



2024 South Dakota Legislature

Senate Bill 210

Introduced by: **Senator Nesiba**

1 **An Act to establish an individual's right to make autonomous decisions about the**
2 **individual's reproductive health care, and to repeal provisions related to**
3 **abortion.**

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

5 **Section 1. That a NEW SECTION be added:**

6 For purposes of this Act, the term "reproductive health care" means health care
7 offered, arranged, or furnished for the purpose of preventing pregnancy, terminating a
8 pregnancy, managing pregnancy loss, or improving maternal health and birth outcomes.
9 The term includes abortion care, contraception, counseling regarding reproductive health
10 care, maternity care, preconception care, and sterilization.

11 **Section 2. That a NEW SECTION be added to chapter 34-23A:**

12 Each individual may make autonomous decisions about the individual's own
13 reproductive health, including a decision to use or refuse reproductive health care.

14 Any individual who becomes pregnant may continue the pregnancy and give birth
15 or exercise the individual's right to have an abortion.

16 Nothing in this section extends independent rights under the laws of this state to
17 a fertilized egg, an embryo, or a fetus.

18 **Section 3. That a NEW SECTION be added to chapter 34-23A:**

19 No individual may be denied the ability to engage in decision-making regarding the
20 individual's own reproductive health or discriminated against for exercising that ability.
21 This section applies to all individuals, including those who are in state custody, or under
22 state control or supervision.

23 No individual may be prosecuted, punished, or otherwise deprived of the
24 individual's rights for any act or omission occurring during the individual's pregnancy, if

1 the predominant basis for the prosecution, punishment, or deprivation of rights is the
2 potential, actual, or perceived impact on:

3 (1) The pregnancy or its outcomes; or

4 (2) The individual's health.

5 Any party aggrieved by a violation of this Act may file a civil lawsuit. Upon motion,
6 a court shall award a prevailing plaintiff reasonable attorneys' fees and costs, including
7 expert witness fees and other litigation expenses.

8 **Section 4. That a NEW SECTION be added to chapter 34-23A:**

9 A health care practitioner may provide abortion care in accordance with the
10 practitioner's professional judgment and scope of practice. If the health care practitioner
11 determines that there is fetal viability, the health care practitioner may provide abortion
12 care only if, in the exercise of professional judgment, the practitioner determines that an
13 abortion is necessary to protect the life or health of the pregnant patient.

14 Each health care practitioner shall report the performance of an abortion to the
15 Department of Health, within ten days after the end of the month in which the abortion
16 was performed. The department shall make the reporting forms available on its website.
17 The information reported may not include the patient's name or any other identifying
18 information.

19 Any report provided in accordance with this chapter is confidential and may be
20 used only for statistical purposes. The department shall destroy all reports after two years.

21 **Section 5. That § 22-17-5.1 be REPEALED.**

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

27 **Section 6. That § 22-17-5.2 be REPEALED.**

28 ~~A female who undergoes an unlawful abortion, as set forth in § 22-17-5.1, may~~
29 ~~not be held criminally liable for the abortion.~~

30 **Section 7. That § 22-17-6 be REPEALED.**

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

3 **Section 8. That § 22-17-13 be REPEALED.**

4 A person is guilty of a Class B felony if, with the intent to cause a pregnant mother
5 to undergo an abortion against her will, the person:

6 (1) — Threatens to commit, against the pregnant mother or any other person within the
7 pregnant mother's presence:

8 (a) — Homicide, murder, or manslaughter, under chapter 22-16;

9 (b) — Aggravated assault, under § 22-18-1.1; or

10 (c) — Kidnapping, under chapter 22-19; and

11 (2) — The threat results in the death of the unborn human being, as defined under § 34-
12 23A-1.

13 A charge brought under this section may be commenced at any time prior to the
14 time the victim attains age twenty-five or within seven years of the commission of the
15 crime, whichever is longer.

16 **Section 9. That § 22-17-13.1 be REPEALED.**

17 A person is guilty of a Class 5 felony if, with the intent to coerce a pregnant mother
18 to undergo an abortion against her will, the person threatens to commit, against the
19 pregnant mother or any other person within the pregnant mother's presence:

20 (1) — Homicide, murder, or manslaughter, under chapter 22-16;

21 (2) — Aggravated assault, under § 22-18-1.1; or

22 (3) — Kidnapping, under chapter 22-19.

23 A charge brought under this section may be commenced at any time prior to the
24 time the victim attains age twenty-five or within seven years of the commission of the
25 crime, whichever is longer.

26 **Section 10. That § 22-17-14 be REPEALED.**

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

28 (1) — In any manner other than that set forth in § 22-17-13.1, coerces, compels, or
29 attempts to compel a pregnant woman to undergo an abortion;

30 (2) — Requires a pregnant woman to agree to a provision that if she refuses to undergo
31 an abortion, it is a breach of a contract; or

- 1 ~~(3) — Requires a pregnant woman to agree to a provision that results in her assuming~~
 2 ~~any cost, obligation, or responsibility for refusing to undergo an abortion.~~
 3 ~~A subsequent offense of this section is a Class 6 felony.~~

4 **Section 11. That § 34-23A-1 be REPEALED.**

5 ~~Terms used in this chapter mean:~~

- 6 ~~(1) — "Abortion," the intentional termination of the life of a human being in the uterus;~~
 7 ~~(1A) — "Abortion facility," a place where abortions are performed;~~
 8 ~~(1B) — "Department," the South Dakota Department of Health;~~
 9 ~~(2) — "Fetus," the biological offspring, including the implanted embryo or unborn child,~~
 10 ~~of human parents;~~
 11 ~~(3) — "Fertilization," that point in time when a male human sperm penetrates the zona~~
 12 ~~pellucida of a female human ovum;~~
 13 ~~(4) — "Human being," an individual living member of the species of Homo sapiens,~~
 14 ~~including the unborn human being during the entire embryonic and fetal ages from~~
 15 ~~fertilization to full gestation;~~
 16 ~~(5) — "Medical emergency," any condition which, on the basis of the physician's good~~
 17 ~~faith clinical judgment, so complicates the medical condition of a pregnant woman~~
 18 ~~as to necessitate the immediate abortion of her pregnancy to avert her death or~~
 19 ~~for which a delay will create serious risk of substantial and irreversible impairment~~
 20 ~~of a major bodily function;~~
 21 ~~(6) — "Parent," one parent or guardian of the pregnant minor or the guardian or~~
 22 ~~conservator of the pregnant woman;~~
 23 ~~(7) — "Physician," a person licensed under the provisions of chapter 36-4 or a physician~~
 24 ~~practicing medicine or osteopathy in the employ of the government of the United~~
 25 ~~States or of this state;~~
 26 ~~(8) — "Probable gestational age of the unborn child," what, in the judgment of the~~
 27 ~~physician, will with reasonable probability be the gestational age of the unborn~~
 28 ~~child at the time the abortion is planned to be performed.~~

29 **Section 12. That § 34-23A-1.1 be REPEALED.**

30 ~~For the purposes of this chapter, an attempt to perform an abortion is an act or~~
 31 ~~omission that, under the circumstances as the actor believes them to be, constitutes a~~
 32 ~~substantial step in a course of conduct planned to culminate in the performance of an~~
 33 ~~abortion in South Dakota.~~

1 **Section 13. That § 34-23A-1.2 be REPEALED.**

2 ~~The Legislature finds that all abortions, whether surgically or chemically induced,~~
3 ~~terminate the life of a whole, separate, unique, living human being.~~

4 **Section 14. That § 34-23A-1.3 be REPEALED.**

5 ~~The Legislature finds that there is an existing relationship between a pregnant~~
6 ~~woman and her unborn child during the entire period of gestation.~~

7 **Section 15. That § 34-23A-1.4 be REPEALED.**

8 ~~The Legislature finds that procedures terminating the life of an unborn child impose~~
9 ~~risks to the life and health of the pregnant woman. The Legislature further finds that a~~
10 ~~woman seeking to terminate the life of her unborn child may be subject to pressures which~~
11 ~~can cause an emotional crisis, undue reliance on the advice of others, clouded judgment,~~
12 ~~and a willingness to violate conscience to avoid those pressures. The Legislature therefore~~
13 ~~finds that great care should be taken to provide a woman seeking to terminate the life of~~
14 ~~her unborn child and her own constitutionally protected interest in her relationship with~~
15 ~~her child with complete and accurate information and adequate time to understand and~~
16 ~~consider that information in order to make a fully informed and voluntary consent to the~~
17 ~~termination of either or both.~~

18 **Section 16. That § 34-23A-1.5 be REPEALED.**

19 ~~The Legislature finds that pregnant women contemplating the termination of their~~
20 ~~right to their relationship with their unborn children, including women contemplating such~~
21 ~~termination by an abortion procedure, are faced with making a profound decision most~~
22 ~~often under stress and pressures from circumstances and from other persons, and that~~
23 ~~there exists a need for special protection of the rights of such pregnant women, and that~~
24 ~~the State of South Dakota has a compelling interest in providing such protection.~~

25 **Section 17. That § 34-23A-1.6 be REPEALED.**

26 ~~The Legislature finds that, through the common law, the courts of the State of~~
27 ~~South Dakota have imposed a standard of practice in the health care profession that,~~
28 ~~except in exceptional circumstances, requires physicians and other health care~~
29 ~~practitioners to provide patients with such facts about the nature of any proposed course~~

1 ~~of treatment, the risks of the proposed course of treatment, the alternatives to the~~
2 ~~proposed course, including any risks that would be applicable to any alternatives, as a~~
3 ~~reasonable patient would consider significant to the decision of whether to undergo the~~
4 ~~proposed course of treatment.~~

5 **Section 18. That § 34-23A-1.7 be REPEALED.**

6 ~~The South Dakota common law cause of action for medical malpractice informed~~
7 ~~consent claims based upon the reasonable patient standard is reaffirmed and is hereby~~
8 ~~expressly declared to apply to all abortion procedures. The duty of a physician to disclose~~
9 ~~all facts about the nature of the procedure, the risks of the procedure, and the alternatives~~
10 ~~to the procedure that a reasonable patient would consider significant to her decision of~~
11 ~~whether to undergo or forego the procedure applies to all abortions. Nothing in § 34-23A-~~
12 ~~1, §§ 34-23A 1.2 to 34-23A 1.7, inclusive, § 34-23A 10.1, and § 34-23A 10.3 may be~~
13 ~~construed to render any of the requirements otherwise imposed by common law~~
14 ~~inapplicable to abortion procedures or diminish the nature or the extent of those~~
15 ~~requirements. The disclosure requirements expressly set forth in § 34-23A 1, §§ 34-23A-~~
16 ~~1.2 to 34-23A 1.7, inclusive, § 34-23A 10.1, and § 34-23A 10.3 are an express~~
17 ~~clarification of, and are in addition to, those common law disclosure requirements.~~

18 **Section 19. That § 34-23A-2.1 be REPEALED.**

19 ~~If a medical emergency compels the performance of an abortion, the physician~~
20 ~~shall inform the female, prior to the abortion if possible, of the medical indications~~
21 ~~supporting his judgment that an abortion is necessary to avert her death or that a delay~~
22 ~~will create serious risk of substantial and irreversible impairment of a major bodily~~
23 ~~function.~~

24 **Section 20. That § 34-23A-6 be REPEALED.**

25 ~~Any abortion performed under the provisions of § 34-23A-4 or 34-23A-5 shall be~~
26 ~~performed only in a facility which has a blood bank or a sufficient supply of blood~~
27 ~~immediately available and such facilities shall provide for Rhesus factor (Rh) testing and~~
28 ~~Rho-gam, Gammulin or any other product of equivalency inoculations shall be required~~
29 ~~for women undergoing abortion who have the Rh-negative factor.~~

30 **Section 21. That § 34-23A-7 be REPEALED.**

1 ~~No abortion may be performed upon an unemancipated minor or upon a female for~~
2 ~~whom a guardian has been appointed because of a finding of incompetency, until at least~~
3 ~~forty eight hours after written notice of the pending operation has been delivered in the~~
4 ~~manner specified in this section. The notice shall be addressed to the parent at the usual~~
5 ~~place of abode of the parent and delivered personally to the parent by the physician or an~~
6 ~~agent. In lieu of such delivery, notice may be made by certified mail addressed to the~~
7 ~~parent at the usual place of abode of the parent with return receipt requested and~~
8 ~~restricted delivery to the addressee, which means a postal employee can only deliver the~~
9 ~~mail to the authorized addressee. If notice is made by certified mail, the time of delivery~~
10 ~~shall be deemed to occur at twelve noon on the next day on which regular mail delivery~~
11 ~~takes place, subsequent to mailing.~~

