

## 2022 South Dakota Legislature

**House Bill 1208****AMENDMENT 1208C FOR THE INTRODUCED BILL**

1 **An Act to prohibit chemical abortion drugs and to provide a penalty therefor.**

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

3 **Section 1. That § 28-6B-8 be AMENDED:**

4 **28-6B-8.** For purposes of this chapter, the term, prenatal medical services, does  
5 not include an abortion, unless the abortion is necessitated by a medical emergency, as  
6 defined in ~~subdivision 34-23A-1(5)~~ § 34-23A-1.

7 **Section 2. That § 34-23A-1 be AMENDED:**

8 **34-23A-1.** Terms used in this chapter mean:

9 (1) "Abortion," the intentional termination of the life of a human being in the uterus;

10 ~~(1A)~~(2) "Abortion facility," a place where abortions are performed;

11 ~~(1B)~~(3) "Chemical abortion drug," mifegyne, mifeprex, mifepristone, and any other  
12 pharmaceutically equivalent drug, unless the drug is to be used for a purpose other  
13 than an abortion.

14 (4) "Department," the South Dakota Department of Health;

15 ~~(2)~~(5) "Fetus," the biological offspring, including the implanted embryo or unborn child,  
16 of human parents;

17 ~~(3)~~(6) "Fertilization," that point in time when a male human sperm penetrates the zona  
18 pellucida of a female human ovum;

19 ~~(4)~~(7) "Human being," an individual living member of the species of Homo sapiens,  
20 including the unborn human being during the entire embryonic and fetal ages from  
21 fertilization to full gestation;

22 ~~(5)~~(8) "Medical emergency," any condition which, on the basis of the physician's good  
23 faith clinical judgment, so complicates the medical condition of a pregnant woman  
24 as to necessitate the immediate abortion of her pregnancy to avert her death or

1 for which a delay will create serious risk of substantial and irreversible impairment  
2 of a major bodily function;  
3 ~~(6)~~(9) "Parent," one parent or guardian of the pregnant minor or the guardian or  
4 conservator of the pregnant woman;  
5 ~~(7)~~(10) "Physician," a person licensed under the provisions of chapter 36-4 or a physician  
6 practicing medicine or osteopathy in the employ of the government of the United  
7 States or of this state; and  
8 ~~(8)~~(11) "Probable gestational age of the unborn child," what, in the judgment of the  
9 physician, will with reasonable probability be the gestational age of the unborn  
10 child at the time the abortion is planned to be performed.

11 **Section 3. That chapter 34-23A be amended with a NEW SECTION:**

12 A ~~person-physician~~ may not:  
13 (1) Perform or attempt to perform an abortion using any chemical abortion drug;  
14 or  
15 (2) Dispense, distribute, manufacture, prescribe, sell, or transfer any chemical  
16 abortion drug, ~~unless the drug is to be used for a purpose other than an abortion.~~  
17 Any person who violates this section is guilty of a Class 6 felony.  
18 Nothing in this section prohibits the sale, use, or prescription of any contraceptive  
19 agent, or the administration of any contraceptive agent prior to conception or prior to the  
20 confirmation of a pregnancy through the use of conventional medical tests.

21 **Section 4. That § 34-23A-10.1 be AMENDED:**

22 **34-23A-10.1.** No abortion may be performed unless the physician first obtains a  
23 voluntary and informed written consent of the pregnant woman upon whom the physician  
24 intends to perform the abortion, unless the physician determines that obtaining an  
25 informed consent is impossible due to a medical emergency and further determines that  
26 delaying in performing the procedure until an informed consent can be obtained from the  
27 pregnant woman or her next of kin in accordance with chapter 34-12C is impossible due  
28 to the medical emergency, which determinations ~~shall~~must then be documented in the  
29 medical records of the patient.

