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# Born Alive Infant Protection Act

*Model Legislation & Policy Guide*



*Advancing the Human Right to Life  
in Culture, Law, and Policy*

# INTRODUCTION

Jill Stanek, a nurse at Christ Hospital in Oak Lawn, Illinois, held a tiny, 21-week-old baby boy in her hands. He weighed about half a pound and was around ten inches long. “He was too weak to move very much, expending any energy he had trying to breathe,” Jill recalled. The baby had survived an abortion and was going to be left alone in a filthy utility room because his parents did not want to hold him as he died, and the attending nurse was too busy to bother with him.

Jill intervened. “I could not stand the thought of this suffering child dying alone in the soiled utility room, so I cradled and rocked him for the 45 minutes that he lived,” she testified before the U.S. House of Representatives. “Toward the end, he was so quiet, I couldn’t tell if he was alive unless I held him up to the light to see if I could see his heart beating through his chest wall.”<sup>1</sup>

To her horror, Jill discovered that babies who were born alive as a result of failed abortions were routinely left alone to die on the cold metal countertop in the hospital’s utility room.<sup>2</sup> Distraught and filled with disbelief, Jill spoke out against the practice and was subsequently fired.

Jill worked to have the hospital prosecuted for violating the *Illinois Abortion Law of 1975* which required physicians to provide medical care for born-alive infants. However, then-Illinois Attorney General Jim Ryan found that there was “no basis for legal action.”<sup>3</sup> Similarly, the Office for Civil Rights at the U.S. Department of Health and Human Services wrote a letter to Jill stating that federal “civil rights laws do not cover abortions or the rights of newborns.”<sup>4</sup> This is despite the fact that even the abortion industry acknowledges that babies may be born alive after surviving an attempted abortion. A chapter on second trimester abortions in a clinical textbook of the National Abortion Federation reads, “Providers should consider the possibility of a live-born fetus, particularly if fetal death is not induced prior to the procedure and the gestational age is 18 to 20 weeks or more.”<sup>5</sup>

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<sup>1</sup> Testimony of Jill Stanek during the hearing before the Subcommittee on the Constitution on the Committee on the Judiciary, U.S. House of Representatives, 107th Congress, on H.R. 2175 (Born Alive Infant Protection Act), July 12, 2001, Serial No. 32, at 19.

<sup>2</sup> *Id.* One instance involved the failed abortion of a baby boy who was supposed to have spina bifida. What appeared on the ultrasound to be a mass on the baby’s back was actually an incompletely formed twin. The healthy baby was born alive with an intact spine after a failed abortion procedure and was left to die on the cold countertop of the utility room.

<sup>3</sup> *Id.* at 25, 42.

<sup>4</sup> *Id.* at 25, 41.

<sup>5</sup> Maureen Paul et al., *MANAGEMENT OF UNINTENDED AND ABNORMAL PREGNANCY* 180 (1st ed. 2009).

Undeterred, Jill took her story all the way to the U.S. House of Representatives where, in 2001, she testified in support of the *Federal Born-Alive Infants Protection Act* (BAIPA).

## Federal Born-Alive Infant Protection Act

On March 12, 2002, the federal BAIPA passed the House of Representatives by a resounding voice vote. Later, on June 19, 2002, it was approved by a 98-0 vote in the U.S. Senate. All Congressional Democrats were present for that vote, and all of them—including abortion supporters Senators Hillary Clinton, Ted Kennedy, Barbara Boxer, and John Kerry—voted in favor of the bill. On the Senate floor, Senator Boxer voiced her strong support for the bill, exclaiming, “Who would be more vulnerable than a newborn baby?” She continued, stating that “all of our people deserve protection, from the very tiniest infant to the most elderly among us.”<sup>6</sup>

While the federal BAIPA was an important step in that it recognized infants born alive as persons under federal law, there is still no federal law criminalizing the actions of abortionists who deny care to babies who survive abortions. A federal law is still needed that would establish strong criminal penalties for killing or denying care to abortion survivors. Thus, it is incumbent upon states to take action to protect their most vulnerable citizens.

