



2020 South Dakota Legislature

Senate Bill 87

Introduced by: **Senator Phil Jensen**

1 **An Act to add information required to be provided to a woman receiving an abortion.**

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

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

4 **34-23A-10.1. Voluntary and informed consent required--Medical emergency**
 5 **exception--Information provided.**

6 No abortion may be performed unless the physician first obtains a voluntary and
 7 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
 9 is impossible due to a medical emergency and further determines that delaying in
 10 performing the procedure until an informed consent can be obtained from the pregnant
 11 woman or her next of kin in accordance with chapter 34-12C is impossible due to the
 12 medical emergency, which determinations shall then be documented in the medical
 13 records of the patient. A consent to an abortion is not voluntary and informed, unless, in
 14 addition to any other information that must be disclosed under the common law doctrine,
 15 the physician provides that pregnant woman with the following information:

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

- 17 (a) The name of the physician who will perform the abortion;
- 18 (b) That the abortion will terminate the life of a whole, separate, unique, living
 19 human being;
- 20 (c) That the pregnant woman has an existing relationship with that unborn
 21 human being and that the relationship enjoys protection under the United
 22 States Constitution and under the laws of South Dakota;
- 23 (d) That by having an abortion, her existing relationship and her existing
 24 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;
 - 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 it is still possible to
18 discontinue a drug-induced abortion by not taking the prescribed Misoprostol;
19 ~~and~~
- 20 (i) That information on discontinuing a drug-induced abortion is available on the
21 Department of Health website; and
- 22 (j) That the woman may request to view the aborted fetus after the abortion is
23 performed up until the time the hospital, clinic, or medical facility disposes of
24 the aborted fetus.

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

- 1 (2) A statement by telephone or in person, by the physician who is to perform the
2 abortion, or by the referring physician, or by an agent of both, at least twenty-four
3 hours before the abortion, providing the following information:
- 4 (a) That medical assistance benefits may be available for prenatal care,
5 childbirth, and neonatal care;
- 6 (b) That the father of the unborn child is legally responsible to provide financial
7 support for her child following birth, and that this legal obligation of the father
8 exists in all instances, even in instances in which the father has offered to
9 pay for the abortion;
- 10 (c) The name, address, and telephone number of a pregnancy help center in
11 reasonable proximity of the abortion facility where the abortion will be
12 performed; and
- 13 (d) That she has a right to review all of the material and information described
14 in § 34-23A-1, §§ 34-23A-1.2 to 34-23A-1.7, inclusive, § 34-23A-10.1, and
15 § 34-23A-10.3, as well as the printed materials described in § 34-23A-10.3,
16 and the website described in § 34-23A-10.4. The physician or the physician's
17 agent shall inform the pregnant woman, orally or in writing, that the materials
18 have been provided by the State of South Dakota at no charge to the
19 pregnant woman. If the pregnant woman indicates, at any time, that she
20 wants to review any of the materials described, such disclosures shall be
21 either given to her at least twenty-four hours before the abortion or mailed
22 to her at least seventy-two hours before the abortion by certified mail,
23 restricted delivery to addressee, which means the postal employee can only
24 deliver the mail to the addressee;
- 25 (3) A written statement that sex-selective abortions are illegal in the State of South
26 Dakota and that a pregnant mother cannot have an abortion, either solely or partly,
27 due to the unborn child's sex, regardless of whether that unborn child is a girl or a
28 boy or whether it is of the pregnant mother's free will or the result of the use of
29 pressure and coercion; and
- 30 (4) A written notification, prepared and provided to each abortion facility by the
31 Department of Health, that contains the name, text, and telephone number of an
32 organization fighting to end sex trafficking and states the following: "If someone is
33 sexually abusing you or causing you to exchange sex for something of value, and
34 you want help, call 911, text, or call the number provided on this notice."

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