30 A consent to an abortion is not voluntary and informed, unless, in addition to any  
31 other information that must be disclosed under the common law doctrine, the physician  
32 provides that pregnant woman with the following information:

33 (1) A statement in writing providing the following information:

- 1 (a) The name of the physician who will perform the abortion;
- 2 (b) That the abortion will terminate the life of a whole, separate, unique, living
- 3 human being;
- 4 (c) That the pregnant woman has an existing relationship with that unborn
- 5 human being and that the relationship enjoys protection under the United
- 6 States Constitution and under the laws of South Dakota;
- 7 (d) That by having an abortion, her existing relationship and her existing
- 8 constitutional rights with regards to that relationship will be terminated;
- 9 (e) A description of all known medical risks of the procedure and statistically
- 10 significant risk factors to which the pregnant woman would be subjected,
- 11 including:
- 12 (i) Depression and related psychological distress;
- 13 (ii) Increased risk of suicide ideation and suicide;
- 14 (iii) A statement setting forth an accurate rate of deaths due to abortions,
- 15 including all deaths in which the abortion procedure was a
- 16 substantial contributing factor; and
- 17 (iv) All other known medical risks to the physical health of the woman,
- 18 including the risk of infection, hemorrhage, danger to subsequent
- 19 pregnancies, and infertility;
- 20 (f) The probable gestational age of the unborn child at the time the abortion is
- 21 to be performed, and a scientifically accurate statement describing the
- 22 development of the unborn child at that age;
- 23 (g) The statistically significant medical risks associated with carrying her child
- 24 to term compared to undergoing an induced abortion;
- 25 ~~(h) That even after a pregnant mother takes Mifepristone, or another drug~~
- 26 ~~approved by the United States Food and Drug Administration for the same~~
- 27 ~~use, it is still possible to discontinue a drug-induced abortion by not taking~~
- 28 ~~the prescribed Misoprostol;~~
- 29 (i) That information on discontinuing a drug-induced abortion is available on
- 30 the ~~Department of Health~~department website;
- 31 ~~(j)~~(i) A written statement that sex-selective abortions are illegal in the State of
- 32 South Dakota and that a pregnant mother cannot have an abortion, either
- 33 solely or partly, due to the unborn child's sex, regardless of whether that
- 34 unborn child is a girl or a boy or whether it is of the pregnant mother's free
- 35 will or the result of the use of pressure and coercion; and

1           ~~(k)~~(j) A written notification, prepared and provided to each abortion facility by  
2           the ~~Department of Health~~department, that contains the name, text, and  
3           telephone number of an organization fighting to end sex trafficking and  
4           states the following: "If someone is sexually abusing you or causing you to  
5           exchange sex for something of value, and you want help, call 911, text, or  
6           call the number provided on this notice."

7           The disclosures set forth above ~~shall~~must be provided to the pregnant woman in  
8           writing and in person in full compliance with § 34-23A-56. The physician shall ensure that  
9           the pregnant woman signs each page of the written disclosure with the certification that  
10          she has read and understands all of the disclosures, prior to the patient signing a consent  
11          for the procedure. If the pregnant woman asks for a clarification or explanation of any  
12          particular disclosure, or asks any other question about a matter of significance to her, the  
13          explanation or answer ~~shall~~must be made in writing and be given to the pregnant woman  
14          before signing a consent for the procedure and ~~shall~~must be made part of the permanent  
15          medical record of the patient.

16          Prior to the pregnant woman signing a consent to the abortion, she shall sign a  
17          written statement that indicates that the requirements of this section have been complied  
18          with. Prior to the performance of the abortion, the physician who is to perform the abortion  
19          shall receive a copy of the written disclosure documents required by this section, and shall  
20          certify in writing that all of the information described in those subdivisions has been  
21          provided to the pregnant woman, that the physician is, to the best of his or her ability,  
22          satisfied that the pregnant woman has read the materials which are required to be  
23          disclosed, and that the physician believes she understands the information imparted; and

24          (2) A statement by telephone or in person, by the physician who is to perform the  
25          abortion, or by the referring physician, or by an agent of both, at least twenty-four  
26          hours before the abortion, providing the following information:

27                  (a) That medical assistance benefits may be available for prenatal care,  
28                  childbirth, and neonatal care;

29                  (b) That the father of the unborn child is legally responsible to provide financial  
30                  support for her child following birth, and that this legal obligation of the  
31                  father exists in all instances, even in instances in which the father has  
32                  offered to pay for the abortion;

33                  (c) The name, address, and telephone number of a pregnancy help center in  
34                  reasonable proximity of the abortion facility where the abortion will be  
35                  performed; and

