



2021 South Dakota Legislature

House Bill 1051

Introduced by: **Representative** Deutsch

1 **An Act to maintain the life of any child born alive.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1.** That § 34-23A-16.1 be AMENDED.

4 **34-23A-16.1. Child born alive--Preservation of life.**

5 ~~All persons~~The same available means and medical skills that a physician would
 6 render to any child born alive, whether in the course of an abortion procedure or not, shall
 7 have the same rights to medical treatment and other necessary health care to promote,
 8 preserve, and maintain the child's life, must be used to promote, preserve, and maintain
 9 the life of a child born alive as a result of an abortion or an attempted abortion at the
 10 same gestational age.

11 Any physician who performs or attempts to perform an abortion that results in a
 12 child being born alive has a physician-patient relationship with that child. In addition to
 13 using the means and skills required by this section, the physician shall ensure that the
 14 child is immediately admitted to a hospital.

15 For purposes of this section, born alive means the complete expulsion or extraction
 16 of a human being from its mother, at any stage of development, if after the expulsion or
 17 extraction, and regardless of whether the umbilical cord has been cut, that human being:

18 (1) Breathes;

19 (2) Has a beating heart;

20 (3) Has pulsation of the umbilical cord; or

21 (4) Has definite movement of voluntary muscles.

22 **Section 2.** That a NEW SECTION be added:

1 **34-23A-16.2. Abortion--Child born alive--Civil and disciplinary action.**

2 Any mother upon whom an abortion has been performed, or the mother's parent
 3 or guardian in the case of a minor, may maintain an action, against the physician who
 4 performed the abortion, for the death of, or injury to, the infant if:

5 (1) The abortion resulted in the infant being born alive; and

6 (2) The infant's death or injury was the result of negligence, gross negligence, or any
 7 other violation of a legal standard of care.

8 An award under this section may include compensatory damages, punitive
 9 damages equal to three times the cost of the abortion procedure, and reasonable
 10 attorney's fees.

11 A physician who fails to meet the requirements of § 34-23A-16.1 is liable to the
 12 state for a civil penalty at least equal to one hundred thousand dollars. The attorney
 13 general may bring the suit and may recover reasonable attorney's fees. The civil penalty
 14 is in addition to any other recovery authorized by law. If the physician prevails, the
 15 physician may recover reasonable attorney's fees incurred in defending against the suit.

16 If a physician fails to meet the requirements of § 34-23A-16.1, that failure
 17 constitutes grounds for the suspension or revocation of the physician's license to practice
 18 medicine under § 36-4-29.

19 Any person having knowledge of a failure to meet the requirements of § 34-23A-
 20 16.1 may report the failure to the attorney general. Upon request, the person's identity
 21 must remain confidential.

22 Nothing in § 34-23A-16.1 may be construed to hold the mother of the infant born
 23 alive criminally or civilly liable for any acts or omissions of the physician, if the mother did
 24 not consent to the acts or omissions.

25 **Section 3.** That § 34-23A-19 be AMENDED.

26 **34-23A-19. Performance of abortion--Required reports--Rules.**

27 Any facility or physician performing abortions in this state shall ~~report to the state~~
 28 ~~department of health as follows~~ forward to the Department of Health:

29 (1) ~~Total~~ The number of abortions performed;

30 (2) ~~Method~~ The method of abortion used in each abortion performed;

31 (3) Complete pathology reports ~~giving~~ including the period of gestation of fetuses, the
 32 presence of abnormality, and the measurements of fetuses, if the facility where the
 33 abortion is performed is so-equipped to complete such the reports;

34 (4) ~~Numbers~~ The number of maternal deaths due directly or indirectly to abortions;

- 1 (5) Reports of all follow-up, including short-term and long-term complications due to
2 abortion in the female ~~due to abortion~~ who received an abortion;
- 3 (6) ~~Other~~ The number of infants who survived an attempted abortion;
- 4 (7) Medical action taken to preserve the life of an aborted child born alive;
- 5 (8) The outcome for an aborted child born alive, including the child's survival, death,
6 and location of death, if known; and
- 7 (9) Any other information required by the ~~regulations issued by the department~~
8 ~~pursuant to,~~ as authorized by this section.

9 No report made under this section ~~shall~~ may include the name of any female ~~receiving~~
10 who received an abortion.

11 The Department of Health ~~may~~ shall promulgate rules ~~pursuant to,~~ in accordance with
12 chapter 1-26, to ~~provide for the reporting of such~~ acquire the necessary information
13 concerning abortion ~~as will enable the department to provide complete reporting to the~~
14 ~~centers for disease control of the public health services in the United States Department~~
15 ~~of Health and Human Services~~ for the department's report, to the Centers for Disease
16 Control and Prevention, of all abortion-related data, as recommended by the centers ~~for~~
17 ~~disease control recommend be reported to them by states.~~