

History of “Born Alive Infant” Legislation in Illinois

In 2001, the first package of so-called “Born Alive Infant” bills was introduced in the Illinois General Assembly (SB 1093, SB 1094 and SB 1095). This package of legislation was aimed at giving the legal rights of personhood to a fetus, no matter what stage of pregnancy – even before viability. SB 1095 defined “born alive” and amended every Illinois law or regulation to include the definition. The definition of “live born” fetus applied under circumstances of natural labor, induced labor, cesarean section, or induced abortion. These bills would have placed criminal and civil liabilities (including punitive damages) on doctors and hospitals that provided obstetric care or abortion services to pregnant women. By giving fetuses the legal status of personhood, these bills had broad ramifications. These bills gave the fetus the same status under the law as the pregnant woman and required them to be treated the same. These bills had the potential of placing a woman and her fetus at odds when it came to medical care because what might be in the best interest of one might put the other at risk. For these reasons, Planned Parenthood came out strongly against the package. The package failed in the General Assembly and did not become law.

In subsequent years numerous other “Born Alive Infant” bills were introduced. These bills included the same or similar language as the first package introduced in 2001. Planned Parenthood opposed all of these bills. None of them became law.

Recently, anti-choice activists have claimed that the Illinois “Born Alive Infants” legislation was designed to outlaw “infanticide”. However, the various versions of these bills did not include the term “infanticide” nor did they make changes to the Illinois criminal code in order to create such a crime. In fact, the argument that legislation was needed ignores the fact that Illinois already had provisions in the Illinois Abortion Act of 1975 which outlined requirements for the care of fetuses that have a chance for survival.

It is also important to note that Congress also considered “Born Alive Infant” legislation. On August 5, 2002 the Born-Alive Infants Protection Act became law. Anti-choice activists often claim that the federal law is the same as state legislation considered in Illinois. However, this allegation is extremely misleading. This law included a similar definition to the “born alive” definition bills introduced in Illinois during 2001 - 2005. However, until SB 1082 was amended in 2003, the definition bills introduced in the Illinois General Assembly did not contain the **exact** language of the federal legislation. Although the differences between the federal and state versions appeared to be of few actual words, the legal impact of the definitions remained significantly different between the two versions. The state versions afforded full legal rights to pre-viable fetuses. They also excluded a section of the federal bill that clarified that legal rights of a person would not be applied to fetuses that were not yet born.

In addition to language differences between the state and federal definition bills, another very important factor was the fact that in Illinois, unlike in Congress, the “Born Alive Infant” legislation was introduced as a package of bills that included liabilities for physicians and hospitals that provided abortion services and medical care to pregnant women. Thus, the state legislation was intended to have a much broader reach than the federal law.

Finally, perhaps the most significant difference between the federal and state versions of the legislation is the fact that the federal version applied to federal law while the state version applied to Illinois law. The federal legislation was considered to be a restatement of existing federal law. The federal Born-Alive Infants Protection Act did not amend or change Illinois law. At the time, there were no federal laws regulating abortion in any way. Therefore, the federal law did not limit access to abortion services or threaten legal action against physicians. But, Illinois law does regulate abortion and medical practice. Therefore, it is the state legislation that would have affected abortion practice in Illinois, not federal law. While these differences between the federal and state legislation may appear to be just legal

technicalities, when it came to medical care for pregnant women the actual impact would have been significant.

In 2003, "Born Alive Infant" legislation was reintroduced. This time it was a package of two bills instead of three. SB 1082 would have amended the Statute on Statutes by including the definition of "born alive" in any Illinois statute, rule or regulation using the terms "person", "human being", "child", or "individual". SB 1082 included a clause that was different from the federal Born-Alive Infants Protection Act. It also excluded language contained in the federal law. The second bill, SB 1083, would have created the Induced Birth Infant Liability Act which included civil liability for physicians who performed abortions. Again, the legislation was aimed at creating barriers to abortion services in Illinois. In addition, the package raised concerns about the provision of health care to pregnant women and the legal status of the fetus. For these reasons Planned Parenthood renewed its opposition to the package.

On March 12, 2003 both bills were posted for consideration in the Illinois Senate Health and Human Services Committee which was chaired by Senator Barack Obama. The bills' sponsor, Senator Rick Winkel first presented SB 1082. He requested that an amendment be adopted to the bill which would change it to mirror the federal legislation passed in 2002. The amendment was adopted in a procedural move called "leave for attendance roll call" which is a courtesy that is afforded to bill sponsors in order to move committee hearings along in a timely fashion. Despite the fact that the bill then contained the same language as the federal law, it remained problematic because it still amended Illinois statutes regulating abortion, and it still was part of a package that included SB 1083. Senator Winkel presented SB 1082 to the committee and it failed on a vote of six members voting no (including Senator Obama) and four members voting yes. Chairman Obama asked Senator Winkel if he wished to present SB 1083. He declined. Senator Winkel did not present the bill because, due to the failure of SB 1082, SB 1083 lacked a definition of a "live born" fetus and, thus, was structurally flawed. SB 1082 and SB 1083 were not considered again that session.

In 2005, the "Born Alive Infant" legislation came up again. However, this time Representative Brandon Phelps introduced the definition bill as a stand alone bill, HB 984. Planned Parenthood opposed the bill because even without the companion legislation, it still could have caused numerous problems when the definition interfaced with Illinois statutes and regulations on abortion and medical practice. HB 984 was assigned to the Illinois House Judiciary Civil Law Committee. The chairman, Representative John Fritchey, initiated talks between the interested parties. Planned Parenthood agreed to participate in negotiations because without the companion bills, we saw the possibility of addressing the issues we had with the definition bill and reaching a compromise. The result was a negotiated bill which contained the definition of "born alive" but also included the following key protections for physicians and pregnant women:

"(c) Nothing in this Section 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 Section.

(d) Nothing in this Section shall be construed to affect existing federal or State law regarding abortion.

(e) Nothing in this Section shall be construed to alter generally accepted medical standards."

The compromise language passed both the Illinois House and Senate with no legislators voting against it. HB 984 was signed into law on August 12, 2005. The Illinois law does contain a definition of "born alive" that mirrors the federal law including the language contained in (c) which was left out of earlier state versions. However, the above language in (d) and (e) is not contained in the federal law. These provisions were essential in ensuring that the state law would not change the laws regulating abortion or medical practice. The enactment of HB 984 did not negatively impact access to abortion services in Illinois and medical care for pregnant women remains protected.