

TABLE 1: STATE SURVEY OF PRENATAL TORT CLAIMS¹³⁴

Key

√ = Tort claim explicitly recognized

X = Tort claim explicitly disallowed

* = Tort claim identified in case law but not explicitly recognized

[Blank] = no case law or statute

STATE	WRONGFUL PREGNANCY	WRONGFUL BIRTH	WRONGFUL LIFE
AL	√ <i>Boone v. Mullendore</i> , 416 So. 2d 718 (Ala. 1982) (limiting damages)	√ <i>Keel v. Banach</i> , 624 So. 2d 1022 (Ala. 1993)	X <i>Elliott v. Brown</i> , 361 So. 2d 546 (Ala. 1978)
AK	√ <i>M.A. v. United States</i> , 951 P.2d 851 (Alaska 1998) (precluding damages for child rearing)		
AZ	X ARIZ. REV. STAT. § 12-719 (LexisNexis 2012) (precluding recovery unless grossly negligent or intentional)	X § 12-719 (precluding recovery unless grossly negligent or intentional)	X § 12-719 (precluding recovery unless grossly negligent or intentional)

134. Last updated March 2023.

STATE	WRONGFUL PREGNANCY	WRONGFUL BIRTH	WRONGFUL LIFE
AR	√ <i>Wilbur v. Kerr</i> , 628 S.W.2d 568 (Ark. 1982) (limiting damages)	X ARK. CODE ANN. § 16-120-902 (2017) (precluding recovery unless intentional, reckless, or grossly negligent act or omission)	X § 16-120-902 (precluding recovery unless intentional, reckless, or grossly negligent act or omission)
CA		√ <i>Turpin v. Sortini</i> , 643 P.2d 954 (Cal. 1982)	√ <i>Turpin</i> , 643 P.2d 954
CO	√ <i>Dotson v. Bernstein</i> , 207 P.3d 911 (Colo. App. 2009)	√ <i>Lininger ex rel. Lininger v. Eisenbaum</i> , 764 P.2d 1202 (Colo. 1988) (en banc)	X <i>Lininger</i> , 764 P.2d 1202
CT	√ <i>Ochs v. Borrelli</i> , 445 A.2d 883 (Conn. 1982)	√ <i>Rich v. Foye</i> , 976 A.2d 819 (Conn. Super. Ct. 2007)	X <i>Rich</i> , 976 A.2d 819
DE		√ <i>Garrison ex rel. Garrison v. Medical Center of Delaware</i> , 581 A.2d 288 (Del. 1989)	X <i>Garrison</i> , 581 A.2d 288
DC	X <i>Flowers v. District of Columbia</i> , 478 A.2d 1073 (D.C. 1984)	√ <i>Haymon v. Wilkerson</i> , 535 A.2d 880 (D.C. 1987)	
FL	√ <i>Fassoulas v. Ramey</i> , 450 So. 2d 822 (Fla. 1984) (prohibiting recovery for cost of raising child)	√ <i>Kush v. Lloyd</i> , 616 So. 2d 415 (Fla. 1992)	X <i>Kush</i> , 616 So. 2d 415
GA	√ <i>Fulton-DeKalb Hospital Authority v. Graves</i> , 314 S.E.2d 653 (Ga. 1984) (prohibiting recovery for cost of raising child)	X <i>Atlanta Obstetrics & Gynecology Group v. Abelson</i> , 398 S.E.2d 557 (Ga. 1990)	
HI ¹³⁵			

135. While Hawaii has no case law on wrongful pregnancy claims (or wrongful birth or life claims), a negligent vasectomy case was permitted to proceed on the basis of lack of informed consent. *Carr v. Storde*, 904 P.2d 489 (Haw. 1995).