12 ~~No notice is required under this section if:~~

13 ~~(1) The attending physician certifies in the pregnant unemancipated minor's medical~~
14 ~~record that, on the basis of the physician's good faith clinical judgment, a medical~~
15 ~~emergency exists and there is insufficient time to provide the required notice.~~
16 ~~Unless the unemancipated minor gives notice of her intent to seek a judicial waiver,~~
17 ~~a good faith effort shall be made by the attending physician or the physician's~~
18 ~~agent to verbally inform the parent within twenty four hours after the performance~~
19 ~~of the emergency abortion, that an emergency abortion was performed on the~~
20 ~~unemancipated minor and shall also be sent a written notice, in the manner~~
21 ~~described in this section, of the performed emergency abortion. If the~~
22 ~~unemancipated minor, upon whom an emergency abortion was performed, elects~~
23 ~~not to allow the notification of her parent, any judge of a circuit court shall, upon~~
24 ~~petition, or motion, and after an appropriate hearing, authorize the waiving of the~~
25 ~~required notice of the performed abortion if the judge determines, by clear and~~
26 ~~convincing evidence that the unemancipated minor is mature and capable of~~
27 ~~determining whether notification should be given, or that the waiver would be in~~
28 ~~the unemancipated minor's best interest; or~~

29 ~~(2) The person who is entitled to notice certifies in writing that the person has been~~
30 ~~notified. The certification is valid only if the signature has been notarized. If the~~
31 ~~person does not provide a notarized signature, the person shall be sent a written~~
32 ~~notice as described in this section. No abortion as described in this section may be~~
33 ~~performed until at least forty eight hours after written notice of the pending~~
34 ~~operation has been delivered in the manner specified in this section; or~~

1 ~~(3) — A pregnant female elects not to allow the notification of her parent, in which case,~~
2 ~~any judge of a circuit court shall, upon petition, or motion, and after an appropriate~~
3 ~~hearing, authorize a physician to perform the abortion if the judge determines, by~~
4 ~~clear and convincing evidence, that the pregnant female is mature and capable of~~
5 ~~giving informed consent to the proposed abortion. If the judge determines that the~~
6 ~~pregnant female is not mature, or if she does not claim to be mature, the judge~~
7 ~~shall determine, by clear and convincing evidence, whether the performance of an~~
8 ~~abortion upon her without notification of her parent would be in her best interests~~
9 ~~and shall authorize a physician to perform the abortion without such notification if~~
10 ~~the judge concludes that her best interests would be served thereby.~~

11 **Section 22. That § 34-23A-7.1 be REPEALED.**

12 ~~In any proceeding pursuant to subdivision 34-23A-7(1) or 34-23A-7(3), the~~
13 ~~pregnant female may participate in proceedings in the court on her own behalf, and the~~
14 ~~court may appoint a guardian ad litem for her. The court shall, however, advise her that~~
15 ~~she has a right to court-appointed counsel and shall, upon her request, provide her with~~
16 ~~such counsel. Proceedings in the court under subdivision 34-23A-7(1) or 34-23A-7(3) shall~~
17 ~~be confidential and shall be given such precedence over other pending matters so that the~~
18 ~~court may reach a decision promptly and without delay so as to serve the best interests~~
19 ~~of the pregnant female. A judge of the court who conducts proceedings under subdivision~~
20 ~~34-23A-7(1) or 34-23A-7(3) shall make in writing specific factual findings and legal~~
21 ~~conclusions supporting the decision and shall order a record of the evidence to be~~
22 ~~maintained including the judge's own findings and conclusions.~~

23 ~~An expedited confidential appeal shall be available to any such pregnant female for~~
24 ~~whom the court denies an order authorizing an abortion without notification. An order~~
25 ~~authorizing an abortion without notification is not subject to appeal. No filing fees are~~
26 ~~required of any such pregnant female at either the trial or the appellate level. Access to~~
27 ~~the trial court for the purposes of such a petition or motion, and access to the appellate~~
28 ~~courts for purposes of making an appeal from denial of the same, shall be afforded such~~
29 ~~a pregnant female twenty four hours a day, seven days a week. Notwithstanding any~~
30 ~~other provision of law, all pleadings, papers, and other documents filed pursuant to this~~
31 ~~section are confidential, are not public records, and are not open for inspection by any~~
32 ~~member of the public for any purpose.~~

33 **Section 23. That § 34-23A-10.1 be REPEALED.**

1 ~~No abortion may be performed unless the physician first obtains a voluntary and~~
2 ~~informed written consent of the pregnant woman upon whom the physician intends to~~
3 ~~perform the abortion, unless the physician determines that obtaining an informed consent~~
4 ~~is impossible due to a medical emergency and further determines that delaying in~~
5 ~~performing the procedure until an informed consent can be obtained from the pregnant~~
6 ~~woman or her next of kin in accordance with chapter 34-12C is impossible due to the~~
7 ~~medical emergency, which determinations shall then be documented in the medical~~
8 ~~records of the patient.~~

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

12 ~~(1) — A statement in writing providing the following information:~~

13 ~~(a) — The name of the physician who will perform the abortion;~~

14 ~~(b) — That the abortion will terminate the life of a whole, separate, unique, living~~
15 ~~human being;~~

16 ~~(c) — That the pregnant woman has an existing relationship with that unborn~~
17 ~~human being and that the relationship enjoys protection under the United~~
18 ~~States Constitution and under the laws of South Dakota;~~

19 ~~(d) — That by having an abortion, her existing relationship and her existing~~
20 ~~constitutional rights with regards to that relationship will be terminated;~~

21 ~~(e) — A description of all known medical risks of the procedure and statistically~~
22 ~~significant risk factors to which the pregnant woman would be subjected,~~
23 ~~including:~~

24 ~~(i) — Depression and related psychological distress;~~

25 ~~(ii) — Increased risk of suicide ideation and suicide;~~

26 ~~(iii) — A statement setting forth an accurate rate of deaths due to~~
27 ~~abortions, including all deaths in which the abortion procedure was~~
28 ~~a substantial contributing factor; and~~

29 ~~(iv) — All other known medical risks to the physical health of the woman,~~
30 ~~including the risk of infection, hemorrhage, danger to subsequent~~
31 ~~pregnancies, and infertility;~~

32 ~~(f) — The probable gestational age of the unborn child at the time the abortion is~~
33 ~~to be performed, and a scientifically accurate statement describing the~~
34 ~~development of the unborn child at that age;~~

- 1 ~~(g) — The statistically significant medical risks associated with carrying her child~~
2 ~~to term compared to undergoing an induced abortion;~~
- 3 ~~(h) — That even after a pregnant mother takes Mifepristone, or another drug~~
4 ~~approved by the United States Food and Drug Administration for the same~~
5 ~~use, it is still possible to discontinue a drug-induced abortion by not taking~~
6 ~~the prescribed Misoprostol;~~
- 7 ~~(i) — That information on discontinuing a drug-induced abortion is available on~~
8 ~~the Department of Health website;~~
- 9 ~~(j) — A written statement that sex-selective abortions are illegal in the State of~~
10 ~~South Dakota and that a pregnant mother cannot have an abortion, either~~
11 ~~solely or partly, due to the unborn child's sex, regardless of whether that~~
12 ~~unborn child is a girl or a boy or whether it is of the pregnant mother's free~~
13 ~~will or the result of the use of pressure and coercion; and~~
- 14 ~~(k) — A written notification, prepared and provided to each abortion facility by the~~
15 ~~Department of Health, that contains the name, text, and telephone number~~
16 ~~of an organization fighting to end sex trafficking and states the following:~~
17 ~~"If someone is sexually abusing you or causing you to exchange sex for~~
18 ~~something of value, and you want help, call 911, text, or call the number~~
19 ~~provided on this notice.".~~

20 ~~The disclosures set forth above shall be provided to the pregnant woman in writing~~
21 ~~and in person in full compliance with § 34-23A-56. The physician shall ensure that the~~
22 ~~pregnant woman signs each page of the written disclosure with the certification that she~~
23 ~~has read and understands all of the disclosures, prior to the patient signing a consent for~~
24 ~~the procedure. If the pregnant woman asks for a clarification or explanation of any~~
25 ~~particular disclosure, or asks any other question about a matter of significance to her, the~~
26 ~~explanation or answer shall be made in writing and be given to the pregnant woman before~~
27 ~~signing a consent for the procedure and shall be made part of the permanent medical~~
28 ~~record of the patient.~~

29 ~~Prior to the pregnant woman signing a consent to the abortion, she shall sign a~~
30 ~~written statement that indicates that the requirements of this section have been complied~~
31 ~~with. Prior to the performance of the abortion, the physician who is to perform the abortion~~
32 ~~shall receive a copy of the written disclosure documents required by this section, and shall~~
33 ~~certify in writing that all of the information described in those subdivisions has been~~
34 ~~provided to the pregnant woman, that the physician is, to the best of his or her ability,~~

- 1 satisfied that the pregnant woman has read the materials which are required to be
2 disclosed, and that the physician believes she understands the information imparted;
- 3 (2) — A statement by telephone or in person, by the physician who is to perform the
4 abortion, or by the referring physician, or by an agent of both, at least twenty-four
5 hours before the abortion, providing the following information:
- 6 (a) — That medical assistance benefits may be available for prenatal care,
7 childbirth, and neonatal care;
- 8 (b) — That the father of the unborn child is legally responsible to provide financial
9 support for her child following birth, and that this legal obligation of the
10 father exists in all instances, even in instances in which the father has
11 offered to pay for the abortion;
- 12 (c) — The name, address, and telephone number of a pregnancy help center in
13 reasonable proximity of the abortion facility where the abortion will be
14 performed; and
- 15 (d) — That she has a right to review all of the material and information described
16 in § 34-23A-1, §§ 34-23A-1.2 to 34-23A-1.7, inclusive, § 34-23A-10.1, and
17 § 34-23A-10.3, as well as the printed materials described in § 34-23A-10.3,
18 and the website described in § 34-23A-10.4. The physician or the
19 physician's agent shall inform the pregnant woman, orally or in writing, that
20 the materials have been provided by the State of South Dakota at no charge
21 to the pregnant woman. If the pregnant woman indicates, at any time, that
22 she wants to review any of the materials described, such disclosures shall
23 be either given to her at least twenty-four hours before the abortion or
24 mailed to her at least seventy-two hours before the abortion by certified
25 mail, restricted delivery to addressee, which means the postal employee
26 can only deliver the mail to the addressee;
- 27 (3) — In the case of a pregnant woman who has been administered Mifepristone, or
28 another drug approved by the United States Food and Drug Administration for the
29 same use, the statement required by subsection (h) of subdivision (1) must also
30 be duplicated and presented to the woman at the time of her release or discharge,
31 immediately after the provision or administration of the first drug. The statement
32 must be accompanied by a notice that includes:
- 33 (a) — The following verbiage: "If you decide you want to give birth to your child,
34 even after the abortion process has begun, seek the assistance of a
35 physician immediately."; and

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

5 **Section 24. That § 34-23A-10.2 be REPEALED.**

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

10 ~~No penalty may be assessed against the female upon whom the abortion is~~
 11 ~~performed or attempted to be performed. No criminal penalty or civil liability for failure to~~
 12 ~~comply with subsection 34-23A-10.1(2)(c) or that portion of subsection 34-23A-10.1(3)~~
 13 ~~requiring a written certification that the woman has been informed of her opportunity to~~
 14 ~~review the information referred to in subsection 34-23A-10.1(2)(c) may be assessed~~
 15 ~~unless the department of health has made the printed materials available at the time the~~
 16 ~~physician or the physician's agent is required to inform the female of her right to review~~
 17 ~~them.~~

18 **Section 25. That § 34-23A-10.3 be REPEALED.**

19 ~~The health department shall publish, in culturally sensitive languages, the following~~
 20 ~~printed materials, in such a way as to ensure that the information is easily~~
 21 ~~comprehensible:~~

22 ~~(1) — Materials designed to inform the pregnant woman of all the disclosures enumerated~~
 23 ~~in § 34-23A-10.1;~~

24 ~~(2) — Materials designed to inform the pregnant woman of public and private agencies~~
 25 ~~and services available to assist a pregnant woman through pregnancy, upon~~
 26 ~~childbirth and while the child is dependent, including adoption agencies, which shall~~
 27 ~~include a list of the agencies available and a description of the services they offer;~~

