



2021 South Dakota Legislature
House Bill 1051
ENROLLED

AN ACT

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

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

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

34-23A-16.1. Child born alive--Preservation of life and health.

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 physician who performs or attempts to perform an abortion that results in a child being born alive. Such physician has a physician-patient relationship with that child 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 ensure that the child is immediately admitted to a hospital, consistent with accepted standards of medical practice.

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

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

Section 2. That a NEW SECTION be added:

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

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 ten 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.

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

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

Any facility or physician performing abortions in this state shall forward to the Department of Health:

- (1) The number of abortions performed;
- (2) The method of abortion used in each abortion performed;

- (3) Complete pathology reports including the period of gestation of fetuses, the presence of abnormality, and the measurements of fetuses, if the facility where the abortion is performed is equipped to complete the reports;
- (4) The number of maternal deaths due directly or indirectly to abortions;
- (5) Reports of all follow-up, including short-term and long-term complications due to abortion in the female who received an abortion;
- (6) The number of infants who survived an attempted abortion;
- (7) Medical action taken to preserve the life of an aborted child born alive;
- (8) The outcome for an aborted child born alive, including the child's survival, death, and location of death, if known; and
- (9) Any other information required by the department, as authorized by this section.

No report made under this section may include the name of any female who received an abortion.

The Department of Health shall promulgate rules, in accordance with chapter 1-26, to acquire the necessary information for the department's report, to the Centers for Disease Control and Prevention, of all abortion-related data, as recommended by the centers.

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I certify that the attached Act originated in
the:

House as Bill No. 1051

Received at this Executive Office
this _____ day of _____,
2021 at _____ M.

Chief Clerk

By _____
for the Governor

Speaker of the House

The attached Act is hereby
approved this _____ day of
_____, A.D., 2021

Attest:

Chief Clerk

Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

President of the Senate

Attest:

Filed _____, 2021
at _____ o'clock ___ M.

Secretary of the Senate

Secretary of State

House Bill No. 1051
File No. _____
Chapter No. _____

By _____
Asst. Secretary of State