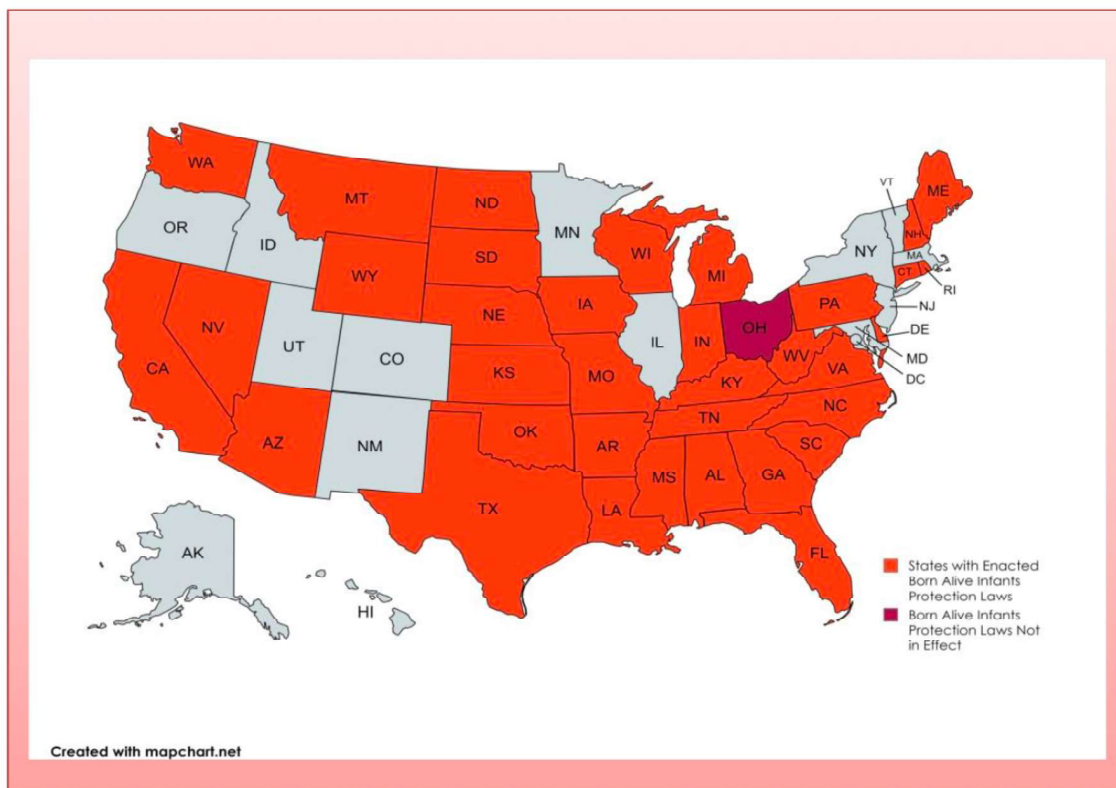


State Laws: Born Alive Infants Protection Act

September 17, 2024

Born Alive Infants Protection laws vary by state. Some may only define what the term “born alive” means; some require that, when a baby is born alive following an abortion, health care practitioners must exercise the same degree of professional skill and care that would be offered to any other child born alive at the same gestational age. Some laws require that, following appropriate care, health care workers must transport the child immediately to a hospital, and report any violations.

Currently, 36 states have enacted laws to protect babies born alive during an abortion.