28 ~~(3) — Materials designed to inform the pregnant woman of the probable anatomical and~~
 29 ~~physiological characteristics of the unborn child at two week gestational~~
 30 ~~increments from the time when a pregnant woman can be known to be pregnant~~
 31 ~~to full term, including any relevant information on the possibility of the unborn~~
 32 ~~child's survival and pictures or drawings representing the development of unborn~~
 33 ~~children at two week gestational increments. Such pictures or drawings shall~~

1 ~~contain the dimensions of the fetus and shall be realistic and appropriate for the~~
 2 ~~stage of pregnancy depicted. The materials shall be objective, nonjudgmental, and~~
 3 ~~designed to convey only accurate scientific information about the unborn child at~~
 4 ~~the various gestational ages; and~~

5 ~~(4) Materials designed to inform the pregnant woman that: "If someone is sexually~~
 6 ~~abusing you or causing you to exchange sex for something of value, and you want~~
 7 ~~help, call 911, text or call the number provided on this notice."~~

8 ~~The materials shall be printed in a typeface large enough to be clearly legible and~~
 9 ~~shall be available at no cost from the Department of Health upon request and in~~
 10 ~~appropriate number to any person, facility, or hospital.~~

11 **Section 26. That § 34-23A-10.4 be REPEALED.**

12 ~~The Department of Health shall, by January 1, 2004, develop and maintain a multi-~~
 13 ~~media website that contains web pages covering each of the following topics:~~

14 ~~(1) Embryonic and fetal development at various gestational stages;~~

15 ~~(a) Anatomical and physiological characteristics; and~~

16 ~~(b) Survival possibilities of the unborn child;~~

17 ~~(2) Abortion methods commonly used for each trimester of pregnancy;~~

18 ~~(3) Statistically significant abortion method risks, including infection, hemorrhage,~~
 19 ~~danger to subsequent pregnancies, and infertility;~~

20 ~~(4) Important pre-abortion procedures;~~

21 ~~(a) Confirmation of pregnancy via sonogram; and~~

22 ~~(b) Counseling and discussion of medical history to detect possible abortion~~
 23 ~~risks;~~

24 ~~(5) Post-abortion psychological and emotional complications;~~

25 ~~(6) Parental notification as required by 34-23A-7;~~

26 ~~(7) Assistance, benefits, and services:~~

27 ~~(a) Names and contact information of public and private agencies; and~~

28 ~~(b) Types and availability of public medical benefits and services;~~

29 ~~(8) Responsibility of the father of the unborn child;~~

30 ~~(9) Statistically significant pregnancy risks;~~

31 ~~(10) Adoption options:~~

32 ~~(a) Names and contact information of public and private agencies; and~~

33 ~~(b) Description of services;~~

34 ~~(11) Information on discontinuing a drug-induced abortion.~~

1 ~~The state shall collect and maintain web statistics regarding the website developed~~
2 ~~and maintained pursuant to this section. However, no personal information may be~~
3 ~~collected.~~

4 **Section 27. That § 34-23A-10.5 be REPEALED.**

5 ~~To meet the requirement of subdivision 34-23A-10.1(1), a physician shall use a~~
6 ~~form prescribed by the department. The department shall promulgate rules pursuant to~~
7 ~~chapter 1-26 specifying the form necessary to meet the requirement of this section.~~

8 **Section 28. That § 34-23A-11 be REPEALED.**

9 ~~No counselor, social worker, or anyone else who may be in such a position where~~
10 ~~the abortion question may appear as a part of their workday routine, shall be liable to any~~
11 ~~person for damages allegedly arising from advising or helping to arrange for or for refusal~~
12 ~~to arrange or encourage abortion, and there shall be no retaliation from any agency or~~
13 ~~institution with which such person may be affiliated or by which he may be employed.~~

14 **Section 29. That § 34-23A-12 be REPEALED.**

15 ~~No physician, nurse, or other person who refuses to perform or assist in the~~
16 ~~performance of an abortion shall be liable to any person for damages arising from that~~
17 ~~refusal.~~

18 **Section 30. That § 34-23A-13 be REPEALED.**

19 ~~No physician, nurse, or other person who performs or refuses to perform or assist~~
20 ~~in the performance of an abortion shall, because of that performance or refusal, be~~
21 ~~dismissed, suspended, demoted, or otherwise prejudiced or damaged by a hospital or~~
22 ~~other medical facility with which he is affiliated or by which he is employed.~~

23 **Section 31. That § 34-23A-14 be REPEALED.**

24 ~~No hospital licensed pursuant to the provisions of chapter 34-12 is required to~~
25 ~~admit any patient for the purpose of terminating a pregnancy pursuant to the provisions~~
26 ~~of this chapter. No hospital is liable for its failure or refusal to participate in such~~
27 ~~termination if the hospital has adopted a policy not to admit patients for the purpose of~~
28 ~~terminating pregnancies as provided in this chapter.~~

1 **Section 32. That § 34-23A-16 be REPEALED.**

2 ~~Whenever an abortion procedure results in a live birth, a birth certificate shall be~~
3 ~~issued certifying the birth of said live born person even though said live person may~~
4 ~~thereafter die in a short time. In the event death does ensue after a short time, a death~~
5 ~~certificate shall be issued; both the birth and death certificates shall be issued pursuant~~
6 ~~to law and rules and regulations of the State Department of Health.~~

7 **Section 33. That § 34-23A-16.1 be REPEALED.**

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

17 ~~For purposes of this section, born alive means the complete expulsion or extraction~~
18 ~~of a human being from its mother, at any stage of gestation, if after the expulsion or~~
19 ~~extraction, and regardless of whether the umbilical cord has been cut, that human being:~~
20 ~~(1) —Breathes;~~
21 ~~(2) —Has a beating heart;~~
22 ~~(3) —Has pulsation of the umbilical cord; or~~
23 ~~(4) —Has definite movement of voluntary muscles.~~

24 **Section 34. That § 34-23A-16.2 be REPEALED.**

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

30 ~~The child born alive has a cause of action against the physician, the physician's~~
31 ~~agents, and the abortion facility, for any physical or psychological injury, or both, for any~~
32 ~~injuries sustained during and as a result of the abortion, and for any additional physical~~

1 ~~or psychological injury, or both, where the negligence of the physician, the physician's~~
2 ~~agents, and the abortion facility, in the medical care following birth, was a significant~~
3 ~~contributing factor.~~

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

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

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

17 ~~Any person having knowledge of a failure to meet the requirements of § 34-23A-~~
18 ~~16.1 may report the failure to the attorney general and, upon request, that person's~~
19 ~~identity must remain confidential.~~

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

24 **Section 35. That § 34-23A-17 be REPEALED.**

25 ~~Any tissue, organ, or body part of an unborn or newborn child who has been subject~~
26 ~~to an induced abortion, other than an abortion necessary to prevent the death of the~~
27 ~~mother, may not be used in animal or human research or for animal or human~~
28 ~~transplantation. Nothing in this section precludes any therapy intended to directly benefit~~
29 ~~the unborn or newborn child who has been subject to the abortion. This section does not~~
30 ~~prohibit the use for human transplantation of an unborn child or any tissue or organ~~
31 ~~thereof if removed in the course of removal of an ectopic or a molar pregnancy. Any person~~
32 ~~who knowingly and for consideration provides, acquires, receives, or otherwise transfers~~
33 ~~any fetal tissue, organ, or body part in violation of this section is guilty of a Class 6 felony.~~

1 **Section 36. That § 34-23A-18 be REPEALED.**

2 ~~Whenever a person is born alive in the course of an abortion procedure, the facts~~
 3 ~~and circumstances involving the birth and the abortion procedure shall be considered~~
 4 ~~relevant and material evidence in any proceeding under chapters 26-7A, 26-8A, 26-8B,~~
 5 ~~and 26-8C for termination of parental rights or adjudication of dependency or neglect;~~
 6 ~~and the Department of Social Services may commence such proceeding as it deems~~
 7 ~~applicable under that chapter.~~

8 **Section 37. That § 34-23A-19 be REPEALED.**

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

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

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

26 ~~The Department of Health shall promulgate rules, in accordance with chapter 1-~~
 27 ~~26, to acquire the necessary information for the department's report, to the Centers for~~
 28 ~~Disease Control and Prevention, of all abortion-related data, as recommended by the~~
 29 ~~centers.~~

30 **Section 38. That § 34-23A-20 be REPEALED.**

31 ~~If any part or provision of this chapter is determined to be invalid, or is preliminarily~~
 32 ~~enjoined, all other parts not determined to be invalid or enjoined are severable from the~~

1 ~~invalid parts and remain in effect. If any part or provision of this chapter is determined to~~
 2 ~~be invalid, or is preliminarily enjoined in one or more of its applications, all other parts or~~
 3 ~~provisions not determined to be invalid or preliminarily enjoined are severable from the~~
 4 ~~invalid or preliminarily enjoined application and remain in effect.~~

5 **Section 39. That § 34-23A-21 be REPEALED.**

6 ~~Nothing in this chapter may be construed to repeal, by implication or otherwise,~~
 7 ~~any provision not explicitly repealed.~~

8 **Section 40. That § 34-23A-22 be REPEALED.**

9 ~~If any person performs an abortion willfully, wantonly, or maliciously in disregard~~
 10 ~~to § 34-23A-2.1, 34-23A-7, or 34-23A-10.1, the person upon whom such an abortion has~~
 11 ~~been performed, and the parent of a minor child upon whom such an abortion was~~
 12 ~~performed, or any of them, may maintain an action against the person who performed the~~
 13 ~~abortion not to exceed ten thousand dollars in punitive damages. Any person upon whom~~
 14 ~~such an abortion has been attempted may maintain an action against the person who~~
 15 ~~attempted to perform the abortion not to exceed five thousand dollars in punitive~~
 16 ~~damages.~~

17 ~~If judgment is rendered in favor of the plaintiff in any such action, the court shall~~
 18 ~~also render judgment for a reasonable attorney's fee in favor of the plaintiff against the~~
 19 ~~defendant. If judgment is rendered in favor of the defendant and the court finds that the~~
 20 ~~plaintiff's suit was frivolous or brought in bad faith, the court shall also render judgment~~
 21 ~~for a reasonable attorney's fee in favor of the defendant against the plaintiff.~~

22 **Section 41. That § 34-23A-23 be REPEALED.**

23 ~~In every civil or criminal proceeding or action brought pursuant to this chapter, the~~
 24 ~~court shall rule whether the anonymity of any female upon whom an abortion is performed~~
 25 ~~or attempted shall be preserved from public disclosure if she does not give her consent to~~
 26 ~~such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon~~
 27 ~~determining that her anonymity should be preserved, shall issue orders to the parties,~~
 28 ~~witnesses, and counsel, and shall direct the sealing of the record and exclusion of~~
 29 ~~individuals from courtrooms or hearing rooms, to the extent necessary to safeguard her~~
 30 ~~identity from public disclosure. Each such order shall be accompanied by specific written~~
 31 ~~findings explaining why the anonymity of the female should be preserved from public~~

1 ~~disclosure, why the order is essential to that end, how the order is narrowly tailored to~~
2 ~~serve that interest, and why no reasonable less restrictive alternative exists. In the~~
3 ~~absence of written consent of the female upon whom an abortion has been performed or~~
4 ~~attempted, anyone, other than a public official, who brings an action pursuant to this~~
5 ~~chapter shall do so under a pseudonym. This section may not be construed to conceal the~~
6 ~~identity of the plaintiff or of witnesses from the defendant.~~

7 **Section 42. That § 34-23A-24 be REPEALED.**

8 ~~The Department of Health shall monitor and analyze maternal mortality. The~~
9 ~~department may promulgate rules pursuant to chapter 1-26 concerning reporting related~~
10 ~~to maternal mortality, on death certificates or by other means, as will assist it in~~
11 ~~performing such analyses.~~

12 **Section 43. That § 34-23A-25 be REPEALED.**

13 ~~The department may collect data from health providers and medical facilities for~~
14 ~~purposes of performing analyses of pregnancy outcomes to determine the number, or if~~
15 ~~that is not possible, the best available estimate of the number, of each of the following:~~
16 ~~(1) Ectopic pregnancies;~~
17 ~~(2) Stillbirths;~~
18 ~~(3) Live births;~~
19 ~~(4) Molar pregnancies;~~
20 ~~(5) Spontaneous abortions;~~
21 ~~(6) Induced abortions; and~~
22 ~~(7) Any other pregnancy related classifications the department deems useful.~~

