

South Dakota

§ 22-17-5.1. Performance of abortion unless necessary to preserve life of pregnant female prohibited — Felony.

Any person who administers to any pregnant female or who prescribes or procures for any pregnant female any medicine, drug, or substance or uses or employs any instrument or other means with intent thereby to procure an abortion, unless there is appropriate and reasonable medical judgment that performance of an abortion is necessary to preserve the life of the pregnant female, is guilty of a Class 6 felony.

§ 22-17-6. Killing of fetus by injuring mother — Penalty.

Any person who intentionally kills a human fetus by causing an injury to its mother, which is not authorized by chapter 34-23A, is guilty of a Class 4 felony.

§ 22-17-14. Coerce or compel an abortion — Misdemeanor, felony.

A person is guilty of a Class 1 misdemeanor if the person:

- (1) In any manner other than that set forth in section 2 of this Act, coerces, compels, or attempts to compel a pregnant woman to undergo an abortion;
- (2) Requires a pregnant woman to agree to a provision that if she refuses to undergo an abortion, it is a breach of a contract; or
- (3) Requires a pregnant woman to agree to a provision that results in her assuming any cost, obligation, or responsibility for refusing to undergo an abortion.

A subsequent offense of this section is a Class 6 felony.

§ 34-23A-27. Partial-birth abortion prohibited — Penalty.

No person may perform a partial-birth abortion which results in the death of a human fetus or infant. A violation of this section is a Class 6 felony.

SDCL § 34-23A-28. Application of partial-birth abortion prohibition.

The provisions of §§ 34-23A-27 to 34-23A-33, inclusive, do not apply to any partial-birth abortion that is necessary to save the life of the mother because her life is endangered by a physical disorder, illness, or injury, including a life-endangering condition caused by or arising from the pregnancy itself, if no other medical procedure would suffice for that purpose.

§ 34-23A-42. Failure to submit reporting form — Misdemeanor.

Any person who knowingly or recklessly fails to submit any report required by §§ 34-23A-34 to 34-23A-45, inclusive, or submits false information under §§ 34-23A-34 to 34-23A-45, inclusive, is guilty of a Class 2 misdemeanor.

s. 34-23A-31. Prosecution of woman upon whom partial-birth abortion performed.

No woman upon whom a partial-birth abortion is performed may be prosecuted under the provisions of §§ 34-23A-27 to 34-23A-33, inclusive, for conspiracy to violate § 34-23A-27.

s. 34-23A-32. Partial-birth abortion defined.

For the purposes of §§ 34-23A-27 to 34-23A-33, inclusive, a partial-birth abortion is any abortion in which the person who performs the abortion causes a living human fetus to be partially vaginally delivered before killing the infant and completing the delivery.

s. 34-23A-64. Sex-selective abortions prohibited--Felony.

No person may knowingly or in reckless disregard perform or attempt to perform a sex-selective abortion. A violation of this section is a Class 6 felony. No penalty may be assessed against the pregnant mother upon whom the abortion is performed or attempted to be performed.

s. 34-23A-68. Definitions regarding unborn child capable of experiencing pain.

Terms used in §§ 34-23A-34 and 34-23A-67 to 34-23A-72, inclusive mean:

- (1) "Post-fertilization age," the age of an unborn child as calculated from fertilization;
- (2) "Probable post-fertilization age of the unborn child," what, in reasonable medical judgment, will with reasonable probability be the post-fertilization age of the unborn child at the time the abortion is planned to be performed or induced;
- (3) "Reasonable medical judgment," a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved;
- (4) "Woman," a female human being whether or not she has reached the age of majority.

§ 34-23A-69. Penalty for violations.

It is a Class 6 felony to intentionally or recklessly perform, or attempt to perform, an abortion of an unborn child capable of feeling pain unless it is a medical emergency. No penalty may be assessed against the woman upon whom the abortion is performed, or attempted to be performed.

34-23A-70. "Unborn child capable of feeling pain" defined.

For purposes of §§ 34-23A-34 and 34-23A-67 to 34-23A-73, inclusive, an unborn child is capable of feeling pain when the physician performing, or attempting to perform, the abortion or another physician upon whose determination that physician relies, determines that the probable post-fertilization age of the unborn child is twenty or more weeks.

In determining the post-fertilization age of the unborn child, the physician shall make inquiries of the pregnant woman and perform medical examinations and tests that a reasonably prudent physician would perform to accurately diagnose the post-fertilization age of an unborn child.

S.D. Codified Laws § 34-23A-70

§ 34-23A-90. Down syndrome — Abortion prohibited.

No person may perform or attempt to perform an abortion with knowledge that the pregnant woman is seeking the abortion because the unborn child either has been diagnosed with Down syndrome or has had a screening indicating that the unborn child may have Down syndrome. Any person who violates this section is guilty of a Class 6 felony. No penalty may be assessed against the woman upon whom the abortion is performed or attempted to be performed.

34-23A-92. Exemptions to save life of the mother.

The provisions of §§ 34-23A-89 to 34-23A-93, inclusive, do not apply to any abortion that is necessary to save the life of the pregnant woman because her life is endangered by a physical disorder, illness, or injury, including a life-endangering condition caused by or arising from the pregnancy itself, if no other medical procedure would suffice for that purpose.

§34-23A-94. Informational video – Abortion law.

On or before September 1, 2024, the Department of Health shall create a video and other materials that describe:

- (1) The state's abortion law and acts that do and do not constitute an abortion;
- (2) The most common medical conditions that threaten the life or health of a pregnant woman;
- (3) The generally accepted standards of care applicable to the treatment of a pregnant woman experiencing life-threatening or health-threatening medical conditions; and
- (4) The criteria that a practitioner, exercising reasonable medical judgment, might use in determining the best course of treatment for a pregnant woman experiencing life-threatening or health-threatening medical conditions and for her unborn child.

In creating the video and other materials described in this section, the department shall consult with the attorney general and stakeholders having medical and legal expertise. Upon completion, the department shall make the video and materials available on its website.