State Legislation Department
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STATE	INFORMATION
Alabama Code of Alabama §§ 26-22-1 to 26-22-3; 26-22-2; 26-22-3. 26-23A-4 (b)(3)(c)	A child born alive during an abortion is entitled to the same rights, powers, and privileges as any other child born alive. Failing to preserve the life and health of child will be a felony; reporting violations is required. Second physician required in room during abortion in order to care the born alive infant. The child born alive will be entitled to the same physician-patient relationship as any other person receiving medical care in Alabama. An informed consent law says a mother must be told, in person, 48 hours prior to the abortion, that the physician has the legal obligation to maintain the life and health of child born alive during an abortion. This law has a loophole that states, if a mental health condition may exist where there is reasonable likelihood that the woman's conduct may result in her death or the death of her child, and this is confirmed by a second physician (a psychiatric physician), the abortion may be performed. *In effect August 2021.
Arizona A.R.S. § 36-2301	Duty of the doctor performing the abortion, and second required doctor in attendance, to use all means to promote, preserve, and maintain the life of the child born alive. Doctor must report and document, to the department of health services, the measures used to maintain the baby's life. If a child born alive is diagnosed with a lethal fetal condition before the abortion is performed, and the condition is confirmed after the child is born alive, the physician must report the specific condition to the department of health. Transport to a hospital if abortion not performed in one. Department of health must adopt rules requiring abortion facilities that perform abortions after 20 weeks gestation to designate a person to contact emergency services once an infant survives an abortion, and arrange transport of the child to a hospital. At least one person trained in neonatal resuscitation must be present in the room where abortion takes place, and establish a protocol for rapid neonatal resuscitation. Penalties and sanctions if rules and policies not complied with.
Arkansas A.C.A. §20-16-604	Physician performing abortion shall take all medically and reasonable steps to preserve the life of the infant born alive. 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. Transfer child born alive to hospital if abortion is performed in a facility that is not a hospital. Reporting of infant born alive is required to Department of Health and the department shall make these statistics public annually. Failure to comply with these shall be a basis for discipline and penalty.
California (Cal Health & Saf Code § 123435)	The rights to medical treatment of an infant prematurely born alive during abortion shall be the same as the rights of an infant of similar medical status prematurely born spontaneously.

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Connecticut Conn. Agencies Regs. § 19-13-D54 (g)	If the newborn shows signs of life following an abortion, those measures used to support life in a premature infant shall be employed.
Delaware Del. Code tit. 24 § 1795	If abortion results in the live birth, all persons involved with performing abortion shall render medical care to the child after its birth, exercising 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. Anyone who knowingly violates this section shall be guilty of a Class A Misdemeanor.
Florida Fla. Stat. § 390.0111(4); (12) and § 390.01112(3)	<p>An infant born alive during an attempted abortion is entitled to the same rights as other children born alive during a natural birth. 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 during a natural birth.</p> <p>An infant born alive during an attempted abortion must be immediately transported to a hospital.</p> <p>Any violation must be reported, and it is subject to felony.</p> <p>If an abortion is performed on a viable baby, the abortionist must exercise the same degree and skill in order to preserve the life of the born alive infant as a child born alive during a natural birth.</p> <p>Reporting of infant born alive is required to Department of Health and the department shall make these statistics public annually.</p>
Georgia O.C.G.A. § 16-12-141(c)	In conducting an abortion, if the child is capable of sustained life, medical aid then available shall be rendered.
Indiana Burns Ind. Code Ann. § 16-34-2-3 (b)(c)(d) (2011) (Amended 2021) and § 16-21-2-17	All reasonable steps shall be taken to preserve the life of the child born alive during an abortion, no matter what the infant's gestational age. Any fetus born alive will be treated as a person under law, and issued a birth certificate even if the child should subsequently die. Infant born alive must be transported to a hospital with the capacity to provide for needed care. Failure to take all reasonable steps to preserve life, in keeping with good medical practice, is subject to criminal and civil liability. Child shall become ward of state if parents have stated in writing that they do not want the child if born alive.
Iowa Iowa Code §§ 707.9; 707.10	Intentional killing of a viable fetus aborted alive shall be guilty of a class "B" felony. Those performing the termination of a human pregnancy and who willfully fail 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.