23 **Section 44. That § 34-23A-26 be REPEALED.**

24 ~~The department shall include sections in its annual vital statistics and health status~~
25 ~~report detailing the findings derived from the analyses provided under §§ 34-23A-24 and~~
26 ~~34-23A-25. The department shall ensure that neither the information published in its~~
27 ~~reports, nor the information provided to researchers, with the exception of information~~
28 ~~requested by the centers for disease control of the public health service in the United~~
29 ~~States Department of Health and Human Services, identifies or could reasonably lead to~~
30 ~~the identification of any individual patient.~~

31 **Section 45. That § 34-23A-27 be REPEALED.**

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

3 **Section 46. That § 34-23A-28 be REPEALED.**

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

9 **Section 47. That § 34-23A-29 be REPEALED.**

10 ~~In the case of the death of a human fetus or infant as the result of a partial birth~~
11 ~~abortion, the father of the human fetus or infant and, if the mother has not attained the~~
12 ~~age of eighteen years at the time of the partial birth abortion, the maternal grandparents~~
13 ~~of the human fetus or infant may file a civil action to obtain appropriate relief, unless the~~
14 ~~plaintiff consented to the partial birth abortion or unless the plaintiff's criminal conduct~~
15 ~~caused the pregnancy.~~

16 **Section 48. That § 34-23A-30 be REPEALED.**

17 ~~Civil relief pursuant to § 34-23A-29 includes money damages for all injuries,~~
18 ~~psychological or physical, that are proximately caused by a partial birth abortion in~~
19 ~~violation of § 34-23A-27. Any plaintiff with standing to sue pursuant to § 34-23A-29 who~~
20 ~~has paid for the costs of a partial birth abortion may recover treble the costs in damages.~~

21 **Section 49. That § 34-23A-31 be REPEALED.**

22 ~~No woman upon whom a partial birth abortion is performed may be prosecuted~~
23 ~~under the provisions of §§ 34-23A-27 to 34-23A-33, inclusive, for conspiracy to violate~~
24 ~~§ 34-23A-27.~~

25 **Section 50. That § 34-23A-32 be REPEALED.**

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

1 **Section 51. That § 34-23A-33 be REPEALED.**

2 ~~For the purposes of §§ 34-23A-27 to 34-23A-33, inclusive, the term, fetus, and~~
 3 ~~the term, infant, are used interchangeably to refer to the biological offspring of human~~
 4 ~~parents.~~

5 **Section 52. That § 34-23A-34 be REPEALED.**

6 ~~The Department of Health shall prepare a reporting form for physicians which shall~~
 7 ~~provide for the collection of the following information:~~

8 ~~(1) The month, day, and year of the induced abortion;~~

9 ~~(2) The method of abortion used for each induced abortion;~~

10 ~~(3) The approximate gestational age, in weeks, of the unborn child involved in the~~
 11 ~~abortion;~~

12 ~~(4) The age of the mother at the time of the abortion and, if the mother was younger~~
 13 ~~than sixteen years of age at the time the child was conceived, the age of the father,~~
 14 ~~if known;~~

15 ~~(5) The specific reason for the induced abortion, including the following:~~

16 ~~(a) The pregnancy was a result of rape;~~

17 ~~(b) The pregnancy was a result of incest;~~

18 ~~(c) The mother could not afford the child;~~

19 ~~(d) The mother did not desire to have the child;~~

20 ~~(e) The mother's emotional health was at risk;~~

21 ~~(f) The mother would suffer substantial and irreversible impairment of a major~~
 22 ~~bodily function if the pregnancy continued;~~

23 ~~(g) Other, which shall be specified;~~

24 ~~(6) Whether the induced abortion was paid for by:~~

25 ~~(a) Private insurance;~~

26 ~~(b) Public health plan;~~

27 ~~(c) Other, which shall be specified;~~

28 ~~(7) Whether coverage was under:~~

29 ~~(a) A fee-for-service insurance company;~~

30 ~~(b) A managed care company; or~~

31 ~~(c) Other, which shall be specified;~~

32 ~~(8) A description of the complications, if any, for each abortion and for the aftermath~~
 33 ~~of each abortion;~~

- 1 ~~(9) The fee collected for performing or treating the abortion;~~
2 ~~(10) The type of anesthetic, if any, used for each induced abortion;~~
3 ~~(11) The method used to dispose of fetal tissue and remains;~~
4 ~~(12) The specialty area of the physician;~~
5 ~~(13) Whether the physician performing the induced abortion has been subject to license~~
6 ~~revocation or suspension or other professional sanction;~~
7 ~~(14) The number of previous abortions the mother has had;~~
8 ~~(15) The number of previous live births of the mother, including both living and~~
9 ~~deceased;~~
10 ~~(16) The date last normal menses began for the mother;~~
11 ~~(17) The name of physician performing the induced abortion;~~
12 ~~(18) The name of hospital or physician office where the induced abortion was performed;~~
13 ~~(19) A unique patient number that can be used to link the report to medical report for~~
14 ~~inspection, clarification, and correction purposes but that cannot, of itself,~~
15 ~~reasonably lead to the identification of any person obtaining an abortion;~~
16 ~~(20) Certain demographic information including:~~
17 ~~(a) State, county, and city of occurrence of abortion;~~
18 ~~(b) State, county, and city of residence of mother;~~
19 ~~(c) Marital status of mother;~~
20 ~~(d) Education status of mother;~~
21 ~~(e) Race of mother;~~
22 ~~(21) Certain Rhesus factor (Rh) information including:~~
23 ~~(a) Whether the mother received the Rh test;~~
24 ~~(b) Whether the mother tested positive for the Rh negative factor;~~
25 ~~(c) Whether the mother received a Rho(D) immune globulin injection;~~
26 ~~(22) The sex of the unborn child and the following information:~~
27 ~~(a) Whether the pregnant mother used a sex determining test;~~
28 ~~(b) What type of sex determining test the pregnant mother used; and~~
29 ~~(c) The approximate gestational age of the unborn child, in weeks, when the test~~
30 ~~was taken;~~
31 ~~(23) The post fertilization age of the unborn child and the following information:~~
32 ~~(a) How the post fertilization age was determined or if a determination was not~~
33 ~~made, the basis of the determination that an exception existed;~~
34 ~~(b) Whether an intra fetal injection was used in an attempt to induce fetal~~
35 ~~demise;~~

- 1 ~~(c) If the unborn child was deemed capable of experiencing pain, pursuant to~~
- 2 ~~§ 34-23A-70, the basis of the determination that it is a medical emergency;~~
- 3 ~~(d) If the unborn child was deemed capable of experiencing pain pursuant to~~
- 4 ~~§ 34-23A-70, whether the method of the abortion used was that, in~~
- 5 ~~reasonable medical judgment, provided the best opportunity for the unborn~~
- 6 ~~child to survive and, if such a method was not used, the basis of the~~
- 7 ~~determination that termination of the pregnancy in that manner would pose~~
- 8 ~~a greater risk either of the death of the pregnant mother or of the~~
- 9 ~~substantial and irreversible physical impairment of a major bodily function,~~
- 10 ~~not including a psychological or emotional condition, of the mother than~~
- 11 ~~other available methods;~~
- 12 ~~(24) The following information concerning the performance of a medical abortion:~~
- 13 ~~(a) Any complication that requires medical follow up;~~
- 14 ~~(b) The medical follow up that was required resulting from any complication;~~
- 15 ~~(c) The facility where the medical follow up was performed; and~~
- 16 ~~(d) If the pregnant mother was sex trafficked.~~

17 **Section 53. That § 34-23A-35 be REPEALED.**

18 ~~By January fifteenth of each year, each physician who performed or treated an~~
19 ~~induced abortion during the previous calendar year or the physician's agent, shall submit~~
20 ~~to the department a copy of the physicians' information report described in § 34-23A-34~~
21 ~~with the requested data entered accurately and completely.~~

22 **Section 54. That § 34-23A-36 be REPEALED.**

23 ~~The department shall issue a public report on or before July first of each year~~
24 ~~providing the same detailed information required by the reporting forms required by~~
25 ~~§§ 34-23A-34 to 34-23A-45, inclusive. The public report shall cover the entire previous~~
26 ~~calendar year and shall be compiled from the data in all the reporting forms required by~~
27 ~~§§ 34-23A-34 to 34-23A-45, inclusive, and submitted to the department in accordance~~
28 ~~with §§ 34-23A-34 to 34-23A-45, inclusive. Each public report shall also provide detailed~~
29 ~~information for all previous calendar years, adjusted to reflect any additional information~~
30 ~~from late or corrected reports. The department shall take care to ensure that none of the~~
31 ~~information included in the public reports may reasonably lead to identification of any~~
32 ~~physician who performed or treated an abortion or any mother who has had an abortion.~~

1 **Section 55. That § 34-23A-37 be REPEALED.**

2 The Department of Health shall prepare a reporting form for physicians which shall
3 provide for the collection of the following information:

4 (1) ~~The number of pregnant mothers to whom the physician provided the information~~
5 ~~described in subdivision 34-23A-10.1(1) and of those pregnant mothers, the~~
6 ~~number to whom the physician provided information in the capacity of a referring~~
7 ~~physician and the number to whom the physician provided information in the~~
8 ~~capacity of a physician who is to perform the abortion;~~

9 (2) ~~The number of pregnant mothers to whom the physician provided the information~~
10 ~~described in subdivision 34-23A-10.1(2); of that number, the number provided by~~
11 ~~telephone and the number provided in person; of each of those numbers, the~~
12 ~~number provided in the capacity of a referring physician and the number provided~~
13 ~~in the capacity of a physician who is to perform the abortion; and of each of those~~
14 ~~numbers, the number provided by the physician and the number provided by an~~
15 ~~agent of the physician;~~

16 (3) ~~The number of pregnant mothers who availed themselves of the opportunity to~~
17 ~~obtain a copy of the printed information described in § 34-23A-10.3, and the~~
18 ~~number who did not; and of each of those numbers, the number who, to the best~~
19 ~~of the reporting physician's information and belief, went on to obtain the abortion;~~

20 (4) ~~The number of pregnant mothers who availed themselves of the opportunity to~~
21 ~~view a sonogram image, hear the heartbeat of the unborn child, or both, pursuant~~
22 ~~to § 34-23A-52, and the number who did not; and of each of those numbers, the~~
23 ~~number who, to the best of the reporting physician's information and belief, went~~
24 ~~on to obtain the abortion;~~

25 (5) ~~The number of abortions performed by the physician in which information~~
26 ~~otherwise required to be provided at least twenty-four hours before the abortion~~
27 ~~was not provided because an immediate abortion was necessary to avert the~~
28 ~~pregnant mother's death, and the number of abortions in which such information~~
29 ~~was not so provided because a delay would have created a serious risk of~~
30 ~~substantial and irreversible impairment of a major bodily function;~~

31 (6) ~~The name of the hospital or physician office;~~

32 (7) ~~The month, day, and year of the report; and~~

33 (8) ~~A unique patient number that can be used to link the report under this section to~~
34 ~~the medical report for inspection, clarification, and correction purposes, but which~~

1 cannot, of itself, reasonably lead to the identification of any pregnant mother
2 obtaining an abortion.

3 **Section 56. That § 34-23A-38 be REPEALED.**

4 By February twenty-eighth of each year, each physician who provided, or whose
5 agent provided, information to one or more females in accordance with § 34-23A-10.1
6 during the previous calendar year shall submit to the Department of Health a copy of the
7 physicians' information report form described in § 34-23A-37 with the requested data
8 entered accurately and completely.

9 **Section 57. That § 34-23A-39 be REPEALED.**

10 The Department of Health shall prepare a reporting form for physicians which shall
11 provide for the collection of the following information:

- 12 (1) — The number of females or parents whom the physician or agent of the physician
13 provided the notice described in § 34-23A-7; and of each of those numbers, the
14 number of females who, to the best of the reporting physician's information and
15 belief, went on to obtain the abortion;
- 16 (2) — The number of females upon whom the physician performed an abortion without
17 providing to the parent of the minor the notice described in § 34-23A-7; of that
18 number, the number who were emancipated minors, and the numbers from whom
19 each of the exceptions to § 34-23A-7 were applicable;
- 20 (3) — The number of abortions performed upon a female by the physician after receiving
21 judicial authorization to do so without parental notice;
- 22 (4) — The same information described in subdivisions (1) through (3) of this section with
23 respect to females for whom a guardian or conservator has been appointed
24 pursuant to statutes on guardianship or conservatorship because of finding of
25 incompetency ;
- 26 (5) — The name of hospital or physician office;
- 27 (6) — The date of report by month, day, and year; and
- 28 (7) — A unique patient number that can be used to link the report to medical report for
29 inspection, clarification, and correction purposes but that cannot, of itself,
30 reasonably lead to the identification of any person obtaining an abortion.

