedure results in a live birth, failure to take all reasonable steps, in keeping with good medical practice, to preserve the life and health of the live born person shall subject the responsible party or parties to Maine law governing homicide, manslaughter and civil liability for wrongful death and medical malpractice.