

Colorado Legislative Council Staff Fiscal Note

**FINAL
FISCAL NOTE**

Drafting Number: LLS 15-0031
Prime Sponsor(s): Rep. Landgraf

Date: August 31, 2015
Bill Status: Postponed Indefinitely
Fiscal Analyst: Lauren Schreier (303-866-3523)

BILL TOPIC: BORN-ALIVE INFANT PROTECTION ACT

Fiscal Impact Summary*	FY 2015-2016	FY 2016-2017
State Revenue	< \$5,000	< \$5,000
General Fund	< 5,000	< 5,000
State Expenditures	Potential increase. See State Expenditures section.	
FTE Position Change		
TABOR Set Aside	< \$5,000	< \$5,000
Appropriation Required: None.		

** This summary shows changes from current law under the bill for each fiscal year.*

Summary of Legislation

The bill creates the Born-Alive Infant Protection Act (act). The act prohibits any person from denying or depriving an infant of nourishment with the intent to cause or allow the death of the infant for any reason, even if the infant was born alive during an abortion procedure. The bill prohibits any person from depriving an infant of medically appropriate and reasonable medical care or treatment unless the medical care:

- is not required to save the life of the infant;
- 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
- is treatment that will do no more than temporarily prolong the act of dying when death is imminent.

A physician performing an abortion must take all medically appropriate and reasonable steps to preserve the life and health of a born-alive infant. Under the bill, any born-alive infant, including an infant born during the course of an abortion procedure, must be treated as a legal person under Colorado law. The bill also prohibits any person from using a born-alive infant for any type of scientific or experimental research unless it is deemed necessary to protect or preserve the life and health of the born-alive infant.

The bill also creates three class 3 felonies and civil penalties and related definitions.

State Revenue

Beginning in FY 2015-16, this bill is anticipated to increase state revenue by less than \$5,000 per year, credited to the Fines Collection Cash Fund in the Judicial Department. The fine penalty for a class 3 felony is \$3,000 to \$750,000. Because the courts have the discretion of incarceration, imposing a fine, or both, the precise impact to state revenue cannot be determined. However, the fiscal note assumes a high level of compliance among health care providers and that any revenue generated is likely to be less than \$5,000.

TABOR Impact

The bill may increase state revenues from fines, which may increase the amount required to be refunded under TABOR. TABOR refunds are paid from the General Fund.

State Expenditures

The bill affects workload and costs in several state agencies, as discussed below.

Judicial Department. The bill may increase workload in the trial courts by a minimal amount. The bill may result in additional felony filings and civil filings for health care providers acting in violation of the bill. However, the fiscal note assumes a high level of compliance among health care providers and that no new appropriations are required.

Office of the State Public Defender and the Office of Alternate Defense Counsel. The bill may increase workload or costs for the Office of the State Public Defender and Office of Alternate Defense Counsel, to provide representation for any persons deemed to be indigent. The fiscal note assumes any such increases are minimal and will not require an increase in appropriations for either agency.

Department of Regulatory Agencies (DORA). The bill may increase workload in the Department of Regulatory Agencies for the Colorado Medical Board to review complaints, conduct investigations, hold hearings, and take disciplinary action against medical providers who engage in conduct that fails to take all medically appropriate action to preserve the life of a born-alive infant. The fiscal note assumes a high level of compliance among medical professionals, and any workload increase to the DORA is anticipated to be minimal.

Department of Corrections. Current law prohibits the General Assembly from passing any bill to increase periods of imprisonment in state correctional facilities without appropriating an amount sufficient to cover the increased capital construction and operating costs of the bill in each of the first five fiscal years. This bill creates three class 3 felony offenses. The fiscal note does not project any convictions to occur in the next five years for the offenses created in the bill. Therefore, the bill is not expected to have a fiscal impact on the Department of Corrections. Should any offenders be convicted and sentenced to the custody of the Department of Corrections, it is assumed these costs can be addressed through the annual budget process. For informational purposes only, the average length of stay for a class 3 felony of violence is 83.0 months and in FY 2015-16, the cost to house an inmate for one year is \$22,068.

Department of Public Health and Environment (DPHE). The bill requires that birth and death certificates be issued accordingly for infants that are born-alive during abortion procedures. This will increase workload for the DPHE by a minimal amount, but can be accomplished within existing appropriations.

Comparable Crime

Pursuant to Section 2-2-322 (2.5), C.R.S., Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of the existing crime that creates a new factual basis for the offense. The bill creates three new felony offenses relating to the death of, failure to provide care for, or experimentation on infants. A somewhat related offense includes current law on child abuse and neglect. Over the last five years, there have been 161 filings for child abuse and neglect cases. It is unknown how many of these cases involved physicians and other health care providers. At the writing of this fiscal note, no information on the gender and minority status of victims is available. However, information on the gender and minority status of offenders may be available upon request. Based on this, the fiscal note assumes a minimal number of filings and convictions under the bill, and that no health care provider will be sentenced to the custody of the Department of Corrections over the next five years.

Effective Date

The bill was postponed indefinitely by the House Public Health Care and Human Services Committee on March 3, 2015.

State and Local Government Contacts

Corrections
Human Services
Municipalities
Public Health and Environment

Judicial Department
Counties
Law

Higher Education
District Attorneys
Regulatory Agencies