

Committee: House Health and Human Services

Tuesday, January 26, 2021 7:45 AM

Roll Call

Present: Rep. Deutsch, Rep. Healy, Rep. Kevin Jensen, Rep. Phil Jensen, Rep. Miskimins, Rep. Perry, Rep. St. John, Rep. Weis, Rep. Wiese, Rep. Davis, Rep. Aylward, Rep. Rehfeldt, and Rep. Keintz

OTHERS PRESENT: See Original Minutes

**The meeting was called to order by Representative Kevin Jensen**

**MOTION: TO APPROVE THE MINUTES OF THURSDAY, JANUARY 21<sup>ST</sup>**

Moved by: Phil Jensen  
Second by: Rehfeldt  
Action: Prevailed by voice vote

**HB 1051 : maintain the life of any child born alive.**

Presented by: Representative Fred Deutsch

Proponents: Dale Allen Bartscher, South Dakota Right to Life, Rapid City  
Chris Motz, South Dakota Catholic Conference, Sioux Falls  
Melissa Ohden, Abortions Survivors Network, Kansas City  
Linda Schauer, Concerned Women for America, Alexandria  
Debbie Pease, Family Heritage Alliance Action, Rapid City  
Senator Al Novstrup

Opponents: Dean Krogman, State Medical Association SD, Sioux Falls

**MOTION: AMEND HB 1051**

Drafted 1051C

On page 1, line 4, of the Introduced bill, after "life" insert " and health"

On page 1, line 5, of the Introduced bill, after "persons " delete "The same available means and medical skills that a physician would render to any child born alive, "

On page 1, line 7, of the Introduced bill, delete " to promote, preserve, and maintain the child's life, must be used to promote, preserve, and maintain the life of a child born alive as a result of an abortion or an attempted abortion at the same gestational age.

Any " and insert "The same means and medical skills and treatment provided a child born alive consistent with accepted standards of medical practice for treatment of a child at that child's particular stage of gestation must be employed and provided to every child born alive immediately following an abortion or an attempted abortion. This obligation applies to every "

On page 1, line 12, of the Introduced bill, after "alive" insert ". Such physician"

On page 1, line 12, of the Introduced bill, after "child" delete ". In addition to using the means and skills required by this section, the physician shall"

On page 1, line 13, of the Introduced bill, after "shall " insert "under the laws of this state, with all of the duties that attend that relationship. Among the duties of such physician is the duty to "

On page 1, line 14, of the Introduced bill, after "hospital" insert ", consistent with accepted standards of medical practice"

On page 1, line 16, of the Introduced bill, delete "development" and insert " gestation"

On page 2, line 2, of the Introduced bill, after "action." delete "Any mother upon whom an abortion has been performed, or the mother's parent or guardian in the case of a minor, may

maintain an action, against the physician who performed the abortion, for the death of, or injury to, the infant if:

- (1) The abortion resulted in the infant being born alive; and
- (2) The infant's death or injury was the result of negligence, gross negligence, or any other violation of a legal standard of care."

On page 2, line 8, of the Introduced bill, delete "An award under this section may include compensatory damages, punitive damages equal to three times the cost of the abortion procedure, and reasonable attorney's fees.

A physician who fails to meet the requirements of § 34-23A-16. 1 is liable to the state for a civil penalty at least equal to one hundred thousand dollars. The attorney general may bring the suit and may recover reasonable attorney's fees. The civil penalty is in addition to any other recovery authorized by law. If the physician prevails, the physician may recover reasonable attorney's fees incurred in defending against the suit.

If a physician fails to meet the requirements of § 34-23A-16. 1, that failure constitutes grounds for the suspension or revocation of the physician's license to practice medicine under § 36-4-29.

Any person having knowledge of a failure to meet the requirements of § 34-23A-16. 1 may report the failure to the attorney general. Upon request, the person's identity must remain confidential.

Nothing in § 34-23A-16. 1 may be construed to hold the mother of the infant born alive criminally or civilly liable for any acts or omissions of the physician, if the mother did not consent to the acts or omissions." and insert "

A mother upon whom an abortion has been performed, or attempted to be performed, whose child is born alive, whose consent for the abortion was either not informed or not voluntary, may maintain a civil tort claim against the physician, the physician's agents who performed or attempted to perform the abortion, and the abortion facility, pursuant to §§ 34-23A-60 and 34-23A-61.