## State Born-Alive Infant Protection Acts

Since its enactment, the federal BAIPA has been used as a model for similar state legislation. Thirty-five states have at least some born-alive protections. Just eighteen states have comprehensive legal protections for babies who survive abortion, with more states in the process of strengthening their laws.<sup>7</sup> However, states including Alaska, Colorado, New Jersey, New Mexico, Oregon, and Vermont, as well as the District of Columbia allow abortion at any time for any reason and have yet to legally safeguard born-alive infants.<sup>8</sup> New York and Illinois have actually passed laws to remove protections to infants born alive.<sup>9</sup>

State BAIPAs are necessary for a several reasons. First, the federal BAIPA only applies in limited circumstances. For example, it only covers those hospitals and employees operated by the federal government or which receive federal funding. It would not

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<sup>6</sup> Congressional Record, S7062-S7064, June 28, 2001.

<sup>7</sup> *Id.*

<sup>8</sup> *Questions and Answers on Born-Alive Abortion Survivors*, Charlotte Lozier Institute (Apr. 14, 2021), <https://lozierinstitute.org/questions-and-answers-on-born-alive-abortion-survivors/>.

<sup>9</sup> *Id.*

prohibit private or state-operated clinics and hospitals from denying care or medical attention to born-alive infants. Although the U.S. House is considering an amendment to BAIPA that would greatly strengthen the law,<sup>10</sup> Second, states can enact versions of the BAIPA that are more comprehensive and protective than the federal version. Lastly, state versions of federal laws function as reinforcement mechanisms for their federal counterpart. The federal government has limited resources for law enforcement and prosecution, so state BAIPAs help ensure the intent and requirements of BAIPAs are enforced and that violators are prosecuted.

Born Alive legislation has become prevalent in recent years with thirty-seven Born Alive bills being introduced in 2021. There has been a 700% increase in Born Alive legislation over the last six years.<sup>11</sup> This legislation presents a strong opportunity for pro-life legislation moving forward.

To assist states considering protection for born-alive infants, AUL has drafted the *Born-Alive Infant Protection Act*. For more information or drafting assistance, please contact AUL at [Legislation@aul.org](mailto:Legislation@aul.org).

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<sup>10</sup> The “Born-Alive Abortion Survivors Protection Act,” <https://www.congress.gov/bill/117th-congress/house-bill/619/titles>, H.R. 619 in the 117th Congress, is the subject of a discharge petition, but as of this writing has fallen short of the votes needed for discharge despite having 205 co-sponsors.

<sup>11</sup> *Born-Alive Abortion Survivors Protection Acts*, Family Research Council (2021) <https://downloads.frc.org/EF/EF21G28.pdf>.

# BORN-ALIVE INFANT PROTECTION ACT

HOUSE/SENATE BILL No. \_\_\_\_\_  
By Representatives/Senators \_\_\_\_\_

## Section 1. Title.

This Act may be known and cited as the “Born-Alive Infant Protection Act.”

## Section 2. Legislative Findings and Purpose.

- (a) The [Legislature] of the State of [Insert name of State] finds that:
- (1) The State of [Insert name of State] has a paramount interest in protecting all human life.
  - (2) If an [attempted] abortion results in the live birth of an infant, the infant is a legal person for all purposes under the laws of this State.
  - (3) It is not an infringement on a woman’s right to terminate her pregnancy for this State to assert its interest in protecting an infant whose live birth occurred as the result of an [attempted] abortion.
  - (4) Without proper legal protection, newly born infants who have survived [attempted] abortions have been denied appropriate life-saving or life-sustaining medical care and treatment and have been left to die.
- (b) Based on the findings in subsection (a), the purposes of this Act are to:
- (1) Ensure the protection and promotion of the health and well-being of all infants born alive in this State; and
  - (2) Mandate that healthcare providers give medically appropriate and reasonable life-saving and life-sustaining medical care and treatment to all born-alive infants.

## Section 3. Definitions.

For the purposes of this Act only:

(a) “**Abortion**” means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to:

- (1) Save the life or preserve the health of the unborn child;
- (2) Remove a dead unborn child caused by spontaneous abortion; or
- (3) Remove an ectopic pregnancy.

(b) “**Born alive**” or “**live birth**” means the complete expulsion or extraction of an infant from his or her mother, regardless of the state of gestational development, who, after expulsion or extraction, 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, but not limited to, one or more of the following:

- (1) Breathing;
- (2) A heartbeat;
- (3) Umbilical cord pulsation; or
- (4) Definite movement of voluntary muscles.

(c) “**Consent**” means the voluntary agreement or acquiescence by a person of age and with the requisite mental capacity who is not under duress or coercion and who has knowledge or understanding of the act or action to which he or she has agreed or acquiesced.