1 (d) That she has a right to review all of the material and information described  
2 in § 34-23A-1, §§ 34-23A-1.2 to 34-23A-1.7, inclusive, § 34-23A-10.1, and  
3 § 34-23A-10.3, as well as the printed materials described in § 34-23A-10.3,  
4 and the website described in § 34-23A-10.4. The physician or the  
5 physician's agent shall inform the pregnant woman, orally or in writing, that  
6 the materials have been provided by the State of South Dakota at no charge  
7 to the pregnant woman. If the pregnant woman indicates, at any time, that  
8 she wants to review any of the materials described, such disclosures ~~shall~~  
9 must be either given to her at least twenty-four hours before the abortion  
10 or mailed to her at least seventy-two hours before the abortion by certified  
11 mail, restricted delivery to addressee, which means the postal employee  
12 can only deliver the mail to the addressee;

13 ~~(3) In the case of a pregnant woman who has been administered Mifepristone, or~~  
14 ~~another drug approved by the United States Food and Drug Administration for the~~  
15 ~~same use, the statement required by subsection (h) of subdivision (1) must also~~  
16 ~~be duplicated and presented to the woman at the time of her release or discharge,~~  
17 ~~immediately after the provision or administration of the first drug. The statement~~  
18 ~~must be accompanied by a notice that includes:~~

19 ~~(a) The following verbiage: "If you decide you want to give birth to your child, even~~  
20 ~~after the abortion process has begun, seek the assistance of a physician~~  
21 ~~immediately."; and~~

22 ~~(b) The phone number, website, and any other contact information provided to the~~  
23 ~~department by physicians or other entities, who or that have indicated their ability~~  
24 ~~and willingness to provide assistance, twenty-four hours per day, seven days a~~  
25 ~~week, to a woman seeking to discontinue an abortion.~~

26 **Section 5. That § 34-23A-10.2 be AMENDED:**

27 **34-23A-10.2.** A physician who, knowingly or in reckless disregard, violates § 34-  
28 23A-2.1, 34-23A-7, or 34-23A-10.1 is guilty of a Class 2 misdemeanor. The court in which  
29 a conviction of a violation of § 34-23A-2.1, 34-23A-7, or 34-23A-10.1 occurs shall report  
30 such conviction to the Board of Medical and Osteopathic Examiners.

31 No penalty may be assessed against the female upon whom the abortion is  
32 performed or attempted to be performed. No criminal penalty or civil liability for failure to  
33 comply with subsection 34-23A-10.1(2)(c) ~~or that portion of subsection 34-23A-10.1(3)~~  
34 ~~requiring a written certification that the woman has been informed of her opportunity to~~

1 ~~review the information referred to in subsection 34-23A-10.1(2)(c) may be assessed,~~  
2 unless the department of health has made the printed materials available at the time the  
3 physician or the physician's agent is required to inform the female of her right to review  
4 them.

5 **Section 6. That § 34-23A-10.4 be AMENDED:**

6 **34-23A-10.4.** ~~The Department of Health shall, by January 1, 2004,~~department  
7 shall develop and maintain a multi-media website that contains web pages covering each  
8 of the following topics:

- 9 (1) Embryonic and fetal development at various gestational stages;
  - 10 (a) Anatomical and physiological characteristics; and
  - 11 (b) Survival possibilities of the unborn child;
- 12 (2) Abortion methods commonly used for each trimester of pregnancy;
- 13 (3) Statistically significant abortion method risks, including infection, hemorrhage,  
14 danger to subsequent pregnancies, and infertility;
- 15 (4) Important pre-abortion procedures;
  - 16 (a) Confirmation of pregnancy via sonogram; and
  - 17 (b) Counseling and discussion of medical history to detect possible abortion risks;
- 18 (5) Post-abortion psychological and emotional complications;
- 19 (6) Parental notification as required by 34-23A-7;
- 20 (7) Assistance, benefits, and services:
  - 21 (a) Names and contact information of public and private agencies; and
  - 22 (b) Types and availability of public medical benefits and services;
- 23 (8) Responsibility of the father of the unborn child;
- 24 (9) Statistically significant pregnancy risks; and
- 25 (10) Adoption options:
  - 26 (a) Names and contact information of public and private agencies; and
  - 27 (b) Description of services;
  - 28 ~~(11) Information on discontinuing a drug-induced abortion.~~

29 The state shall collect and maintain web statistics regarding the website developed  
30 and maintained pursuant to this section. However, no personal information may be  
31 collected.