STATE	WRONGFUL PREGNANCY	WRONGFUL BIRTH	WRONGFUL LIFE
ID	√ IDAHO CODE § 5-334 (2010) (explicitly excluding negligent fertilization claims from statutory preclusion); <i>Conner v. Hodges</i> , 333 P.3d 130 (Idaho 2014) (characterizing case as a “medical malpractice” action)	X § 5-334	X § 5-334
IL	√ <i>Cockrum v. Baumgartner</i> , 447 N.E.2d 385 (Ill. 1983) (prohibiting recovery for cost of raising child)	√ <i>Clark v. Children’s Memorial Hospital</i> , 955 N.E.2d 1065 (Ill. 2011) (precluding recovery of emotional distress damages)	X <i>Clark</i> , 955 N.E.2d 1065
IN	√ <i>Chaffee v. Seslar</i> , 786 N.E.2d 705 (Ind. 2003) (prohibiting recovery for cost of raising child)	√ <i>Bader v. Johnson</i> , 732 N.E.2d 1212 (Ind. 2000)	X <i>Cowe v. Forum Group</i> , 575 N.E.2d 630 (Ind. 1991)
IA	√ <i>Nanke v. Napier</i> , 346 N.W.2d 520 (Iowa 1984)	X IOWA CODE § 613.15B (2018) (precluding recovery unless grossly negligent)	X § 613.15B (precluding recovery unless grossly negligent)
KS	√ <i>Johnston v. Elkins</i> , 736 P.2d 935 (Kan. 1987) (limiting damages to those incurred before birth of child)	X KAN. STAT. ANN. § 60-1906 (2019)	X § 60-1906
KY	X <i>Schork v. Huber</i> , 648 S.W.2d 861 (Ky. 1983)	X <i>Grubbs v. Barbourville Family Health Center</i> , 120 S.W.3d 682 (Ky. 2003)	X <i>Grubbs</i> , 120 S.W.3d 682
LA	√ <i>Pitre v. Opelousas General Hospital</i> , 530 So. 2d 1151 (La. 1988)		X <i>Robinson v. Mitchell</i> , 53-958 (La. App. 2 Cir. 6/30/21), 323 So. 3d 982
ME	√ ME. STAT. tit. 24, § 2931 (1985) (limiting claims to failed sterilization and limiting damages)	√ § 2931 (limiting damages); <i>Thibeault v. Larson</i> , 666 A.2d 112 (Me. 1995) (confirming cause of action under statute)	X § 2931
MD	√ <i>Jones v. Malinowski</i> , 473 A.2d 429 (Md. 1984)	√ <i>Reed v. Campagnalo</i> , 630 A.2d 1145 (Md. 1993)	X <i>Kassama v. Magat</i> , 792 A.2d 1102 (Md. 2002)

STATE	WRONGFUL PREGNANCY	WRONGFUL BIRTH	WRONGFUL LIFE
MA	√ <i>Burke v. Rivo</i> , 551 N.E.2d 1 (Mass. 1990) (limiting claim to plaintiffs who sought sterilization for economic reasons)	√ <i>Viccaro v. Milunsky</i> , 551 N.E.2d 8 (Mass. 1990)	X <i>Viccaro</i> , 551 N.E.2d 8
MI	√ <i>Rouse v. Wesley</i> , 494 N.W.2d 7 (Mich. Ct. App. 1992); MICH. COMP. LAWS § 600.2971 (2000) (prohibiting damages for cost of raising child)	X § 600.2971 (precluding recovery unless grossly negligent or intentional)	X § 600.2971 (precluding recovery unless grossly negligent or intentional)
MN	√ <i>Sherlock v. Stillwater Clinic</i> , 260 N.W.2d 169 (Minn. 1977); see MINN. STAT. § 145.424 (2005) (allowing wrongful pregnancy actions by not explicitly precluding them)	X § 145.424	X § 145.424
MS ¹³⁶			
MO	√ <i>Girdley v. Coats</i> , 825 S.W.2d 295 (Mo. 1992) (prohibiting damages for cost of raising child)	X MO. REV. STAT. § 188.130 (1986)	X § 188.130
MT			
NE			
NV	X <i>Szekeres v. Robinson</i> , 715 P.2d 1076 (Nev. 1986)	√ <i>Greco v. United States</i> , 893 P.2d 345 (Nev. 1995)	X <i>Greco</i> , 893 P.2d 345
NH	√ <i>Kingsbury v. Smith</i> , 442 A.2d 1003 (N.H. 1982) (prohibiting recovery for cost of raising child)	√ <i>Smith v. Cote</i> , 513 A.2d 341 (N.H. 1986)	X <i>Smith</i> , 513 A.2d 341
NJ	√ <i>Betancourt v. Gaylor</i> , 344 A.2d 336 (N.J. Super. Ct. Law Div. 1975)	√ <i>Schroeder v. Perkel</i> , 432 A.2d 834 (N.J. 1981)	√ <i>Procanik v. Cillo</i> , 478 A.2d 755 (N.J. 1984)