In addition to the damages recoverable under §§ 34-23A-60 and 34-23A-61, a mother upon whom an abortion is performed or attempted to be performed, whose child is born alive, may obtain money damages for any psychological injury the mother sustained where the physician's negligence in caring for the child following birth was a significant contributing factor in causing her psychological injury.

The child born alive has a cause of action against the physician, the physician's agents, and the abortion facility, for any physical or psychological injury, or both, for any injuries sustained during and as a result of the abortion, and for any additional physical or psychological injury, or both, where the negligence of the physician, the physician's agents, and the abortion facility, in the medical care following birth, was a significant contributing factor.

The money damages for any claim brought pursuant to this section must include all traditionally recognized compensatory and punitive damages recoverable under the laws of this state and punitive damages for intentional disregard for the standard imposed by § 34-23A-16.1 and for reasonable attorney's fees.

A physician who fails to meet the requirements of § 34-23A-16.1 is liable to the state for a civil penalty of one hundred thousand dollars for each offense. The attorney general may bring an action to recover that civil penalty and, if successful, shall be awarded reasonable attorney's fees.

A licensed physician, licensed agent, and licensed abortion facility who or that fails to comply with the requirements of § 34-23A-16.1, must be reported to the South Dakota Board of Medical and Osteopathic Examiners and that may form the grounds for sanctions, including suspension of the physician's license and, where appropriate, revocation of such license.

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

Nothing in § 34-23A-16.1 may be construed to hold the mother of the child born alive criminally or civilly liable for consenting to an abortion, or for the acts of the physician, the physician's agents, or the abortion facility for violation of § 34-23A-16.1 following the child being born alive.

"

Moved by: Weis  
Second by: Perry  
Action: Prevailed by voice vote

**MOTION: DEFER HB 1051 TO THE 41<sup>ST</sup> LEGISLATIVE DAY**

Moved by: Healy  
Second by: Keintz  
Action: Was not acted on.

**MOTION: SUBSTITUTE MOTION: DO PASS HB 1051 AS AMENDED**

Moved by: Phil Jensen  
Second by: Weis  
Action: Prevailed by roll call vote (10-3-0-0)

Voting Yes: Deutsch, Kevin Jensen, Phil Jensen, Perry, St. John, Weis, Wiese, Davis, Aylward, and Rehfeldt

Voting No: Healy, Miskimins, and Keintz

**HB 1076 : require that birth certificates reflect biological sex.**

Presented by: Representative Fred Deutsch  
Proponents: Norman Woods, Family Heritage Alliance Action, Rapid City  
Chris Motz, South Dakota Catholic Conference, Sioux Falls  
Opponents: Kooper Caraway, South Dakota Federation of Labor, Sioux Falls  
Roger Tellinghuisen, Human Rights Campaign, Washington  
Seymour Otterman, self, Sioux Falls  
Jett Jonelis, American Civil Liberties Union Foundation Inc, New York  
Heather Krause, Young Democrats of South Dakota  
Dylan Daniels, self, Vermillion  
Reverend Anne Dilenschneider, self, Sioux Falls

**MOTION: DEFER HB 1076 TO THE 41<sup>ST</sup> LEGISLATIVE DAY**

Moved by: Healy  
Second by: Keintz  
Action: Was not acted on.

**MOTION: SUBSTITUTE MOTION: DO PASS HB 1076**

Moved by: Phil Jensen  
Second by: Perry  
Action: Failed by roll call vote (6-7-0-0)

Voting Yes: Deutsch, Kevin Jensen, Phil Jensen, Perry, Weis, and Wiese

Voting No: Healy, Miskimins, St. John, Davis, Aylward, Rehfeldt, and Keintz

**Revert to previous motion**

**MOTION: DEFER HB 1076 TO THE 41<sup>ST</sup> LEGISLATIVE DAY**

Moved by: Healy  
Second by: Keintz  
Action: Prevailed by roll call vote (7-6-0-0)

Voting Yes: Healy, Miskimins, St. John, Davis, Aylward, Rehfeldt, and Keintz

Voting No: Deutsch, Kevin Jensen, Phil Jensen, Perry, Weis, and Wiese

**MOTION: ADJOURN**

Moved by: Perry  
Second by: Rehfeldt  
Action: Prevailed by voice vote

Pam Kean, Committee Secretary

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/s/ KEVIN D. JENSEN  
Kevin D. Jensen, Chair