

2021 South Dakota Legislature

House Bill 1051**AMENDMENT 1051C FOR THE INTRODUCED BILL**

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 and health.**

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~~ The same means and medical skills and treatment provided a child born alive
12 consistent with accepted standards of medical practice for treatment of a child at that
13 child's particular stage of gestation must be employed and provided to every child born
14 alive immediately following an abortion or an attempted abortion. This obligation applies
15 to every physician who performs or attempts to perform an abortion that results in a child
16 being born alive. Such physician has a physician-patient relationship with that child. ~~In~~
17 ~~addition to using the means and skills required by this section, the physician shall under~~
18 ~~the laws of this state, with all of the duties that attend that relationship. Among the duties~~
19 ~~of such physician is the duty to~~ ensure that the child is immediately admitted to a hospital,
20 consistent with accepted standards of medical practice.

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

25 (1) Breathes;

- 1 (2) Has a beating heart;
- 2 (3) Has pulsation of the umbilical cord; or
- 3 (4) Has definite movement of voluntary muscles.

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

5 **34-23A-16.2. Abortion--Child born alive--Civil and disciplinary action.**

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

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

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

12 ~~An award under this section may include compensatory damages, punitive~~
13 ~~damages equal to three times the cost of the abortion procedure, and reasonable~~
14 ~~attorney's fees.~~

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

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

23 ~~Any person having knowledge of a failure to meet the requirements of § 34-23A-~~
24 ~~16.1 may report the failure to the attorney general. Upon request, the person's identity~~
25 ~~must remain confidential.~~

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

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

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

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

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

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

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

25 Any person having knowledge of a failure to meet the requirements of § 34-23A-
26 16.1 may report the failure to the attorney general and, upon request, that person's
27 identity must remain confidential.

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

32

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

1 **34-23A-19. Performance of abortion--Required reports--Rules.**

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

- 4 (1) ~~Total~~ The number of abortions performed;
5 (2) ~~Method~~ The method of abortion used in each abortion performed;
6 (3) Complete pathology reports ~~giving~~ including the period of gestation of fetuses, the
7 presence of abnormality, and the measurements of fetuses, if the facility where the
8 abortion is performed is ~~so~~ equipped to complete such the reports;
9 (4) ~~Numbers~~ The number of maternal deaths due directly or indirectly to abortions;
10 (5) Reports of all follow-up, including short-term and long-term complications due to
11 abortion in the female ~~due to abortion~~ who received an abortion;
12 (6) ~~Other~~ The number of infants who survived an attempted abortion;
13 (7) Medical action taken to preserve the life of an aborted child born alive;
14 (8) The outcome for an aborted child born alive, including the child's survival, death,
15 and location of death, if known; and
16 (9) Any other information required by the regulations issued by the department
17 pursuant to, as authorized by this section.

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

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