

# State of South Dakota

SEVENTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 1998

529B0626

## HOUSE ENGROSSED NO. **HB1162** - 2/14/98

Introduced by: Representatives Hunt, Belatti, Brooks, Brown (Jarvis), Cerny, Chicoine, Crisp, Diedrich, Fitzgerald, Hassard, Jaspers, Kazmerzak, Koskan, Kredit, Lucas, Madden, Matthews, McNenny, Monroe, Pederson (Gordon), Pummel, Putnam, Roe, Rost, Schrempp, Smidt, Solum, Van Gerpen, Weber, Wetz, and Wick and Senators Lawler, Aker, Albers, Drake, Dunn (Jim), Dunn (Rebecca), Flowers, Frederick, Hainje, Halverson, Hutmacher, Johnson (William), Kleven, Kloucek, Lange, Reedy, Rounds, Staggers, Symens, and Vitter

1 FOR AN ACT ENTITLED, An Act to require the systematic reporting of information  
2 concerning abortions, informed consent, and parental notice.

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

4 Section 1. That chapter 34-23A be amended by adding thereto a NEW SECTION to read  
5 as follows:

6 No later than October 1, 1998, the Department of Health shall prepare a reporting form for  
7 physicians which shall provide for the collection of the following information:

- 8 (1) The number of induced abortions performed in the previous calendar year, broken  
9 down by month;
- 10 (2) The method of abortion used for each induced abortion;
- 11 (3) The approximate gestational age, in weeks, of the unborn child involved in the  
12 abortion;

- 1       (4)    The age of the mother at the time of the abortion;
- 2       (5)    The specific reason for the induced abortion, including the following:
  - 3           (a)    The pregnancy was a result of rape;
  - 4           (b)    The pregnancy was a result of incest;
  - 5           (c)    The mother could not afford the child;
  - 6           (d)    The mother did not desire to have the child;
  - 7           (e)    The mother's emotional health was at risk;
  - 8           (f)    The mother would suffer substantial and irreversible impairment of a major
  - 9                bodily function if the pregnancy continued;
  - 10          (g)    Other, which shall be specified.
- 11       (6)    Whether the induced abortion was paid for by:
  - 12           (a)    Private insurance;
  - 13           (b)    Public health plan;
  - 14           (c)    Other, which shall be specified.
- 15       (7)    Whether coverage was under:
  - 16           (a)    A-fee-for-service insurance company;
  - 17           (b)    A managed care company; or
  - 18           (c)    Other, which shall be specified.
- 19       (8)    A description of the complications, if any, for each abortion and for the aftermath of
- 20               each abortion;
- 21       (9)    The fee collected for performing or treating the abortion;
- 22       (10)   The type of anesthetic, if any, used for each induced abortion;
- 23       (11)   The method used to dispose of fetal tissue and remains;
- 24       (12)   Speciality area of the physician;
- 25       (13)   Whether the physician performing the induced abortion has been subject to license

1 revocation or suspension or other professional sanction; and

2 (14) The number of previous abortions the mother has had.

3 Section 2. That chapter 34-23A be amended by adding thereto a NEW SECTION to read  
4 as follows:

5 Any physician performing or treating abortions shall obtain a reporting form from the  
6 department and shall complete and submit the reporting form to the department no later than  
7 January fifteenth for any abortion performed or treated during the previous calendar year.

8 Section 3. That chapter 34-23A be amended by adding thereto a NEW SECTION to read  
9 as follows:

10 The department shall issue a public report annually providing the same detailed information  
11 required by the reporting forms required by this Act. The public report shall cover the entire  
12 previous calendar year and shall be compiled from the data in all the reporting forms required by  
13 this Act and submitted to the department in accordance with this Act. Each public report shall  
14 also provide such detailed information for all previous calendar years, adjusted to reflect any  
15 additional information from late or corrected reports. The department shall take care to ensure  
16 that none of the information included in the public reports may reasonably lead to identification  
17 of any physician who performed or treated an abortion or any mother who has had an abortion.

18 Section 4. That chapter 34-23A be amended by adding thereto a NEW SECTION to read  
19 as follows:

20 No later than October 1, 1998, the Department of Health shall prepare a reporting form for  
21 physicians which shall provide for the collection of the following information:

22 (1) The number of females to whom the physician provided the information described in  
23 § 34-23A-10.1(1); of that number, the number provided by telephone and the number  
24 provided in person; and of each of those numbers, the number provided in the  
25 capacity of a referring physician and the number provided in the capacity of a

1 physician who is to perform the abortion;

2 (2) The number of females to whom the physician provided the information described in  
3 § 34-23A-10.1(2); of that number, the number provided by telephone and the number  
4 provided in person; of each of those numbers, the number provided in the capacity of  
5 a referring physician and the number provided in the capacity of a physician who is  
6 to perform the abortion; and of each of those numbers, the number provided by the  
7 physician and the number provided by an agent of the physician;

8 (3) The number of females who availed themselves of the opportunity to obtain a copy  
9 of the printed information described in § 34-23A-10.3, and the number who did not;  
10 and of each of those numbers, the number who, to the best of the reporting physician's  
11 information and belief, went on to obtain the abortion; and

12 (4) The number of abortions performed by the physician in which information otherwise  
13 required to be provided at least twenty-four hours before the abortion was not  
14 provided because an immediate abortion was necessary to avert the female's death,  
15 and the number of abortions in which such information was not so provided because  
16 a delay would create serious risk of substantial and irreversible impairment of a major  
17 bodily function.