31 **Section 58. That § 34-23A-40 be REPEALED.**

1 By February twenty-eighth of each year, each physician who provided, or whose
2 agent provided, the notice described in ~~§ 34-23A-7~~, and any physician who knowingly
3 performed an abortion upon a female or upon a female for whom a guardian or conservator
4 had been appointed because of a finding of incompetency during the previous calendar
5 year shall submit to the Department of Health a copy of the physicians' information report
6 form described in ~~§ 34-23A-39~~ with the requested data entered accurately and
7 completely.

8 **Section 59. That § 34-23A-41 be REPEALED.**

9 Any physician who fails to submit any report required by ~~§§ 34-23A-34 to 34-23A-~~
10 ~~45~~, inclusive, within a grace period of thirty days following the due date is subject to a
11 late fee of five hundred dollars for each additional thirty day period, or portion of a
12 thirty day period, that each report is overdue. Any physician who has not submitted a
13 report, or has submitted only an incomplete report, more than one year following the due
14 date, is also subject to a civil action brought by the department. A court of competent
15 jurisdiction may direct the physician to submit a complete report within a period stated by
16 court order or be subject to sanctions for civil contempt.

17 **Section 60. That § 34-23A-42 be REPEALED.**

18 Any person who knowingly or recklessly fails to submit any report required by
19 ~~§§ 34-23A-34 to 34-23A-45~~, inclusive, or submits false information under ~~§§ 34-23A-34~~
20 ~~to 34-23A-45~~, inclusive, is guilty of a Class 2 misdemeanor.

21 **Section 61. That § 34-23A-43 be REPEALED.**

22 The department shall ensure compliance with ~~§§ 34-23A-34 to 34-23A-45~~,
23 inclusive, and shall verify the data provided by periodic inspection of places where induced
24 abortions are performed.

25 **Section 62. That § 34-23A-44 be REPEALED.**

26 No report made under ~~§§ 34-23A-34 to 34-23A-45~~, inclusive, may include the
27 name of any female having an abortion. The Department of Health shall take care to
28 ensure that none of the information included in any report required by ~~§§ 34-23A-34 to~~
29 ~~34-23A-45~~, inclusive, including printed records, computerized records, or stored
30 information of any type, can reasonably lead to the identification of any person obtaining

1 ~~an abortion. Except in the case of a mother who was younger than the age of sixteen at~~
2 ~~the time her child was conceived, any information collected by or under the direction of a~~
3 ~~physician or psychotherapist for the purpose of completing a report required by §§ 34-~~
4 ~~23A-34 to 34-23A-45, inclusive, is privileged as a confidential communication under~~
5 ~~subdivision 19-19-503(b). In the case of a mother who was younger than the age of~~
6 ~~sixteen at the time the child was conceived, the privilege of confidentiality set forth in~~
7 ~~subdivision 19-19-503(b) may not be claimed in any judicial proceeding involving § 22-~~
8 ~~22-1.~~

9 **Section 63. That § 34-23A-45 be REPEALED.**

10 ~~For purposes of §§ 34-23A-34 to 34-23A-45, inclusive, only, the term, induced~~
11 ~~abortion, means the intentional termination of the life of a human being in the uterus.~~

12 **Section 64. That § 34-23A-46 be REPEALED.**

13 ~~Except as provided by § 34-23A-47, no person may establish or operate an~~
14 ~~abortion facility in this state without an appropriate license issued under §§ 34-23A-46 to~~
15 ~~34-23A-51, inclusive. Each abortion facility shall have a separate license. No abortion~~
16 ~~facility license is transferrable or assignable.~~

17 **Section 65. That § 34-23A-47 be REPEALED.**

18 ~~The following facilities need not be licensed under §§ 34-23A-46 to 34-23A-51,~~
19 ~~inclusive:~~
20 ~~(1) — A health care facility licensed pursuant to chapter 34-12; or~~
21 ~~(2) — The office of a physician licensed pursuant to chapter 36-4 unless the office is used~~
22 ~~for performing abortions.~~

23 **Section 66. That § 34-23A-48 be REPEALED.**

24 ~~An applicant for an abortion facility license shall submit an application to the~~
25 ~~department on a form prescribed by the department. The application shall be accompanied~~
26 ~~by a nonrefundable license fee in an amount set by the department by rules promulgated~~
27 ~~pursuant to chapter 1-26. The license fee may not exceed two thousand dollars. The~~
28 ~~application shall contain evidence that there are one or more physicians on the staff of~~
29 ~~the facility who are licensed by the State Board of Medical and Osteopathic Examiners.~~
30 ~~The department shall issue a license if, after inspection and investigation, it finds that the~~

1 applicant and the abortion facility meet the requirements of §§ 34-23A-46 to 34-23A-51,
2 inclusive, and the standards promulgated in rules adopted pursuant to §§ 34-23A-46 to
3 34-23A-51, inclusive. As a condition for renewal of a license, the licensee shall submit
4 to the department the annual license renewal fee set by rules promulgated pursuant to
5 chapter 1-26.

6 **Section 67. That § 34-23A-49 be REPEALED.**

7 The department may inspect an abortion facility at reasonable times as necessary
8 to ensure compliance with §§ 34-23A-46 to 34-23A-51, inclusive. The department shall
9 inspect an abortion facility before renewing the facility's license.

10 **Section 68. That § 34-23A-49.1 be REPEALED.**

11 The Department of Health shall include information regarding each inspection of
12 an abortion facility on the department's public website no later than forty five days after
13 the inspection. The information posted on the website must include the date and the result
14 of each inspection. If the result of the inspection requires an abortion provider to take
15 corrective action, the information must include the details of the required corrective
16 action.

17 **Section 69. That § 34-23A-50 be REPEALED.**

18 Any fees collected under §§ 34-23A-46 to 34-23A-51, inclusive, shall be deposited
19 in the abortion facility licensing fund and are continuously appropriated to administer and
20 enforce §§ 34-23A-46 to 34-23A-51, inclusive.

21 **Section 70. That § 34-23A-51 be REPEALED.**

22 The department shall adopt rules pursuant to chapter 1-26 for the issuance,
23 renewal, denial, suspension, and revocation of a license to operate an abortion facility.
24 The department shall adopt, by rules promulgated pursuant to chapter 1-26, minimum
25 standards to protect the health and safety of a patient of an abortion facility. The rules
26 shall establish minimum standards regarding:

- 27 (1) Facility safety and sanitation;
- 28 (2) Qualifications and supervision of professional and nonprofessional personnel;
- 29 (3) Emergency equipment and procedures to provide emergency care;
- 30 (4) Medical records and reports;

- 1 ~~(5) Procedure and recovery rooms;~~
- 2 ~~(6) Infection control;~~
- 3 ~~(7) Medication control;~~
- 4 ~~(8) Quality assurance;~~
- 5 ~~(9) Facility and laboratory equipment requirements, sanitation, testing, and~~
- 6 ~~maintenance;~~
- 7 ~~(10) Information on and access to patient follow-up care; and~~
- 8 ~~(11) Patient screening, assessment, and monitoring.~~

9 **Section 71. That § 34-23A-52 be REPEALED.**

10 ~~No physician may take a consent for an abortion from a pregnant mother without~~
 11 ~~first offering the pregnant mother an opportunity to view a sonogram and hear the~~
 12 ~~heartbeat of her unborn child. The physician shall offer to describe the images on the~~
 13 ~~sonogram if the pregnant mother consents. The pregnant mother's response to the offer~~
 14 ~~under this section shall be documented by the physician in the patient's medical records,~~
 15 ~~including the date and time of the offer and the pregnant mother's signature to her~~
 16 ~~response to the offer.~~

17 **Section 72. That § 34-23A-52.1 be REPEALED.**

18 ~~The provisions of § 34-23A-52 do not apply to an abortion provider or facility in~~
 19 ~~the case of a medical emergency. Upon a determination by a physician under this section~~
 20 ~~that a medical emergency exists, the physician shall certify the specific medical conditions~~
 21 ~~that constitute the emergency.~~

22 **Section 73. That § 34-23A-53 be REPEALED.**

23 ~~Terms as used in §§ 34-23A-53 to 34-23A-62, inclusive, mean:~~

24 ~~(1) "Pregnancy help center," any entity whether it be a form of corporation,~~
 25 ~~partnership, or proprietorship, whether it is for profit, or nonprofit, that has as one~~
 26 ~~of its principal missions to provide education, counseling, and other assistance to~~
 27 ~~help a pregnant mother maintain her relationship with her unborn child and care~~
 28 ~~for her unborn child, which entity has a medical director who is licensed to practice~~
 29 ~~medicine in the State of South Dakota, or that it has a collaborative agreement~~
 30 ~~with a physician licensed in South Dakota to practice medicine to whom women~~
 31 ~~can be referred, which entity does not perform abortions and is not affiliated with~~

1 ~~any physician or entity that performs abortions, and does not now refer pregnant~~
 2 ~~mothers for abortions, and has not referred any pregnant mother for abortions for~~
 3 ~~the three year period immediately preceding July 1, 2011, which entity does not~~
 4 ~~place children for adoption, and which entity is in compliance with the requirements~~
 5 ~~of § 34-23A-59.1;~~
 6 (2) ~~Deleted by SL 2012, ch 186, § 1;~~
 7 (3) ~~Deleted by SL 2012, ch 186, § 1;~~
 8 (4) ~~"Coercion," exists if the pregnant mother is induced to consent to an abortion by~~
 9 ~~any other person under circumstances, or in such a manner, which deprives her~~
 10 ~~from making a free decision or exercising her free will.~~

11 **Section 74. That § 34-23A-54 be REPEALED.**

12 ~~The Legislature finds that as abortion medicine is now practiced in South Dakota~~
 13 ~~that:~~
 14 (1) ~~In the overwhelming majority of cases, abortion surgery and medical abortions are~~
 15 ~~scheduled for a pregnant mother without the mother first meeting and consulting~~
 16 ~~with a physician or establishing a traditional physician-patient relationship;~~
 17 (2) ~~The surgical and medical procedures are scheduled by someone other than a~~
 18 ~~physician, without a medical or social assessment concerning the appropriateness~~
 19 ~~of such a procedure or whether the pregnant mother's decision is truly voluntary,~~
 20 ~~uncoerced, and informed, or whether there has been an adequate screening for a~~
 21 ~~pregnant mother with regard to the risk factors that may cause complications if~~
 22 ~~the abortion is performed;~~
 23 (3) ~~Such practices are contrary to the best interests of the pregnant mother and her~~
 24 ~~child and there is a need to protect the pregnant mother's interest in her~~
 25 ~~relationship with her child and her health by passing remedial legislation;~~
 26 (4) ~~There exists in South Dakota a number of pregnancy help centers, as defined in~~
 27 ~~§ 34-23A-53, which have as their central mission providing counseling, education,~~
 28 ~~and other assistance to pregnant mothers to help them maintain and keep their~~
 29 ~~relationship with their unborn children, and that such counseling, education, and~~
 30 ~~assistance provided by these pregnancy help centers is of significant value to the~~
 31 ~~pregnant mothers in helping to protect their interest in their relationship with their~~
 32 ~~children; and~~

1 ~~(5) — It is a necessary and proper exercise of the state's authority to give precedence to~~
 2 ~~the mother's fundamental interest in her relationship with her child over the~~
 3 ~~irrevocable method of termination of that relationship by induced abortion.~~

4 **Section 75. That § 34-23A-55 be REPEALED.**

5 ~~The physician's common law duty to determine that the physician's patient's~~
 6 ~~consent is voluntary and uncoerced and informed applies to all abortion procedures. The~~
 7 ~~requirements expressly set forth in §§ 34-23A-53 to 34-23A-62, inclusive, that require~~
 8 ~~procedures designed to insure that a consent to an abortion is voluntary and uncoerced~~
 9 ~~and informed, are an express clarification of, and are in addition to, those common law~~
 10 ~~duties.~~

11 **Section 76. That § 34-23A-56 be REPEALED.**

12 ~~No surgical or medical abortion may be scheduled except by a licensed physician~~
 13 ~~and only after the physician physically and personally meets with the pregnant mother,~~
 14 ~~consults with her, and performs an assessment of her medical and personal~~
 15 ~~circumstances. Only after the physician completes the consultation and assessment~~
 16 ~~complying with the provisions of §§ 34-23A-53 to 34-23A-62, inclusive, may the physician~~
 17 ~~schedule a surgical or medical abortion, but in no instance may the physician schedule~~
 18 ~~such surgical or medical abortion to take place in less than seventy two hours from the~~
 19 ~~completion of such consultation and assessment except in a medical emergency as set~~
 20 ~~forth in § 34-23A-10.1 and subdivision 34-23A-1(5). No Saturday, Sunday, or annually~~
 21 ~~recurring holiday, as specifically named in § 1-5-1, may be included or counted in the~~
 22 ~~calculation of the seventy two hour minimum time period between the initial physician~~
 23 ~~consultation and assessment and the time of the scheduled abortion procedure. No~~
 24 ~~physician may have the pregnant mother sign a consent for the abortion on the day of~~
 25 ~~this initial consultation and no physician, abortion provider, hospital, or clinic, at which~~
 26 ~~the physician performs an abortion, may accept payment for an abortion until a consent~~
 27 ~~is signed after full compliance with the provisions of §§ 34-23A-53 to 34-23A-62,~~
 28 ~~inclusive. No physician may take a signed consent from the pregnant mother unless the~~
 29 ~~pregnant mother is in the physical presence of the physician and except on the day the~~
 30 ~~abortion is scheduled, and only after complying with the provisions of §§ 34-23A-53 to~~
 31 ~~34-23A-62, inclusive, as they pertain to the initial consultation, and only after complying~~
 32 ~~with the provisions of subdivisions 34-23A-10.1(1) and (2). During the initial consultation~~

Underscores indicate new language.
 Overstrokes indicate deleted language.