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Kansas Kan. Stat. Ann. §§ 65-6751 to 65-6759.	<p>In the event an abortion or attempted abortion results in a child being born alive, any health care provider shall exercise the same degree of professional skill, care, and diligence, to preserve the life and health of the child that any conscientious health care provider would render to any other child born alive at the same gestational age, and ensure that the child who is born alive is immediately transported to a hospital.</p> <p>The law requires the reporting of certain items, including the number of infants born alive subsequent to an abortion or attempted abortion; any medical actions taken to preserve the life of the infant who was born alive; the outcome for such infants, including survival, death, and location of death, such as a clinic, hospital, or ambulance, if known; and the medical conditions of infants who were born alive, including conditions developed prior to and after the attempted abortion. Civil and criminal penalties if failure to comply. Reporting violations is required.</p>
Kentucky KRS § 311.823	<p>No person can deprive nourishment to an infant born alive. Physician performing abortion shall take appropriate and reasonable steps to preserve the life of a baby born alive. Emergency transfer of baby to an on-duty resident or emergency care physician if abortion performed in a hospital or transfer to a hospital if the abortion is performed in a medical facility other than a hospital. Child born alive will be treated as citizen of Commonwealth and granted a birth certificate. Child shall become ward of state if parents have stated in writing that they do not want the child if born alive. Civil and criminal penalties, disciplinary action, if failure to comply.</p>
Louisiana La. R.S. § 14:87.5 (1977) §§ 40:1061.12 - 40:1061.13 (2001)	<p>A child born alive shall be provided immediate medical care, evaluation, reasonable steps shall be taken to preserve the life and health of the child which are in keeping with good medical practice and using standard good faith medical judgment.</p> <p>Another physician must be present during abortion. All shall take all reasonable steps to preserve the life and health of the born-alive infant.</p>
Maine 22 M.R.S. § 1594	<p>Failure to take all reasonable steps of baby born alive during abortion, 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.</p>

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Michigan MCLS § 333.1073	<p>If a child is born alive during abortion done in a hospital, the provider must 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. The infant must be transferred to a hospital if abortion not performed in one.</p> <p>If the child born alive is not wanted by his mother and she refuses to authorize all necessary life sustaining medical treatment for the child, the child shall be considered a newb. under the safe delivery of newborns law.</p> <p>Reporting of infant born alive is required and the state shall make these statistics public annually.</p>
Minnesota Minn. Stat. § 145.423 <i>This law was rendered ineffective and stated here for historical purposes.</i>	<p><i>Not in effect.</i></p> <p><i>This law was repealed in 2023 by S.F. 295.</i></p> <p><i>A born alive infant shall be fully recognized as a human person and afforded immediate protection under law. Reasonable measures consistent with good medical practice shall be taken to preserve the life and health of the born alive infant. Reporting of infant born alive is required and the state shall make these statistics public annually.</i></p>
Mississippi Miss. Code Ann. § 97-3-4	Felony for physician to intentionally allow or cause child born alive during abortion to die. Appropriate medical care of comfort care is mandated.
Missouri § 188.030 R.S.Mo.	The law requires a second physician to be in the room when an abortion is being performed on a viable unborn child. It is required that all physicians in the room take reasonable steps, in keeping with good medical practice consistent with the procedure used, to preserve the life or health of the viable child born alive.
Montana 50-20-108, MCA	Felony for person to purposely, knowingly, or negligently cause the death of a premature infant born alive, if the infant is viable.
Nebraska R.R.S. Neb. § 28-330	Attending physician shall take reasonable precautions, in accord with the sound medical judgment and compatible with preserving the life or health of the mother, to insure the protection of the viable, unborn child.
Nevada Nev. Rev. Stat. Ann. § 442.270	Penalties if there is a failure to take all reasonable steps, in keeping with good medical practice, to preserve the life and health of the baby born alive during an abortion.
New Hampshire RSA 132:23	Law only defines “live birth.” This definition only applies “whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion.”

