

State of South Dakota

SEVENTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 1998

529B0626

HOUSE BILL NO. 1162

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 and the number of spontaneous abortions
9 treated in the previous calendar year, broken 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;
- 13 (4) The age of the mother at the time of the abortion;

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

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

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

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

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

9 No later than October 1, 1998, the department shall prepare an induced abortion
10 complication report form.

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

13 The Board of Medical and Osteopathic Examiners shall provide induced abortion
14 complication report forms provided for in section 3 of this Act and the physicians' information
15 report forms provided for in sections 7 and 9 of this Act, together with a reprint of this Act, no
16 later than November 1, 1998, to all physicians licensed to practice in this state. The board shall
17 provide induced abortion complication report forms and physicians' information report forms to
18 each physician who subsequently becomes newly licensed to practice in this state, at the same
19 time as official notification to that physician that the physician is so licensed.

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

22 Any physician practicing in the State of South Dakota who encounters an illness or injury
23 that is related to an induced abortion shall complete and submit an induced abortion complication
24 report to the department as soon as practicable after the encounter with the induced abortion
25 related illness or injury, but in no case more than sixty days after such an encounter. Any delay

1 or failure to submit an induced abortion complication report shall be penalized as provided in this
2 Act.

3 Section 6. That chapter 34-23A be amended by adding thereto a NEW SECTION to read
4 as follows:

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

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

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

17 (1) The number of females to whom the physician provided the information described in
18 § 34-23A-10.1(1); of that number, the number provided by telephone and the number
19 provided in person; and of each of those numbers, the number provided in the
20 capacity of a referring physician and the number provided in the capacity of a
21 physician who is to perform the abortion;

22 (2) The number of females to whom the physician provided the information described in
23 § 34-23A-10.1(2); of that number, the number provided by telephone and the number
24 provided in person; of each of those numbers, the number provided in the capacity of
25 a referring physician and the number provided in the capacity of a physician who is

1 to perform the abortion; and of each of those numbers, the number provided by the
2 physician and the number provided by an agent of the physician;

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

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

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

15 By February twenty-eighth of each year, each physician who provided, or whose agent
16 provided, information to one or more females in accordance with § 34-23A-10.1 during the
17 previous calendar year shall submit to the Department of Health a copy of the physicians'
18 information report form described in section 7 of this Act with the requested data entered
19 accurately and completely.

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

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

24 (1) The number of females or parents whom the physician or agent of the physician
25 provided the notice described in § 34-23A-7; and of each of those numbers, the

1 number of females who, to the best of the reporting physician's information and belief,
2 went on to obtain the abortion;

3 (2) The number of females upon whom the physician performed an abortion without
4 providing to the parent of the minor the notice described in § 34-23A-7; of that
5 number, the number who were emancipated minors, and the numbers from whom
6 each of the exceptions to § 34-23A-7 were applicable;

7 (3) The number of abortions performed upon a female by the physician after receiving
8 judicial authorization to do so without parental notice; and

9 (4) The same information described in subdivisions (1) through (3) of this section with
10 respect to females for whom a guardian or conservator has been appointed pursuant
11 to statutes on guardianship or conservatorship because of finding of incompetency.

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

14 By February twenty-eighth of each year, each physician who provided, or whose agent
15 provided, the notice described in § 34-23A-7, and any physician who knowingly performed an
16 abortion upon a female or upon a female for whom a guardian or conservator had been appointed
17 because of a finding of incompetency during the previous calendar year shall submit to the
18 Department of Health a copy of the physicians' information report form described in section 9
19 of this Act with the requested data entered accurately and completely.

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

22 Any physician who fails to submit any report required by this Act within a grace period of
23 thirty days following the due date is subject to a late fee of five hundred dollars for each
24 additional thirty-day period, or portion of a thirty-day period, that each report is overdue. Any
25 physician who has not submitted a report, or has submitted only an incomplete report, more than

one year following the due date, is also subject to a civil action brought by the department. A court of competent jurisdiction may direct the physician to submit a complete report within a period stated by court order or be subject to sanctions for civil contempt.

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

Any person who knowingly or recklessly fails to submit any report required by this Act or submits false information under this Act is guilty of a Class 1 misdemeanor.

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

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

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

No report made under this Act may include the name of any female having an abortion.

Section 15. That chapter 34-23A be amended by adding thereto a NEW SECTION to read as follows:

For purposes of this Act only, the terms used in this Act mean:

- (1) "Induced abortion," the use of any means to intentionally terminate the pregnancy of a female known to be pregnant with knowledge that the termination with those means will, with reasonable likelihood, cause the death of the fetus;
- (2) "Spontaneous abortion," any termination of a pregnancy of a female known to be pregnant that is not an induced abortion and does not result in a live birth; and
- (3) "Abortion," both induced abortion and spontaneous abortion.