136. No known “wrongful birth” and “wrongful life” lawsuits have ever been filed in Mississippi. Jimmie E. Gates, *Bill Would Stop Wrongful Birth Lawsuits in Mississippi*, CLARION-LEDGER (Jan. 9, 2017, 4:24 PM), <https://www.clarionledger.com/story/news/politics/2017/01/09/mississippi-wrongful-birth-lawsuits/96353220> [perma.cc/A52F-CQ49].

STATE	WRONGFUL PREGNANCY	WRONGFUL BIRTH	WRONGFUL LIFE
NM	√ <i>Lovelace Medical Center. v. Mendez</i> , 805 P.2d 603 (N.M. 1991)		
NY	√ <i>Weintraub v. Brown</i> , 470 N.Y.S.2d 634 (N.Y. App. Div. 1983) (prohibiting damages for cost of raising child)	√ <i>Becker v. Schwartz</i> , 386 N.E.2d 807 (N.Y. 1978)	X <i>Becker</i> , 386 N.E.2d 807
NC	√ <i>Jackson v. Bumgardner</i> , 347 S.E.2d 743 (N.C. 1986)	X <i>Azzolino v. Dingfelder</i> , 337 S.E.2d 528 (N.C. 1985)	X <i>Azzolino</i> , 337 S.E.2d 528
ND		* <i>B.D.H. ex rel. S.K.L. v. Mickelson</i> , 792 N.W.2d 169 (N.D. 2010) (holding that wrongful life statute does not preclude wrongful birth claim but declining to say whether claim is recognized)	X N.D. CENT. CODE § 32-03-43 (2022)
OH	√ <i>Bowman v. Davis</i> , 356 N.E.2d 496 (Ohio 1976)	√ <i>Schirmer v. Mt. Auburn Obstetrics & Gynecologic Associates</i> , 844 N.E.2d 1160 (Ohio 2006) (prohibiting recovery for cost of raising child)	X <i>Hester ex rel. Hester v. Dwivedi</i> , 733 N.E.2d 1161 (Ohio 2000)
OK	X <i>Morris v. Sanchez</i> , 746 P.2d 184 (Okla. 1987)	X OKLA STAT. tit. 63, § 1-741-12 (2014)	X § 1-741-12
OR	√ <i>Zehr v. Haugen</i> , 871 P.2d 1006 (Or. 1994)	√ <i>Tomlinson v. Metropolitan Pediatrics</i> , 412 P.3d 133 (Or. 2018)	X <i>Tomlinson</i> , 412 P.3d 133
PA	√ <i>Mason v. Western Pennsylvania Hospital</i> , 453 A.2d 974 (Pa. 1982) (prohibiting damages for cost of raising child); <i>Hatter v. Landsberg</i> , 563 A.2d 146 (Pa. Super. Ct. 1989) (holding that 42 PA. STAT. AND CONS. STAT. ANN. § 8305 (West 1988)—prohibiting wrongful birth and life claims—did not apply to wrongful pregnancy claims)	X § 8305	X § 8305