18 Section 5. That chapter 34-23A be amended by adding thereto a NEW SECTION to read  
19 as follows:

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

25 Section 6. That chapter 34-23A be amended by adding thereto a NEW SECTION to read

as follows:

No later than October 1, 1998, the Department of Health shall prepare a reporting form for physicians which shall provide for the collection of the following information:

- (1) The number of females or parents whom the physician or agent of the physician provided the notice described in § 34-23A-7; and of each of those numbers, the number of females who, to the best of the reporting physician's information and belief, went on to obtain the abortion;
- (2) The number of females upon whom the physician performed an abortion without providing to the parent of the minor the notice described in § 34-23A-7; of that number, the number who were emancipated minors, and the numbers from whom each of the exceptions to § 34-23A-7 were applicable;
- (3) The number of abortions performed upon a female by the physician after receiving judicial authorization to do so without parental notice; and
- (4) The same information described in subdivisions (1) through (3) of this section with respect to females for whom a guardian or conservator has been appointed pursuant to statutes on guardianship or conservatorship because of finding of incompetency.

Section 7. That chapter 34-23A be amended by adding thereto a NEW SECTION to read as follows:

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

Section 8. That chapter 34-23A be amended by adding thereto a NEW SECTION to read

1 as follows:

2 Any physician who fails to submit any report required by this Act within a grace period of  
3 thirty days following the due date is subject to a late fee of five hundred dollars for each  
4 additional thirty-day period, or portion of a thirty-day period, that each report is overdue. Any  
5 physician who has not submitted a report, or has submitted only an incomplete report, more than  
6 one year following the due date, is also subject to a civil action brought by the department. A  
7 court of competent jurisdiction may direct the physician to submit a complete report within a  
8 period stated by court order or be subject to sanctions for civil contempt.

9 Section 9. That chapter 34-23A be amended by adding thereto a NEW SECTION to read  
10 as follows:

11 Any person who knowingly or recklessly fails to submit any report required by this Act or  
12 submits false information under this Act is guilty of a Class 2 misdemeanor.

13 Section 10. That chapter 34-23A be amended by adding thereto a NEW SECTION to read  
14 as follows:

15 The department shall ensure compliance with this Act and shall verify the data provided by  
16 periodic inspection of places where induced abortions are performed.

17 Section 11. That chapter 34-23A be amended by adding thereto a NEW SECTION to read  
18 as follows:

19 No report made under this Act may include the name of any female having an abortion. The  
20 Department of Health shall take care to ensure that none of the information included in any  
21 report required by this Act including printed records, computerized records, or stored  
22 information of any type, can reasonably lead to the identification of any person obtaining an  
23 abortion.

24 Section 12. That chapter 34-23A be amended by adding thereto a NEW SECTION to read  
25 as follows:

1       For purposes of this Act only, the term, induced abortion, means the use of any means to  
2       intentionally terminate the pregnancy of a female known to be pregnant with knowledge that the  
3       termination with those means will, with reasonable likelihood, cause the death of the embryo or  
4       fetus.

1 **BILL HISTORY**

- 2 1/20/98 First read in House and referred to Health and Human Services. H.J. 127
- 3 1/30/98 Scheduled for Committee hearing on this date.
- 4 2/2/98 Scheduled for Committee hearing on this date.
- 5 2/2/98 Deferred to 36th legislative day, AYES 9, NAYS 4. H.J. 334
- 6 2/4/98 Health and Human Services Reconsidered, AYES 7, NAYS 6.
- 7 2/6/98 Scheduled for Committee hearing on this date.
- 8 2/11/98 Scheduled for Committee hearing on this date.
- 9 2/11/98 Health and Human Services Do Pass Amended, Failed, AYES 5, NAYS 6.
- 10 2/11/98 Health and Human Services Report Without Recommendation, AYES 10, NAYS 2.
- 11 2/12/98 House of Representatives Deferred to another day, AYES 62, NAYS 3. H.J. 634
- 12 2/13/98 Motion to Amend, Passed. H.J. 653
- 13 2/13/98 House of Representatives Do Pass Amended, Passed, AYES 58, NAYS 10. H.J. 654