



2021 South Dakota Legislature

House Bill 1130

HOUSE ENGROSSED

Introduced by: **Representative Haugaard**

1 **An Act to establish requirements for the presentation of a written statement**
 2 **regarding the discontinuance of a drug-induced abortion.**

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

4 **Section 1.** That § 34-23A-10.1 be AMENDED.

5 **34-23A-10.1. Voluntary and informed consent required--Medical emergency**
 6 **exception--Information provided.**

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

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

- 18 (1) A statement in writing providing the following information:
- 19 (a) The name of the physician who will perform the abortion;
- 20 (b) That the abortion will terminate the life of a whole, separate, unique, living
 21 human being;
- 22 (c) That the pregnant woman has an existing relationship with that unborn
 23 human being and that the relationship enjoys protection under the United
 24 States Constitution and under the laws of South Dakota;
- 25 (d) That by having an abortion, her existing relationship and her existing
 26 constitutional rights with regards to that relationship will be terminated;

- 1 (e) A description of all known medical risks of the procedure and statistically
2 significant risk factors to which the pregnant woman would be subjected,
3 including:
- 4 (i) Depression and related psychological distress;
 - 5 (ii) Increased risk of suicide ideation and suicide;
 - 6 (iii) A statement setting forth an accurate rate of deaths due to abortions,
7 including all deaths in which the abortion procedure was a substantial
8 contributing factor; and
 - 9 (iv) All other known medical risks to the physical health of the woman,
10 including the risk of infection, hemorrhage, danger to subsequent
11 pregnancies, and infertility;
- 12 (f) The probable gestational age of the unborn child at the time the abortion is
13 to be performed, and a scientifically accurate statement describing the
14 development of the unborn child at that age;
- 15 (g) The statistically significant medical risks associated with carrying her child to
16 term compared to undergoing an induced abortion;
- 17 (h) That even after a pregnant mother takes Mifepristone, or another drug
18 approved by the United States Food and Drug Administration for the same
19 use, it is still possible to discontinue a drug-induced abortion by not taking
20 the prescribed Misoprostol; ~~and~~
- 21 (i) That information on discontinuing a drug-induced abortion is available on the
22 Department of Health website;
- 23 (j) A written statement that sex-selective abortions are illegal in the State of
24 South Dakota and that a pregnant mother cannot have an abortion, either
25 solely or partly, due to the unborn child's sex, regardless of whether that
26 unborn child is a girl or a boy or whether it is of the pregnant mother's free
27 will or the result of the use of pressure and coercion; and
- 28 (k) A written notification, prepared and provided to each abortion facility by the
29 Department of Health, that contains the name, text, and telephone number
30 of an organization fighting to end sex trafficking and states the following: "If
31 someone is sexually abusing you or causing you to exchange sex for
32 something of value, and you want help, call 911, text, or call the number
33 provided on this notice."

34 The disclosures set forth above shall be provided to the pregnant woman in writing
35 and in person in full compliance with § 34-23A-56. The physician shall ensure that

1 the pregnant woman signs each page of the written disclosure with the certification
2 that she has read and understands all of the disclosures, prior to the patient signing
3 a consent for the procedure. If the pregnant woman asks for a clarification or
4 explanation of any particular disclosure, or asks any other question about a matter
5 of significance to her, the explanation or answer shall be made in writing and be
6 given to the pregnant woman before signing a consent for the procedure and shall
7 be made part of the permanent medical record of the patient.

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

- 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,
21 childbirth, 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
25 pay for the abortion;
 - 26 (c) The name, address, and telephone number of a pregnancy help center in
27 reasonable proximity of the abortion facility where the abortion will be
28 performed; and
 - 29 (d) That she has a right to review all of the material and information described
30 in § 34-23A-1, §§ 34-23A-1.2 to 34-23A-1.7, inclusive, § 34-23A-10.1, and
31 § 34-23A-10.3, as well as the printed materials described in § 34-23A-10.3,
32 and the website described in § 34-23A-10.4. The physician or the physician's
33 agent shall inform the pregnant woman, orally or in writing, that the materials
34 have been provided by the State of South Dakota at no charge to the
35 pregnant woman. If the pregnant woman indicates, at any time, that she

1 wants to review any of the materials described, such disclosures shall be
2 either given to her at least twenty-four hours before the abortion or mailed
3 to her at least seventy-two hours before the abortion by certified mail,
4 restricted delivery to addressee, which means the postal employee can only
5 deliver the mail to the addressee;

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

11 ~~(4) A written notification, prepared and provided to each abortion facility by the
12 Department of Health, that contains the name, text, and telephone number of an
13 organization fighting to end sex trafficking and states the following: "If someone is
14 sexually abusing you or causing you to exchange sex for something of value, and
15 you want help, call 911, text, or call the number provided on this notice."~~

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

24 (3) In the case of a pregnant woman who has been administered Mifepristone, or
25 another drug approved by the United States Food and Drug Administration for the
26 same use, the statement required by subsection (h) of subdivision (1) must also
27 be duplicated and presented to the woman at the time of her release or discharge,
28 immediately after the provision or administration of the first drug. The statement
29 must be accompanied by a notice that includes:

30 (a) The following verbiage: "If you decide you want to give birth to your child,
31 even after the abortion process has begun, seek the assistance of a
32 physician immediately; and

33 (b) The phone number, website, and any other contact information provided to
34 the department by physicians or other entities, who or that have indicated

1 their ability and willingness to provide assistance, twenty-four hours per
2 day, seven days a week, to a woman seeking to discontinue an abortion.

3 **Section 2.** That § 34-23A-10.3 be AMENDED.

4 **34-23A-10.3. Publication of educational materials.**

5 The health department shall publish, in culturally sensitive languages, ~~within one~~
6 ~~hundred eighty days after July 1, 2005,~~ the following printed materials, in such a way as
7 to ensure that the information is easily comprehensible:

- 8 (1) Materials designed to inform the pregnant woman of all the disclosures enumerated
9 in § 34-23A-10.1;
- 10 (2) Materials designed to inform the pregnant woman of public and private agencies
11 and services available to assist a pregnant woman through pregnancy, upon
12 childbirth and while the child is dependent, including adoption agencies, which shall
13 include a list of the agencies available and a description of the services they offer;
- 14 (3) Materials designed to inform the pregnant woman of the probable anatomical and
15 physiological characteristics of the unborn child at two-week gestational increments
16 from the time when a pregnant woman can be known to be pregnant to full term,
17 including any relevant information on the possibility of the unborn child's survival
18 and pictures or drawings representing the development of unborn children at two-
19 week gestational increments. Such pictures or drawings shall contain the
20 dimensions of the fetus and shall be realistic and appropriate for the stage of
21 pregnancy depicted. The materials shall be objective, nonjudgmental, and designed
22 to convey only accurate scientific information about the unborn child at the various
23 gestational ages; and
- 24 (4) Materials designed to inform the pregnant woman that: "If someone is sexually
25 abusing you or causing you to exchange sex for something of value, and you want
26 help, call 911, text or call the number provided on this notice."

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