

State of South Dakota

NINETY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2016

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HOUSE BILL NO. 1157

Introduced by: Representatives Heinemann (Leslie), Anderson, Bartling, Bolin, Brunner, Campbell, Craig, Deutsch, DiSanto, Greenfield (Lana), Haggar (Don), Harrison, Haugaard, Holmes, Hunt, Klumb, Langer, Latterell, Marty, Mickelson, Novstrup (Al), Partridge, Qualm, Rasmussen, Ring, Russell, Schoenfish, Stalzer, Steinhauer, Tulson, Verchio, Wiik, Willadsen, Wollmann, and Zikmund and Senators Greenfield (Brock), Cammack, Ewing, Haggar (Jenna), Heineman (Phyllis), Holien, Jensen (Phil), Monroe, Novstrup (David), Olson, Peterson (Jim), Rampelberg, and Rusch

1 FOR AN ACT ENTITLED, An Act to require that a doctor provide a woman additional
2 information as a part of informed consent prior to performing an abortion.

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

4 Section 1. That § 34-23A-10.1 be amended to read:

5 34-23A-10.1. No abortion may be performed unless the physician first obtains a voluntary
6 and informed written consent of the pregnant woman upon whom the physician intends to
7 perform the abortion, unless the physician determines that obtaining an informed consent is
8 impossible due to a medical emergency and further determines that delaying in performing the
9 procedure until an informed consent can be obtained from the pregnant woman or her next of
10 kin in accordance with chapter 34-12C is impossible due to the medical emergency, which
11 determinations shall then be documented in the medical records of the patient. A consent to an
12 abortion is not voluntary and informed, unless, in addition to any other information that must



1 be disclosed under the common law doctrine, the physician provides that pregnant woman with
2 the following information:

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

4 (a) The name of the physician who will perform the abortion;

5 (b) That the abortion will terminate the life of a whole, separate, unique, living
6 human being;

7 (c) That the pregnant woman has an existing relationship with that unborn human
8 being and that the relationship enjoys protection under the United States
9 Constitution and under the laws of South Dakota;

10 (d) That by having an abortion, her existing relationship and her existing
11 constitutional rights with regards to that relationship will be terminated;

12 (e) A description of all known medical risks of the procedure and statistically
13 significant risk factors to which the pregnant woman would be subjected,
14 including:

15 (i) Depression and related psychological distress;

16 (ii) Increased risk of suicide ideation and suicide;

17 (iii) A statement setting forth an accurate rate of deaths due to abortions,
18 including all deaths in which the abortion procedure was a substantial
19 contributing factor;

20 (iv) All other known medical risks to the physical health of the woman,
21 including the risk of infection, hemorrhage, danger to subsequent
22 pregnancies, and infertility;

23 (f) The probable gestational age of the unborn child at the time the abortion is to
24 be performed, and a scientifically accurate statement describing the

1 development of the unborn child at that age; ~~and~~

2 (g) The statistically significant medical risks associated with carrying her child to
3 term compared to undergoing an induced abortion; and

4 (h) That even after a pregnant mother takes Mifeprystone it is still possible to
5 discontinue a drug-induced abortion by not taking the prescribed Misoprostol;

6 (i) That information on discontinuing a drug-induced abortion is available on the
7 Department of Health website.

8 The disclosures set forth above shall be provided to the pregnant woman in writing
9 and in person no later than two hours before the procedure is to be performed. The
10 physician shall ensure that the pregnant woman signs each page of the written
11 disclosure with the certification that she has read and understands all of the
12 disclosures, prior to the patient signing a consent for the procedure. If the pregnant
13 woman asks for a clarification or explanation of any particular disclosure, or asks any
14 other question about a matter of significance to her, the explanation or answer shall
15 be made in writing and be given to the pregnant woman before signing a consent for
16 the procedure and shall be made part of the permanent medical record of the patient;

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

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

22 (b) That the father of the unborn child is legally responsible to provide financial
23 support for her child following birth, and that this legal obligation of the father
24 exists in all instances, even in instances in which the father has offered to pay

1 for the abortion;

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

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

17 (3) A written statement that sex-selective abortions are illegal in the State of South
18 Dakota and that a pregnant mother cannot have an abortion, either solely or partly,
19 due to the unborn child's sex, regardless of whether that unborn child is a girl or a
20 boy or whether it is of the pregnant mother's free will or the result of the use of
21 pressure and coercion.

22 Prior to the pregnant woman signing a consent to the abortion, she shall sign a written
23 statement that indicates that the requirements of this section have been complied with. Prior to
24 the performance of the abortion, the physician who is to perform the abortion shall receive a

1 copy of the written disclosure documents required by this section, and shall certify in writing
2 that all of the information described in those subdivisions has been provided to the pregnant
3 woman, that the physician is, to the best of his or her ability, satisfied that the pregnant woman
4 has read the materials which are required to be disclosed, and that the physician believes she
5 understands the information imparted.

6 Section 2. That § 34-23A-10.4 be amended to read:

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

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

1 (10) Adoption options:

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

3 (b) Description of services;

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

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