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North Carolina N.C. Gen. Stat. §§ 90-21.140-90-21.146	Any health care practitioner present at the time the child is born alive shall 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 health care practitioner would render to any other child born alive at the same gestational age. They shall ensure that the child born alive is immediately transported and admitted to a hospital. The mother of a child born alive may not be prosecuted for a violation of or attempt to or conspiracy to commit a violation of the law. Any person who intentionally performs or attempts to perform an overt act that kills a child born alive shall be punished for murder. A claim for damages against any person who violates the law may be sought by the woman upon whom an abortion was performed or attempted in violation of the law.
North Dakota N.D. Cent. Code, § 14-02.1-08	Knowingly, or negligently, causing the death of an infant born alive is a felony.
Ohio ORC Ann. 2919.13	Measures required by the exercise of medical judgment shall be used if an infant is born alive during an abortion. Failure to render medical care to an infant born alive after an abortion is a felony. Not in effect. Temporary restraining order issued in <i>Women's Medical Group Professional Corporation, et al. v. Bruce Vanderhoff, et al.</i> , No. A 220704 (Court of Common Pleas, Hamilton County, Ohio. 2022). Order issued not on merits of the born alive component of the law but on the requirement regarding written transfer agreements.
Oklahoma 59 Okl. St. § 524	Child born alive during abortion has the same rights to medical treatment as an infant of similar medical status prematurely born.
Pennsylvania 18 Pa.C.S. § 3212	Medical personnel attending a child born alive during an abortion shall provide the same type and degree of care and treatment which, in the good faith judgment of the physician, is commonly and customarily provided to other children being born. Any violation of this is a felony.
Rhode Island R.I. Gen. Laws § 11-9-18	Civil and criminal penalties for medical personnel that knowingly and intentionally fail to provide reasonable medical care and treatment to an infant born alive during an abortion.
South Carolina S.C. Code Ann. § 2-7-30	Extends legal protection to an infant born alive during abortion.
South Dakota S.D. Codified Laws § 34-23A-16.1	Requires medical professionals to provide the same means, medical skills, and treatment to every child born alive immediately following an attempted abortion as they would any other child at the same gestational age. Further, the law allows a mother to sue any doctor or abortion facility that violates the law, imposes financial penalties on those who violate the law, and requires statistical reporting to the Department of Health for any infants that survive an abortion attempt.

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Tennessee Tenn. Code Ann. § 39-15-206	Medical treatment of an infant born alive during abortion is the same as the rights of an infant of similar medical status prematurely born spontaneously. Medical personnel 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. Felony for violation. Prohibits a cause of action for wrongful death for any unborn baby or infant during a legal abortion.
Texas Tex. Fam. Code § 151.002	A child born alive during 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 after the normal gestation period. Civil penalty and criminal offense.
Virginia Va. Code Ann. §§ 18.2-71.1; 18.2-74	After the second trimester, measures for life support are required in case the baby is viable.
Washington State Rev. Code Wash. (ARCW) § 18.71.240	The right of medical treatment of an infant born during an abortion procedure shall be the same as the right of an infant born prematurely of equal gestational age.
West Virginia W. Va. Code § 16-2P-1	<p>Medical personnel must exercise the same degree of reasonable medical judgment to preserve the life and health of the child as would be given to any other child born alive at the same gestational age. Transfer to hospital if child is born alive.</p> <p>Knowledge of non-compliance with these requirements of this shall report the failure to the applicable licensing board. Penalties for violation.</p>
Wisconsin Wis. Stat. § 253.10 (2)(a); § 990.001	A born alive infant has the same legal status and rights as a human being.
Wyoming Wyo. Stat. § 35-6-104	<p>The commonly accepted means of care that would be rendered to any other infant born alive shall be employed in the treatment of any viable infant aborted alive.</p> <p>Any physician performing an abortion shall take medically appropriate and reasonable steps to preserve the life and health of an infant born alive.</p>