(d) “**Facility**” or “**medical facility**” means any public or private hospital, clinic, center, medical school, medical training institution, healthcare facility, physician’s office, infirmary, dispensary, ambulatory surgical treatment center, or other institution or location wherein medical care is provided to any person.

(e) “**Healthcare provider**” means any individual who may be asked to participate in any way in a healthcare service, including, but not limited to, the following: a physician; physician’s assistant; nurse; nurses’ aide; medical assistant; hospital

employee; clinic employee; nursing home employee; pharmacist; pharmacy employee; researcher; medical or nursing school faculty, student, or employee; counselor; social worker; or any professional, paraprofessional, or any other person who furnishes or assists in the furnishing of healthcare services.

(f) “**Infant**” means a child of the species *homo sapiens* who has been completely expelled or extracted from his or her mother, regardless of the stage of gestational development, until the age of thirty (30) days post birth.

(g) “**Nurse**” means a person who has undergone training, passed an examination, and obtained a license from the State of *[Insert name of State]* conferring authorization to provide care for patients. The term includes registered nurses, licensed practical nurses, *[and]* licensed vocational nurses, *and [Insert other appropriate terms]*.

(h) “**Physician**” means a person licensed to practice medicine in the State of *[Insert name of State]*. This term includes medical doctors and doctors of osteopathy.

(i) “**Premature**” or “**preterm**” means occurring prior to the thirty-seventh (37th) week of gestation.

#### Section 4. Requirements and Responsibilities.

(a) A person shall not deny or deprive an infant of nourishment with the intent to cause or allow the death of the infant for any reason including, but not limited to:

- (1) The infant was born with a perceived or actual disability or genetic abnormality;
- (2) The infant is not wanted by the parent(s) or guardian(s); or
- (3) The infant is born alive by natural or artificial means.

(b) A person shall not deprive an infant of medically appropriate and reasonable medical care, medical treatment, or surgical care.

(c) The requirements of this Section shall not be construed to prevent an infant's parent(s) or guardian(s) from refusing to give consent to medical treatment or surgical care which is not medically necessary or reasonable including care or treatment which:

- (1) Is not necessary to save the life of the infant;
- (2) Has a potential risk to the infant's life or health that outweighs the potential benefit to the infant of the treatment or care; or
- (3) Is treatment that will do no more than temporarily prolong the act of dying when death is imminent.

(d) A physician performing an abortion must take all medically appropriate and reasonable steps to preserve the life and health of a born-alive infant. If an abortion performed in a hospital results in a live birth, the physician attending the abortion shall provide immediate medical care to the infant, inform the mother of the live birth, and request transfer of the infant to an on-duty resident or emergency care physician who shall provide medically appropriate and reasonable medical care and treatment to the infant.

If an abortion performed in a facility other than a hospital results in a live birth, the physician attending the abortion shall provide immediate medical care to the infant and call 9-1-1 for an emergency transfer of the infant to a hospital that shall provide medically appropriate and reasonable care and treatment to the infant.

(e) If the physician described in subsection (d) of this Section is unable to perform the duties in that paragraph because he is assisting the woman on whom the abortion was performed, then an attending physician's assistant, nurse, or other healthcare provider must assume the duties outlined in subsection (d) of this Section.

(f) Any born-alive infant including one born in the course of an abortion procedure shall be treated as a legal person under the laws of this State, with the same rights to medically appropriate and reasonable care and treatment, and birth and death (if death occurs) certificates shall be issued accordingly.

(g) If, before the abortion, the mother [*and if married, her husband,*] has [*or have*] stated in writing that she does [*or they do*] not wish to keep the infant in the event that the abortion results in a live birth, and this writing is not retracted before the [*attempted*] abortion, the infant, if born alive, shall immediately upon birth become a ward of [*Insert name of appropriate state child welfare department or agency*].



(h) No person may use any born-alive infant for any type of scientific research or other kind of experimentation except as necessary to protect or preserve the life and health of the born-alive infant.

**[OPTIONAL: Section 5. Infanticide.]** *[Consider this Section if the state's criminal code does not include the crime of infanticide, or if the State does not wish to add another definition to the existing crime of infanticide.]*

(a) **"Infanticide"** means any deliberate act that:

(1) Is intended to kill an infant who has been born alive; and

(2) That does kill such infant.

(b) Any physician, nurse, or other healthcare provider who deliberately fails to provide medically appropriate and reasonable care and treatment to a born-alive infant and, as a result of that failure the infant dies, shall be guilty of the crime of infanticide.]

Section [6]. Exceptions.