STATE	WRONGFUL PREGNANCY	WRONGFUL BIRTH	WRONGFUL LIFE
RI	√ <i>Emerson v. Magendantz</i> , 689 A.2d 409 (R.I. 1997)	√ <i>Blouin v. Koster</i> , No. PC-2015-3817, 2016 WL 3976926 (R.I. Super. Ct. July 19, 2016)	√ <i>Blouin</i> , 2016 WL 3976926
SC			X <i>Willis v. Wu</i> , 607 S.E.2d 63 (S.C. 2004)
SD	X ¹³⁷	X S.D. CODIFIED LAWS § 21-55-2 (1981)	X § 21-55-2
TN	√ <i>Smith v. Gore</i> , 728 S.W.2d 738 (Tenn. 1987) (limiting damages); <i>Owens v. Foote</i> , 773 S.W.2d 911 (Tenn. 1989) (allowing recovery for wrongful pregnancy that resulted in child experiencing disability)	X TENN. CODE ANN. § 29-34-212 (2021)	X § 29-34-212
TX	√ <i>Crawford v. Kirk</i> , 929 S.W.2d 633 (Tex. App. 1996)	√ <i>Jacobs v. Theimer</i> , 519 S.W.2d 846, 850 (Tex. 1975)	X <i>Nelson v. Krusen</i> , 678 S.W.2d 918, 925 (Tex. 1984)
UT	√ <i>C.S. v. Nielsen</i> , 767 P.2d 504 (Utah 1988) (prohibiting recovery for cost of raising child) ¹³⁸	X UTAH CODE ANN. § 78B-3-109 (West 2008)	X § 78B-3-109
VT	√ <i>Begin v. Richmond</i> , 555 A.2d 363 (Vt. 1988)		
VA	√ <i>Miller v. Johnson</i> , 343 S.E.2d 301 (Va. 1986)	√ <i>Naccash v. Burger</i> , 290 S.E.2d 825 (Va. 1982)	X <i>Barnes v. Head</i> , 30 Va. Cir. 218 (1993)

137. There is no South Dakota case law on wrongful pregnancy claims, and they are arguably barred by state law. S.D. CODIFIED LAWS § 21-55-2 (1987) (“There shall be no cause of action or award of damages on behalf of any person based on the claim that, but for the conduct of another, a person would not have been permitted to have been born alive.”); *see also* Lininger v. Eisenbaum, 764 P.2d 1202, 1208 n.9 (Colo. 1988) (“South Dakota bars any claims based on the birth of a child, whether or not impaired, and whether arising from the deprivation of an opportunity to abort a fetus or from depriving the mother of the opportunity to avoid conception.” (emphasis added)).

138. There is no wrongful pregnancy case law in Utah since § 70B-3-109 of the Utah Code was adopted in 2008, so the statute has not yet been applied to wrongful pregnancy claims. Prior versions of the statute did not bar wrongful pregnancy claims. *C.S. v. Nielsen*, 767 P.2d 504 (Utah 1988).

STATE	WRONGFUL PREGNANCY	WRONGFUL BIRTH	WRONGFUL LIFE
WA	√ <i>Pacheco v. United States</i> , 515 P.3d 510 (Wash. 2022)	√ <i>Harbeson v. Parke-Davis, Inc.</i> , 656 P.2d 483 (Wash. 1983)	√ <i>Harbeson</i> , 656 P.2d 483
WV	√ <i>James G. v. Caserta</i> , 332 S.E.2d 872 (W. Va. 1985) (prohibiting recovery for cost of raising child)	√ <i>James G.</i> , 332 S.E.2d 872	
WI	√ <i>Marciniak v. Lundborg</i> , 450 N.W.2d 243 (Wis. 1990)	√ <i>Dumer v. Saint Michael's Hospital</i> , 233 N.W.2d 372 (Wis. 1975)	X <i>Dumer</i> , 69 N.W.2d 766
WY	√ <i>Beardsley v. Wierdsma</i> , 650 P.2d 288 (Wyo. 1982) (prohibiting damages after birth of child)		X <i>Beardsley</i> , 650 P.2d 288 (rejecting wrongful life claim brought by nondisabled children)