

State of South Dakota

NINETY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2017

398Y0073

HOUSE HEALTH AND HUMAN SERVICES ENGROSSED NO. **SB 102** - 2/23/2017

Introduced by: Senators Nelson, Greenfield (Brock), Jensen (Phil), Netherton, Russell, and Stalzer and Representatives DiSanto, Dennert, Frye-Mueller, Gosch, Greenfield (Lana), Heinemann, Howard, Jensen (Kevin), Kaiser, Latterell, May, Otten (Herman), Pischke, Rozum, Schoenfish, Steinhauer, Willadsen, and York

1 FOR AN ACT ENTITLED, An Act to require that the name and telephone number of an
2 organization fighting to end sex trafficking be given, in writing, to any woman seeking an
3 abortion.

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

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

6 34-23A-10.1. No abortion may be performed unless the physician first obtains a voluntary
7 and informed written consent of the pregnant woman upon whom the physician intends to
8 perform the abortion, unless the physician determines that obtaining an informed consent is
9 impossible due to a medical emergency and further determines that delaying in performing the
10 procedure until an informed consent can be obtained from the pregnant woman or her next of
11 kin in accordance with chapter 34-12C is impossible due to the medical emergency, which
12 determinations shall then be documented in the medical records of the patient. A consent to an
13 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

development of the unborn child at that age;

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

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

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

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

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

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

(b) That the father of the unborn child is legally responsible to provide financial support for her child following birth, and that this legal obligation of the father

1 exists in all instances, even in instances in which the father has offered to pay
2 for the abortion;

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

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

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

23 (4) A written notification, prepared and provided to each abortion facility by the
24 Department of Health, that contains the name, text, and telephone number of an

organization fighting to end sex trafficking and states the following: "If someone is sexually abusing you or causing you to exchange sex for something of value, and you want help, call 911, text, or call the number provided on this notice."

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

Section 2. That § 34-23A-10.3 be amended to read:

34-23A-10.3. The health department shall publish, in culturally sensitive languages, within one hundred eighty days after July 1, 2005, the following printed materials in such a way as to ensure that the information is easily comprehensible:

- (1) Materials designed to inform the pregnant woman of all the disclosures enumerated in § 34-23A-10.1;
- (2) Materials designed to inform the pregnant woman of public and private agencies and services available to assist a pregnant woman through pregnancy, upon childbirth and while the child is dependent, including adoption agencies, which shall include a list of the agencies available and a description of the services they offer; ~~and~~
- (3) Materials designed to inform the pregnant woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from the time when a pregnant woman can be known to be pregnant to full term,

1 including any relevant information on the possibility of the unborn child's survival
2 and pictures or drawings representing the development of unborn children at two-
3 week gestational increments. Such pictures or drawings shall contain the dimensions
4 of the fetus and shall be realistic and appropriate for the stage of pregnancy depicted.
5 The materials shall be objective, nonjudgmental, and designed to convey only
6 accurate scientific information about the unborn child at the various gestational ages;
7 and

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

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