The parent(s) or guardian(s) of a born-alive infant will not be held criminally or civilly liable for the actions of a physician, nurse, or other healthcare provider that are in violation of this Act and to which the parent(s) or guardian(s) did not give consent.

Section [7]. Criminal Penalties.

(a) Any physician, nurse, or other healthcare provider who intentionally, knowingly, or negligently fails to provide medically appropriate and reasonable care and treatment to a born-alive infant in the course of an *[attempted]* abortion shall be guilty of a *[Insert appropriate classification]* felony and upon conviction shall be fined an amount not exceeding *[Insert appropriate amount]*, imprisoned not less than *[Insert appropriate term]* years and not exceeding *[Insert appropriate term]* years, or both [or "will be punished according to the sentencing guidelines found in the *[Criminal/Penal Code]* of *[Insert name of State]*"].

**[OPTIONAL (if Act includes Section on "Infanticide"):** (b) Any person found guilty of the crime of infanticide shall be fined an amount not exceeding *[Insert appropriate amount]*, or imprisoned not less than *[Insert appropriate term]* years and not exceeding *[Insert appropriate term]* years, or both [or "will be punished according

to the sentencing guidelines found in the [Criminal/Penal Code] of [Insert name of State].”]

[(c)] Any violation of Section 4, subsection (h) of this Act [concerning the research use of a born-alive infant] is a [Insert appropriate classification] felony and upon conviction shall be fined an amount not exceeding [Insert appropriate amount], or imprisoned not less than [Insert appropriate term] years and not exceeding [Insert appropriate term] years, or both [or “will be punished according to the sentencing guidelines found in the [Criminal/Penal Code] of [Insert name of State]”].

#### Section [8]. Civil and Administrative Action.

In addition to whatever remedies are available under the statutory [or common] law of this State, failure to comply with the requirements of this Act shall

(a) Provide a basis for a civil action for compensatory and punitive damages. Any conviction under this Act shall be admissible in a civil suit as *prima facie* evidence of a failure to provide medically appropriate and reasonable care and treatment to a born-alive infant. Any civil action may be based on a claim that the death of or injury to the born-alive infant was a result of simple negligence, gross negligence, wantonness, willfulness, intentional conduct, or another violation of the legal standard of care.

(b) Provide a basis for professional disciplinary action under [Insert appropriate reference(s) to state statute(s) and/or administrative rule(s) concerning the state medical board’s oversight and review authority] for the suspension or revocation of any license for physicians, licensed and registered nurses, or other licensed or regulated persons. Any conviction of any person for any failure to comply with the requirements of this Act shall result in the automatic suspension of his or her license for a period of at least one (1) year [or other appropriate penalty] and said license shall be reinstated after that time only under such conditions as the [Insert reference(s) to appropriate regulatory or licensing body] shall require to ensure compliance with this Act.

(c) Provide a basis for recovery for the parent(s) of the infant or the parent(s) or guardian(s) of the mother if the mother is a minor for the wrongful death of the infant under [Insert reference(s) to state’s wrongful death statute(s)], whether or not the infant was viable at the time the [attempted] abortion was performed.

#### Section [9]. Construction.

(a) Nothing in this Act shall be construed to 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 this Act).

(b) Nothing in this Act shall be construed to affect existing federal or state law regarding abortion.

(c) Nothing in this Act shall be construed as creating or recognizing a right to abortion.

(d) Nothing in this Act shall be construed to alter generally accepted medical standards.

#### Section [10]. Severability.

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable herefrom and shall not affect the remainder hereof or the application of such provision to other persons not similarly situated or to other dissimilar circumstances.

#### Section [11]. Right of Intervention.

The [Legislature], by joint resolution, may appoint one or more of its members who sponsored or cosponsored this Act in his or her official capacity to intervene as a matter of right in any case in which the constitutionality of this law is challenged.

#### Section [12]. Effective Date.

This Act takes effect on [Insert date].

# **STATE OF THE STATES: WHERE ARE WE NOW? BORN-ALIVE INFANT PROTECTION (BAIPA)**

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Thirty-five states have passed some form of BAIPA.

Thirty-two states have laws that require some form of medical attention be provided to infants who survive abortions: Alabama, Arizona, Arkansas, Delaware, Florida, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia, and Wyoming.

Three states have born-alive protections that state any rights (medical or legal) granted to an infant who survives an abortion are similar to a spontaneously born infant: California, Washington, and Wisconsin.

For further information regarding this or other AUL policy guides, please contact:

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