1 ~~between the physician and the pregnant mother, prior to scheduling a surgical or medical~~
2 ~~abortion, the physician shall:~~

3 ~~(1) Do an assessment of the pregnant mother's circumstances to make a reasonable~~
4 ~~determination whether the pregnant mother's decision to submit to an abortion is~~
5 ~~the result of any coercion or pressure from other persons. In conducting that~~
6 ~~assessment, the physician shall obtain from the pregnant mother the age or~~
7 ~~approximate age of the father of the unborn child, and the physician shall consider~~
8 ~~whether any disparity in age between the mother and father is a factor when~~
9 ~~determining whether the pregnant mother has been subjected to pressure, undue~~
10 ~~influence, or coercion;~~

11 ~~(2) Provide the written disclosure required by subdivision 34-23A-10.1(1) and discuss~~
12 ~~them with her to determine that she understands them;~~

13 ~~(3) Provide the pregnant mother with the names, addresses, and telephone numbers~~
14 ~~of all pregnancy help centers that are registered with the South Dakota Department~~
15 ~~of Health pursuant to §§ 34-23A-53 to 34-23A-62, inclusive, and provide her with~~
16 ~~written instructions that set forth the following:~~

17 ~~(a) That prior to the day of any scheduled abortion the pregnant mother must~~
18 ~~have a consultation at a pregnancy help center at which the pregnancy help~~
19 ~~center shall inform her about what education, counseling, and other~~
20 ~~assistance is available to help the pregnant mother keep and care for her~~
21 ~~child, and have a private interview to discuss her circumstances that may~~
22 ~~subject her decision to coercion;~~

23 ~~(b) That prior to signing a consent to an abortion, the physician shall first obtain~~
24 ~~from the pregnant mother, a written statement that she obtained a~~
25 ~~consultation with a pregnancy help center, which sets forth the name and~~
26 ~~address of the pregnancy help center, the date and time of the consultation,~~
27 ~~and the name of the counselor at the pregnancy help center with whom she~~
28 ~~consulted;~~

29 ~~(4) Conduct an assessment of the pregnant mother's health and circumstances to~~
30 ~~determine if any of the following preexisting risk factors associated with adverse~~
31 ~~psychological outcomes following an abortion are present in her case:~~

32 ~~(a) Coercion;~~

33 ~~(b) Pressure from others to have an abortion;~~

34 ~~(c) The pregnant mother views an abortion to be in conflict with her personal~~
35 ~~or religious values;~~

- 1 ~~(d) — The pregnant mother is ambivalent about her decision to have an abortion,~~
- 2 ~~or finds the decision of whether to have an abortion difficult and she has a~~
- 3 ~~high degree of decisional distress;~~
- 4 ~~(e) — That the pregnant mother has a commitment to the pregnancy or prefers~~
- 5 ~~to carry the child to term;~~
- 6 ~~(f) — The pregnant mother has a medical history that includes a pre-abortion~~
- 7 ~~mental health or psychiatric problem; and~~
- 8 ~~(g) — The pregnant mother is twenty-two years old or younger.~~
- 9 ~~The physician making the assessment shall record in the pregnant mother's medical~~
- 10 ~~records, on a form created for such purpose, each of the risk factors associated~~
- 11 ~~with adverse psychological outcomes following an abortion listed in this subdivision~~
- 12 ~~that are present in her case and which are not present in her case;~~
- 13 ~~(4A) — Inquire into whether the pregnant mother knows the sex of her unborn child and~~
- 14 ~~if so, whether the mother is seeking an abortion due to the sex of the unborn child.~~
- 15 ~~(5) — The physician shall identify for the pregnant mother and explain each of the risk~~
- 16 ~~factors associated with adverse psychological outcomes following an abortion listed~~
- 17 ~~in subdivision (4) which are present in her case;~~
- 18 ~~(6) — The physician shall advise the pregnant mother of each risk factor associated with~~
- 19 ~~adverse psychological outcomes following an abortion listed in subdivision 34-23A-~~
- 20 ~~56(4) which the physician determines are present in her case and shall discuss~~
- 21 ~~with the pregnant mother, in such a manner and detail as is appropriate, so that~~
- 22 ~~the physician can certify that the physician has made a reasonable determination~~
- 23 ~~that the pregnant mother understands the information imparted, all material~~
- 24 ~~information about the risk of adverse psychological outcomes known to be~~
- 25 ~~associated with each of the risk factors found to be present;~~
- 26 ~~(7) — In the event that no risk factor is determined to be present, the physician shall~~
- 27 ~~include in the patient's records a statement that the physician has discussed the~~
- 28 ~~information required by the other parts of this section and that the physician has~~
- 29 ~~made a reasonable determination that the mother understands the information in~~
- 30 ~~question;~~
- 31 ~~(8) — Records of the assessments, forms, disclosures, and instructions performed and~~
- 32 ~~given pursuant to this section shall be prepared by the physician and maintained~~
- 33 ~~as a permanent part of the pregnant mother's medical records.~~

Section 77. That § 34-23A-57 be REPEALED.

1 ~~On the day on which the abortion is scheduled, no physician may take a consent~~
 2 ~~for an abortion nor may the physician perform an abortion, unless the provisions of §§ 34-~~
 3 ~~23A 53 to 34 23A 62, inclusive, have been met, and the physician first obtains from the~~
 4 ~~pregnant mother, a written, signed statement setting forth all information required by~~
 5 ~~subsection 34 23A 56(3)(b). The written statement signed by the pregnant mother shall~~
 6 ~~be maintained as a permanent part of the pregnant mother's medical records. Only the~~
 7 ~~physician who meets with and consults with the pregnant mother pursuant to § 34 23A-~~
 8 ~~56 can take her consent and perform her abortion unless serious unforeseen~~
 9 ~~circumstances prevent that physician from taking the consent and performing the~~
 10 ~~abortion.~~

11 **Section 78. That § 34-23A-58 be REPEALED.**

12 ~~The Department of Health shall maintain a registry of pregnancy help centers~~
 13 ~~located in the State of South Dakota. The Department shall publish a list of all pregnancy~~
 14 ~~help centers which submit a written request or application to be listed on the state registry~~
 15 ~~of pregnancy help centers. All pregnancy help centers seeking to be listed on the registry~~
 16 ~~shall be so listed without charge, if they submit an affidavit that certifies that:~~

17 ~~(1) The pregnancy help center has a facility or office in the State of South Dakota in~~
 18 ~~which it routinely consults with women for the purpose of helping them keep their~~
 19 ~~relationship with their unborn children;~~

20 ~~(2) That one of its principal missions is to educate, counsel, and otherwise assist~~
 21 ~~women to help them maintain their relationship with their unborn children;~~

22 ~~(3) That they do not perform abortions at their facility, and have no affiliation with any~~
 23 ~~organization or physician which performs abortions;~~

24 ~~(4) That they do not now refer pregnant women for abortions, and have not referred~~
 25 ~~any pregnant women for an abortion at any time in the three years immediately~~
 26 ~~preceding July 1, 2011;~~

27 ~~(5) That they have a medical director licensed by South Dakota to practice medicine~~
 28 ~~or that they have a collaborative agreement with a physician licensed in South~~
 29 ~~Dakota to practice medicine to whom women can be referred;~~

30 ~~(6) That they shall provide the counseling and interviews described in §§ 34 23A 53~~
 31 ~~to 34 23A 62, inclusive, upon request by pregnant mothers;~~

32 ~~(7) That they shall comply with the provisions of § 34 23A 59 as it relates to discussion~~
 33 ~~of religious beliefs; and~~

34 ~~(8) That they do not place children for adoption.~~

1 ~~For purposes of placing the name of a pregnancy help center on the state registry~~
2 ~~of pregnancy help centers maintained by the Department of Health, it is irrelevant whether~~
3 ~~the pregnancy help center is secular or faith based. The Department of Health shall~~
4 ~~immediately provide a copy of the registry of pregnancy health centers to all physicians,~~
5 ~~facilities, and entities that request it. The registry shall be regularly updated by the~~
6 ~~Department of Health in order to include a current list of pregnancy help centers and shall~~
7 ~~forward all updated lists to all physicians, facilities, and entities that previously requested~~
8 ~~the list. The Department of Health shall accept written requests or applications to be~~
9 ~~placed on the state registry of pregnancy help centers from pregnancy help centers after~~
10 ~~enactment but prior to July 1, 2011.~~

11 **Section 79. That § 34-23A-58.1 be REPEALED.**

12 ~~On or before January 2, 2013, each pregnancy help center which has been placed~~
13 ~~on the registry of pregnancy help centers maintained by the Department of Health before~~
14 ~~January 1, 2012, as a condition to remain on the state registry of pregnancy help centers,~~
15 ~~shall submit a supplemental affidavit that certifies that:~~

16 (1) ~~It has available either on staff, or pursuant to a collaborative agreement, a licensed~~
17 ~~counselor, or licensed psychologist, or licensed certified social worker, or licensed~~
18 ~~social worker, or licensed nurse, or licensed marriage and family therapist, or~~
19 ~~licensed physician, to provide the counseling related to the assessment for coercion~~
20 ~~and the associated imparting of information described in §§ 34-23A-53 to 34-23A-~~
21 ~~59.2, inclusive; and~~

22 (2) ~~It shall strictly adhere to the confidentiality requirements set forth in §§ 34-23A-~~
23 ~~53 to 34-23A-59.2, inclusive.~~

24 **Section 80. That § 34-23A-58.2 be REPEALED.**

25 ~~Any pregnancy help center which has been placed on the registry of pregnancy~~
26 ~~help centers maintained by the Department of Health before January 1, 2012, shall remain~~
27 ~~on the registry of the Department of Health and is eligible to provide the counseling and~~
28 ~~interviews described in §§ 34-23A-53 to 34-23A-62 for pregnancy help centers until~~
29 ~~January 1, 2013. Thereafter, each pregnancy help center shall remain on the state registry~~
30 ~~of the Department of Health and maintain its eligibility to provide the counseling and~~
31 ~~interviews by submitting to the Department of Health the supplemental affidavit provided~~
32 ~~for in § 34-23A-58.1.~~

1 **Section 81. That § 34-23A-58.3 be REPEALED.**

2 ~~Any pregnancy help center which has not been placed on the registry of pregnancy~~
3 ~~help centers maintained by the Department of Health before January 1, 2012, which~~
4 ~~submits a written request or application to be listed on the state registry of pregnancy~~
5 ~~help centers, in order to be included on the registry, shall submit to the Department of~~
6 ~~Health an affidavit that certifies all of the information required by § 34-23A-58 as well as~~
7 ~~the information required by § 34-23A-58.1.~~

