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FISCAL IMPACT REPORT

SPONSOR Montoya/Reeb/Terrazas/Lord **LAST UPDATED** 03/08/2023 **ORIGINAL DATE** 02/22/2023

SHORT TITLE Born Alive Act **BILL NUMBER** House Bill 468

ANALYST Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Board of Nursing costs		$5.0	$5.0	$10.0	Recurring	General Fund
DOH costs		$75.0	$75.0	$150.0	Recurring	General Fund
CYFD costs		$1,260.0	$1,260.0	$2,530.0	Recurring	General Fund
Total		**$1,340.0**	**$1,340.0**	**$2,680.0**	**Recurring**	**General Fund**

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Near duplicate of House Bill 441

Sources of Information

LFC Files

Responses Received From
Board of Nursing (BON
Medical Board (NMMB)
Children, Youth and Families Department (CYFD)
Administrative Office of the Courts (AOC)
Office of the Attorney General (NMAG)
Department of Health (DOH)

SUMMARY

Synopsis of House Bill 468

House Bill 468 mandates that medical care be given to all infants born alive, as evidenced by umbilical cord pulsation, respiratory effort or heartbeat. Appropriate feeding must occur, and reasonable medical treatment must be given. The parent's parent or guardian can withhold approval of treatment if that treatment is not life-saving or has perceived risk to the infant or would only briefly prolong life.

Abortion providers who deliver a born-alive infant must provide emergency care and then refer to an appropriate care giver in a hospital or call 911 for emergency transfer to a hospital if the

abortion is being performed in a non-hospital setting. Infants born alive during an abortion procedure are to be considered legal persons, entitled to care.

Any person in the place performing the abortion may report failure to comply with these requirements to a state and/or federal law enforcement agency.

Persons "performing an overt act" killing a born alive infant is guilty of a first-degree felony, and attempting to do so is a second-degree felony. Women delivering a born-alive infant who is not given appropriate medical care can sue for damages and for three times the cost of the abortion.

The legislation creates a task force to "monitor born alive infants", with two members from DOH and three from CYFD to create guidelines for "all born alive infants", assign CYFD caseworkers to inspect each abortion facility each month to be sure appropriate medical care is given to born alive infants and reporting is being done properly. The task force is to report to the Legislature and the governor each year.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

There is no appropriation in House Bill 468.

Board of Nursing estimates additional costs of $5,000 for a projected case per year in which they would have to provide legal assistance regarding one anticipated case per year. AOC and NMAG do not anticipate additional costs to those agencies. AOC would expect minimal increased costs to update, distribute, and document statutory changes.

CYFD estimates its costs as follows: "Three CYFD employees are required to serve on the task force. As the duration of the task force is not established, fiscal impact related to the task force itself is unknown. This impact will be absorbed by existing resources."

"CYFD caseworkers are required to conduct monthly inspections and staff interviews at every facility statewide that performs elective abortions to assess whether appropriate measures and care are being given to "born alive" infants and whether the reporting guidelines are being followed. Given that the bill does not restrict these inspections and interviews only to children "born alive" pursuant to subsection D of section 2 of this bill, this bill obligates CYFD to assess every birth occurring at such facilities. This impact *cannot* be absorbed by existing resources. A minimum of 18 FTE at $70.0/year will be required to address assessment, inspection, interview, training, and related duties."

DOH also foresees additional costs:

> In previous analysis, the NMDOH Bureau of Vital Records and Health Statistics has estimated that HB0468 would require the development and implementation of new administrative procedures and assignment staff to the task related to health care providers completing birth and death certificates for each born alive infant. Although the total number of events would be very small, costs to support the program for all facilities that provide abortions were estimated at $75,000 per year based on comparable activities within Vital Records.

SIGNIFICANT ISSUES

NMAG notes the previous legislation dealing with this issue: As raised by AOC, the following issue is relevant to House Bill 468: "In 2002, President George W. Bush signed into federal law the Born-Alive Infants Protection Act, 1 U.S.C.A. § 8, which provides that a baby who survives a botched abortion is a human being and must be cared for accordingly by medical professionals. The definitional section of "born alive" in the federal law mirrors the language of HB441. As such, HB441 is duplicative of the federal Born Alive Infants Protection Act."

AOC makes note of the following significant issues with respect to this bill:

1) HB468, 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.

2) HB468 defines "infant" to mean a child who has been completely expulsed or extracted from the child's mother, regardless of the state of gestational development. When does a "child" cease to be covered by this definition? Section 4 provides a first-degree felony resulting in the death of a child penalty for a person who intentionally performs an overt act that kills a born alive infant. Given the imprecise definition of "infant," the penalty could apply to an act that kills a "child" of any age. Importantly, some parents choose to birth a baby whom they know will not survive, in order to hold and comfort the baby until its death. It appears that the act of delivering a baby in this instance could subject someone to the Section 5 first degree felony resulting in the death of a child penalty.

3) In January 2023, the United States House of Representatives passed, by a vote of 220 to 210, H.R.26 – Born-Alive Abortion Survivors Protection Act. See https://www.congress.gov/bill/118th-congress/house-bill/26. CNN reported on this federal bill on January 12, 2023, saying that this act "would require health care providers to try to preserve the life of an infant in the rare case that a baby is born alive during or after an attempted abortion."

DOH, too, states the presence of any of the signs of "life" stated in the bill does not indicate viability and also notes that the proposed actions would represent legislative interference with the practice of medicine.

DUPLICATION

Near duplication of House Bill 441.

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 (approximately 22 thousand live births per year) in addition to all those born alive during an abortion procedure.

The Board of Nursing mentions the following concerns:

- The definition of born alive includes breathing, heartbeat, umbilical cord

pulsation and definite movement of voluntary muscles. If any person observes what is perceived as a heartbeat or umbilical pulsation or voluntary muscle movement, then the birth is considered a born alive birth. This would allow any person to present an assessment of live birth outside the assessment of the licensed health care providers.

- It is unclear if caseworkers from CYFD are the most appropriate professionals to provide monthly visits to facilities to case find. [CYFD agrees, writing "Although CYFD is responsible for assessing abuse and neglect of children, CYFD does not have the expertise to assess a medical professional's provision of care to children. Additionally, CYFD has no statutory authority concerning these providers, either under the Children's Code or the Public Health Act."]

NMAG raises two issues:

- Section 4 of HB468 does not define the term "overt act," and it is unclear whether this term could encompass failing to provide medical attention to the born alive infant (as referenced in other sections of HB441).
- HB441 also presents a potential conflict with Section 24-7A-6.1 NMSA 1978, 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."

Two additional concerns are raised by DOH

Other issues with HB0468 relate to the task force, where it is unclear how the task force will operate, how membership will be determined, and which agency will take the lead. Participation in the task force would require staff time and resources, with no additional funding provided. There also are no provisions for the handling of identifiable health information by the task force.

HB0468 is also unclear about who would have responsibility for monitoring of birth and death certificate registration with Vital Records. If Vital Records would be responsible for monitoring, administrative procedures would need to be developed and implemented, with associated costs.

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