8 **Section 82. That § 34-23A-58.4 be REPEALED.**

9 ~~Prior to adding an entity to the registry of pregnancy help centers, the department~~
10 ~~shall cross-reference the state's records to ensure that the entity is not licensed to place~~
11 ~~children for adoption or licensed to perform abortions. The department may not list on the~~
12 ~~registry any entity which is licensed to place children for adoption or which is licensed to~~
13 ~~perform abortions. The department shall cross-reference the state's records at least once~~
14 ~~each calendar year to ensure that any pregnancy help center already on the registry of~~
15 ~~pregnancy help centers has not been licensed to place children for adoption or licensed to~~
16 ~~perform abortions. If a pregnancy help center on the registry is so licensed, the~~
17 ~~department shall remove that pregnancy help center from the registry. Each year,~~
18 ~~commencing in 2015, each pregnancy help center listed on the state registry maintained~~
19 ~~by the department shall, by January twentieth, provide the department with a list of~~
20 ~~licensed persons who may provide the counseling at the pregnancy help center in~~
21 ~~compliance with §§ 34-23A-58.1, 34-23A-58.2, and 34-23A-58.3. If a pregnancy help~~
22 ~~center fails to provide such list by January twentieth in any particular year, the department~~
23 ~~shall issue a notice to the pregnancy help center that if it fails to provide such list of~~
24 ~~licensed persons within ninety days of the receipt of such notice, the department will~~
25 ~~remove the pregnancy help center from the registry of pregnancy help centers authorized~~
26 ~~to provide the counseling required by §§ 34-23A-53 to 34-23A-61, inclusive, and~~
27 ~~described under § 34-23A-59. The department shall cross-reference the state's records to~~
28 ~~confirm that the licensed persons listed by the pregnancy help center maintain a current~~
29 ~~license. The department may inquire of any licensed persons listed by a registered~~
30 ~~pregnancy help center to confirm that they are available for the counseling required by~~
31 ~~the law. If the department determines that a pregnancy help center on the registry does~~
32 ~~not have a person currently licensed to provide the required counseling, the department~~
33 ~~shall notify the pregnancy help center of that determination and if the pregnancy help~~

1 ~~center cannot demonstrate that it has a licensed person to provide the counseling~~
 2 ~~consistent with the law, the department shall remove the pregnancy help center from the~~
 3 ~~registry. If a pregnancy help center is removed by the department from its registry~~
 4 ~~pursuant to this section, the department shall inform all physicians, facilities, and entities~~
 5 ~~to whom the department provides a copy of the registry of pregnancy help centers that~~
 6 ~~the pregnancy help center is removed.~~

7 **Section 83. That § 34-23A-59 be REPEALED.**

8 ~~A pregnancy help center consultation required by §§ 34-23A-53 to 34-23A-59.2,~~
 9 ~~inclusive, shall be implemented as follows:~~

10 ~~(1) The pregnancy help center shall be permitted to:~~

11 ~~(a) Interview the pregnant mother to determine whether the pregnant mother~~
 12 ~~has been subject to any coercion to have an abortion, or is being pressured~~
 13 ~~into having an abortion;~~

14 ~~(b) Provide counseling in connection with any coercion or pressure;~~

15 ~~(c) Inform the pregnant mother in writing or orally, or both, of the counseling,~~
 16 ~~education, and assistance available to the pregnant mother to assist her in~~
 17 ~~maintaining her relationship with her unborn child and in caring for the child~~
 18 ~~through the pregnancy help center or any other organization, faith-based~~
 19 ~~program, or governmental program;~~

20 ~~(d) Provide a statement orally and in writing to the pregnant mother that "an~~
 21 ~~abortion will terminate the life of a whole, separate, unique, living human~~
 22 ~~being," and provide counseling in lay terms that explain this disclosure, and~~
 23 ~~to ascertain that the pregnant mother understands this disclosure, and for~~
 24 ~~the purpose of this disclosure, the definition of human being found in~~
 25 ~~subdivision 34-23A-1(4) applies; and~~

26 ~~(e) Provide statements orally and in writing setting forth the disclosures~~
 27 ~~required by subsections 34-23A-10.1(1)(c) and (d) and provide counseling~~
 28 ~~in lay terms that explain those disclosures. The pregnancy help center may,~~
 29 ~~if it deems it appropriate, discuss matters pertaining to adoption;~~

30 ~~(2) The pregnancy help center, its agents, or employees may not:~~

31 ~~(a) Discuss with any pregnant mother religion or religious beliefs, either of the~~
 32 ~~mother or the counselor, unless the pregnant mother consents in writing;~~

33 ~~(b) Discuss the physical or psychological risks to a woman posed by an~~
 34 ~~abortion. However, if, during the mandatory pregnancy help center~~

1 ~~consultation interview, the pregnant mother requests the opportunity to~~
2 ~~discuss the risks of an abortion with pregnancy help center personnel, the~~
3 ~~pregnancy help center may schedule a separate and distinct appointment~~
4 ~~for the pregnant mother to meet with a physician for the purpose of~~
5 ~~discussing the physical and psychological risks of abortion. Any requests~~
6 ~~shall be evidenced in writing signed by the pregnant mother;~~

7 ~~(3) The pregnancy help center is under no obligation to communicate with the abortion~~
8 ~~provider in any way, and is under no obligation to submit any written or other form~~
9 ~~of confirmation that the pregnant mother consulted with the pregnancy help~~
10 ~~center. The pregnancy help center may voluntarily provide a written statement of~~
11 ~~assessment to the abortion provider, whose name the woman shall give to the~~
12 ~~pregnancy help center, if the pregnancy help center obtains information that~~
13 ~~indicates that the pregnant mother has been subjected to coercion or that her~~
14 ~~decision to consider an abortion is otherwise not voluntary or not informed. The~~
15 ~~physician shall make the physician's own independent determination whether or~~
16 ~~not a pregnant mother's consent to have an abortion is voluntary, uncoerced, and~~
17 ~~informed before having the pregnant mother sign a consent to an abortion. The~~
18 ~~physician shall review and consider any information provided by the pregnancy~~
19 ~~help center as one source of information, which in no way binds the physician, who~~
20 ~~shall make an independent determination consistent with the provisions of §§ 34-~~
21 ~~23A 53 to 34-23A 59.2, inclusive, the common law requirements, and accepted~~
22 ~~medical standards;~~

23 ~~(4) Any written statement or summary of assessment prepared by the pregnancy help~~
24 ~~center as a result of counseling of a pregnant mother as a result of the procedures~~
25 ~~created by §§ 34-23A 53 to 34-23A 59.2, inclusive, may be forwarded by the~~
26 ~~pregnancy help center, in its discretion, to the abortion physician. If forwarded to~~
27 ~~the physician, the written statement or summary of assessment shall be~~
28 ~~maintained as a permanent part of the pregnant mother's medical records. Other~~
29 ~~than forwarding such documents to the abortion physician, no information obtained~~
30 ~~by the pregnancy help center from the pregnant mother may be released, without~~
31 ~~the written signed consent of the pregnant mother or unless the release is in~~
32 ~~accordance with federal, state, or local law;~~

33 ~~(5) Commencing on September 1, 2016, the counseling authorized pursuant to this~~
34 ~~section shall be conducted in accordance with the Uniform Policy and Procedures~~

1 Guidelines developed and promulgated by the South Dakota Association of
2 Registered Pregnancy Help Centers and adopted in 2015.

3 Nothing in §§ 34-23A-53 to 34-23A-59.2, inclusive, may be construed to impose
4 any liability upon a pregnancy help center. However, the failure of a pregnancy help center
5 to comply with the conditions of § 34-23A-58.1, 34-23A-59.1 or this section for being
6 authorized to provide the pregnancy help center counseling, if uncorrected, may result in
7 the Department of Health removing the pregnancy help center from the state's registry of
8 pregnancy help centers.

9 **Section 84. That § 34-23A-59.1 be REPEALED.**

10 Any pregnancy help center listed on the Department of Health registry of
11 pregnancy help centers prior to January 1, 2012, shall, beginning on January 1, 2013,
12 have available either on staff or pursuant to a collaborative agreement, a licensed
13 counselor, or licensed psychologist, or licensed certified social worker, or licensed social
14 worker, or licensed nurse, or licensed marriage and family therapist, or a licensed
15 physician to meet privately with the pregnant mother to provide the counseling and
16 meeting required by §§ 34-23A-53 to 34-23A-59.2, inclusive. Any pregnancy help center
17 placed on the state registry on or after January 1, 2012, shall have one or more such
18 licensed professionals available on staff or pursuant to collaborative agreement for such
19 purposes beginning on January 1, 2012.

20 **Section 85. That § 34-23A-59.2 be REPEALED.**

21 Any person who knowingly and intentionally releases any information obtained
22 during any consultations resulting from §§ 34-23A-53 to 34-23A-61, inclusive, under
23 circumstances not in accord with the confidentiality provisions required by §§ 34-23A-53
24 to 34-23A-61, inclusive, is guilty of a Class 2 misdemeanor. Such a conviction of a Class
25 2 misdemeanor shall be reported to any agency or board responsible for licensing or
26 certifying the persons who conducted the counseling required by §§ 34-23A-53 to 34-
27 23A-61, inclusive.

28 **Section 86. That § 34-23A-60 be REPEALED.**

29 Any woman who undergoes an abortion, or her survivors, where there has been
30 an intentional, knowing, or negligent failure to comply with the provisions of §§ 34-23A-
31 56 and 34-23A-57 may bring a civil action, and obtain a civil penalty in the amount of ten

1 ~~thousand dollars, plus reasonable attorney's fees and costs, jointly and severally from the~~
2 ~~physician who performed the abortion and the abortion facility where the abortion was~~
3 ~~performed.~~

4 ~~This amount shall be in addition to any damages that the woman or her survivors~~
5 ~~may be entitled to receive under any common law or statutory provisions, to the extent~~
6 ~~that she sustains any injury. This amount shall also be in addition to the amounts that the~~
7 ~~woman or other survivors of the deceased unborn child may be entitled to receive under~~
8 ~~any common law or statutory provisions, including but not limited to the wrongful death~~
9 ~~statutes of this state.~~

10 **Section 87. That § 34-23A-61 be REPEALED.**

11 ~~In any civil action presenting a claim arising from a failure to comply with any of~~
12 ~~the provisions of this chapter, the following shall apply:~~

13 ~~(1) The failure to comply with the requirements of this chapter relative to obtaining~~
14 ~~consent for the abortion shall create a rebuttable presumption that if the pregnant~~
15 ~~mother had been informed or assessed in accordance with the requirements of this~~
16 ~~chapter, she would have decided not to undergo the abortion;~~

17 ~~(2) If the trier of fact determines that the abortion was the result of coercion, and it is~~
18 ~~determined that if the physician acted prudently, the physician would have learned~~
19 ~~of the coercion, there is a nonrebuttable presumption that the mother would not~~
20 ~~have consented to the abortion if the physician had complied with the provisions~~
21 ~~of §§ 34-23A-53 to 34-23A-62, inclusive;~~

22 ~~(3) If evidence is presented by a defendant to rebut the presumption set forth in~~
23 ~~subdivision (1), then the finder of fact shall determine whether this particular~~
24 ~~mother, if she had been given all of the information a reasonably prudent patient~~
25 ~~in her circumstance would consider significant, as well as all information required~~
26 ~~by §§ 34-23A-53 to 34-23A-62, inclusive, to be disclosed, would have consented~~
27 ~~to the abortion or declined to consent to the abortion based upon her personal~~
28 ~~background and personality, her physical and psychological condition, and her~~
29 ~~personal philosophical, religious, ethical, and moral beliefs;~~

30 ~~(4) The pregnant mother has a right to rely upon the abortion doctor as her source of~~
31 ~~information, and has no duty to seek any other source of information, other than~~
32 ~~from a pregnancy help center as referenced in §§ 34-23A-56 and 34-23A-57, prior~~
33 ~~to signing a consent to an abortion;~~

1 ~~(5) — No patient or other person responsible for making decisions relative to the patient's~~
2 ~~care may waive the requirements of this chapter, and any verbal or written waiver~~
3 ~~of liability for malpractice or professional negligence arising from any failure to~~
4 ~~comply with the requirements of this chapter is void and unenforceable.~~

5 **Section 88. That § 34-23A-62 be REPEALED.**

6 ~~Nothing in §§ 34-23A-53 to 34-23A-62, inclusive, repeals, by implication or~~
7 ~~otherwise, any provision not explicitly repealed.~~

8 **Section 89. That § 34-23A-63 be REPEALED.**

9 ~~Terms as used in this chapter mean:~~

- 10 ~~(1) — "Sex selective abortion," the performance of an abortion with knowledge that the~~
11 ~~pregnant mother is seeking the abortion due to the sex of the unborn child;~~
12 ~~(2) — "Sex determining test," any scientific test that is capable of determining the sex of~~
13 ~~an unborn child.~~

14 **Section 90. That § 34-23A-64 be REPEALED.**

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

19 **Section 91. That § 34-23A-65 be REPEALED.**

20 ~~Nothing in subdivision 34-23A-10.1(3), 34-23A-34(22), or 34-23A-56(4A) or § 34-~~
21 ~~23A-63 or 34-23A-64 repeals, by implication or otherwise, any provision not explicitly~~
22 ~~repealed.~~

23 **Section 92. That § 34-23A-67 be REPEALED.**

24 ~~The Legislature finds that:~~

- 25 ~~(1) — The state has a compelling state interest in protecting the lives of unborn children~~
26 ~~from the stage at which substantial medical evidence indicates that they are~~
27 ~~capable of feeling pain;~~
28 ~~(2) — There is substantial medical evidence that an unborn child is capable of~~
29 ~~experiencing pain by twenty weeks after fertilization.~~

1 **Section 93. That § 34-23A-68 be REPEALED.**

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

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

12 **Section 94. That § 34-23A-69 be REPEALED.**

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

17 **Section 95. That § 34-23A-70 be REPEALED.**

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

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

27 **Section 96. That § 34-23A-71 be REPEALED.**

28 No medical emergency may form the basis for an exception to § ~~34-23A-69~~ if it is
29 based on a claim or diagnosis that the pregnant mother will engage in conduct which she
30 intends to result in her death or other self-harm.

1 **Section 97. That § 34-23A-72 be REPEALED.**

2 ~~When an abortion of an unborn child capable of feeling pain is necessary due to a~~
3 ~~medical emergency, the physician shall deliver the child in the manner which, in~~
4 ~~reasonable medical judgment, provides the best opportunity for the unborn child to~~
5 ~~survive, but only if it is consistent with preserving the pregnant mother's life and~~
6 ~~preventing an irreversible impairment of a major bodily function of the pregnant woman.~~

7 **Section 98. That § 34-23A-73 be REPEALED.**

8 ~~Nothing in SL 2016, ch 180 repeals, by implication or otherwise, any provision not~~
9 ~~explicitly repealed.~~

10 **Section 99. That § 34-23A-74 be REPEALED.**

11 ~~The Legislature finds that the Planned Parenthood facility in Sioux Falls, South~~
12 ~~Dakota is the only abortion clinic in the State of South Dakota and approximately ninety-~~
13 ~~eight percent of all abortions performed in South Dakota are performed at that Planned~~
14 ~~Parenthood facility.~~

15 **Section 100. That § 34-23A-75 be REPEALED.**

16 ~~The Legislature finds that the physicians, agents, and employees performing or~~
17 ~~assisting in the performance of abortions and pre-abortion counseling at the Planned~~
18 ~~Parenthood facility in Sioux Falls, South Dakota have been providing pre-abortion~~
19 ~~counseling that does not comply with the mandatory disclosures required by subsections~~
20 ~~34-23A-10.1(1)(b) and (e)(ii).~~

21 **Section 101. That § 34-23A-76 be REPEALED.**

22 ~~The Legislature finds that the physicians, agents, and employees performing or~~
23 ~~assisting in the performance of abortions at the Planned Parenthood facility in Sioux Falls,~~
24 ~~South Dakota provide pregnant mothers written disclosures that include the statement:~~
25 ~~"Politicians in the State of South Dakota require us to tell you that some studies have~~
26 ~~found that women who have had abortions have a higher rate of suicide or thoughts~~
27 ~~of suicide than other women. We dispute this statement because it does not mean~~
28 ~~that abortion causes suicide or thoughts of suicide. In fact, no research study has~~
29 ~~ever established that abortion causes suicide or thoughts of suicide. Planned~~

1 ~~Parenthood and other medical organizations around the world believe that whether~~
2 ~~a woman chooses to have an abortion or to have a baby, her chance of having~~
3 ~~thoughts of suicide or trying suicide will be the same."~~

4 **Section 102. That § 34-23A-77 be REPEALED.**

5 ~~The Legislature finds that the disclosure in § 34-23A-76, made at the Planned~~
6 ~~Parenthood facility in Sioux Falls, South Dakota does not comply with subsection 34-23A-~~
7 ~~10.1(1)(e)(ii), and expressly denies the disclosure required by that subsection of South~~
8 ~~Dakota's informed consent abortion law.~~

9 **Section 103. That § 34-23A-78 be REPEALED.**

10 ~~The Legislature finds that the failure to comply with the provisions of subsection~~
11 ~~34-23A-10.1(1)(e)(ii) is contrary to the interests of pregnant mothers and pregnant~~
12 ~~mothers' need to make informed and voluntary decisions, and is not in keeping with the~~
13 ~~spirit and purpose of §§ 34-23A-1.3 to 34-23A-1.7, inclusive, and 34-23A-10.1, and the~~
14 ~~holding of the United States Court of Appeals in *Planned Parenthood v. Rounds*, 686 F.3d~~
15 ~~889 (8th Cir. 2012)(*en banc*) and the final amended judgment of the U.S. District Court,~~
16 ~~dated December 28, 2012.~~

17 **Section 104. That § 34-23A-79 be REPEALED.**

18 ~~The Legislature finds that the physicians, agents, and employees performing or~~
19 ~~assisting in the performance of abortions at the Planned Parenthood facility in Sioux Falls,~~
20 ~~South Dakota provide pregnant mothers written disclosures that include the statement:~~
21 ~~"Politicians in the State of South Dakota require us to tell you that, as a matter of biology,~~
22 ~~the abortion will end a developing, living organism (an "embryo" or a "fetus") of~~
23 ~~the human species ("Homo sapiens") that has a complete, separate genetic~~
24 ~~makeup that is unique to that embryo or fetus."~~

25 **Section 105. That § 34-23A-80 be REPEALED.**

26 ~~The Legislature finds that the disclosure in § 34-23A-79, made at the Planned~~
27 ~~Parenthood facility in Sioux Falls, South Dakota given to pregnant mothers considering an~~
28 ~~abortion does not comply with subsection 34-23A-10.1(1)(b), and is confusing and~~
29 ~~inaccurate.~~

1 **Section 106. That § 34-23A-81 be REPEALED.**

2 ~~The Legislature finds that the failure to comply with subsection 34-23A-10.1(1)(b)~~
3 ~~is contrary to the interests of pregnant mothers and pregnant mothers' need to make truly~~
4 ~~informed and voluntary decisions, and is not in keeping with the spirit and purpose of the~~
5 ~~law and the holdings of the United States Court of Appeals in *Planned Parenthood v.*~~
6 ~~*Rounds*, 530 F.3d 724 (8th Cir. 2008)(*en banc*) and the United States District Court,~~
7 ~~entered August 20, 2009, *Planned Parenthood v. Rounds*, 650 F.Supp. 2d 972, 976 (S.D.,~~
8 ~~S. Div. 2009).~~

9 **Section 107. That § 34-23A-82 be REPEALED.**

10 ~~The Legislature finds that the physicians, agents, and employees performing or~~
11 ~~assisting in the performance of abortions at the Planned Parenthood facility in Sioux Falls,~~
12 ~~South Dakota have provided written disclosures before an abortion that do not adequately~~
13 ~~disclose or adequately explain the mandatory disclosures required by subsections 34-23A-~~
14 ~~10.1(1)(c) and (d).~~

15 **Section 108. That § 34-23A-83 be REPEALED.**

16 ~~The Legislature finds that the physicians, agents, and employees performing or~~
17 ~~assisting in the performance of abortions at the Planned Parenthood facility in Sioux Falls,~~
18 ~~South Dakota provide written disclosures to pregnant mothers considering an abortion~~
19 ~~that include the statement:~~
20 ~~"Politicians in the State of South Dakota require us to tell you that you are legally and~~
21 ~~constitutionally protected against being forced to have an abortion."~~

22 **Section 109. That § 34-23A-84 be REPEALED.**

23 ~~The Legislature finds that, while the statement in § 34-23A-83 is a true statement,~~
24 ~~the statement fails to adequately provide, explain, or discuss the disclosures actually~~
25 ~~required by subsections 34-23A-10.1(1)(c) and (d) which requires a disclosure "(c) [t]hat~~
26 ~~the pregnant woman has an existing relationship with that unborn human being and that~~
27 ~~the relationship enjoys protection under the United States Constitution and under the laws~~
28 ~~of South Dakota," and "(d) [t]hat by having an abortion, her existing relationship and her~~
29 ~~existing constitutional rights with regards to that relationship would be terminated."~~

30 **Section 110. That § 34-23A-85 be REPEALED.**

1 The Legislature finds ~~that failure to adequately provide and discuss the disclosures~~
2 ~~required by subsections 34-23A-10.1(1)(c) and (d) is contrary to the interests of pregnant~~
3 ~~mothers considering an abortion and the required disclosures are important for the~~
4 ~~pregnant mothers to fully understand that the pregnant mother has an existing~~
5 ~~relationship with her unborn child while the child is in utero, that the law recognizes this~~
6 ~~relationship has value to her, and that by terminating that relationship she loses~~
7 ~~something of great value to herself, and gives up one of the greatest rights she has in all~~
8 ~~of life.~~

9 **Section 111. That § 34-23A-86 be REPEALED.**

10 The Legislature finds ~~and reaffirms that it is essential to the ability of a pregnant~~
11 ~~mother to make a truly informed and voluntary consent to an abortion, and essential to~~
12 ~~the legal protection of her constitutional rights to maintain her relationship with her child,~~
13 ~~and that she have a full appreciation and understanding of the disclosures required by~~
14 ~~subsections 34-23A-10.1(1)(b), (c) and (d).~~

15 **Section 112. That § 34-23A-87 be REPEALED.**

16 The Legislature finds ~~that the use of the phrase "politicians in the State of South~~
17 ~~Dakota require us to tell you that" is antithetical to the purpose and effectiveness of the~~
18 ~~disclosures, and evidences a hostility to the required disclosures and signals to the~~
19 ~~pregnant mothers that the required disclosures, to the extent they are made at all, should~~
20 ~~be ignored.~~

21 **Section 113. That § 34-23A-88 be REPEALED.**

22 The Legislature finds ~~that the physicians, agents, and employees who perform or~~
23 ~~assist in the performance of abortions at the Planned Parenthood facility in Sioux Falls,~~
24 ~~South Dakota have proven to be unreliable providers and counselors of the disclosures~~
25 ~~required by subsections 34-23A-10.1(1)(b), (c), (d), and (e)(ii), such that it is in the~~
26 ~~interests of the pregnant mothers that disclosures required by subsections 34-23A-~~
27 ~~10.1(1)(b), (c), and (d) be included in the mandatory third party counseling provided by~~
28 ~~registered pregnancy help centers as authorized by § 34-23A-59.~~

29 **Section 114. That § 34-23A-89 be REPEALED.**

1 ~~For purposes of §§ 34-23A-89 to 34-23A-93, inclusive, the term, Down syndrome,~~
2 ~~is a chromosome disorder associated with an extra chromosome twenty one, in whole or~~
3 ~~in part, or an effective trisomy for chromosome twenty one.~~

4 **Section 115. That § 34-23A-90 be REPEALED.**

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

11 **Section 116. That § 34-23A-91 be REPEALED.**

12 ~~Where there has been an intentional, knowing, or negligent failure to comply with~~
13 ~~the provisions of §§ 34-23A-89 to 34-23A-93, inclusive, a pregnant woman who~~
14 ~~undergoes an abortion, or her survivors, may bring a civil action, and obtain liquidated~~
15 ~~damages in the amount of ten thousand dollars, plus reasonable attorney's fees and costs~~
16 ~~jointly and severally from the physician who performed the abortion and the abortion~~
17 ~~facility where the abortion was performed.~~

18 ~~This amount shall be in addition to any damages that the woman or survivors may~~
19 ~~be entitled to receive under any common law or statutory provisions, to the extent that~~
20 ~~she sustains any injury. This amount shall also be in addition to the amounts that the~~
21 ~~woman or other survivors of the deceased unborn child may be entitled to receive under~~
22 ~~any common law or statutory provisions, including the wrongful death statutes of this~~
23 ~~state.~~

24 **Section 117. That § 34-23A-92 be REPEALED.**

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

30 **Section 118. That § 34-23A-93 be REPEALED.**

1 ~~Nothing in §§ 34-23A-89 to 34-23A-93, inclusive, repeals, by implication or~~
2 ~~otherwise, any provision not explicitly repealed.~~