

AN ACT

ENTITLED, An Act to revise certain statutes pertaining to abortions.

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

Section 1. That subdivision (3) of § 34-23A-1 be amended to read as follows:

- (3) "Parent," one parent of the pregnant minor or the guardian or conservator of the pregnant female;

Section 2. That § 34-23A-7 be amended to read as follows:

34-23A-7. No abortion may be performed upon an unemancipated minor or upon a female for whom a guardian has been appointed because of a finding of incompetency, until at least forty-eight hours after written notice of the pending operation has been delivered in the manner specified in this section. The notice shall be addressed to the parent at the usual place of abode of the parent and delivered personally to the parent by the physician or an agent. In lieu of such delivery, notice may be made by certified mail addressed to the parent at the usual place of abode of the parent with return receipt requested and restricted delivery to the addressee, which means a postal employee can only deliver the mail to the authorized addressee. If notice is made by certified mail, the time of delivery shall be deemed to occur at twelve o'clock noon on the next day on which regular mail delivery takes place, subsequent to mailing.

No notice is required under this section if:

- (1) The attending physician certifies in the pregnant minor's medical record that, on the basis of the physician's good faith clinical judgment, a medical emergency exists that so complicates the medical condition of a pregnant female as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function and there is insufficient time to provide the required notice; or
- (2) The person who is entitled to notice certifies in writing that he has been notified; or

- (3) A pregnant female elects not to allow the notification of her parent or guardian or conservator, in which case, any judge of a circuit court shall, upon petition, or motion, and after an appropriate hearing, authorize a physician to perform the abortion if the judge determines that the pregnant female is mature and capable of giving informed consent to the proposed abortion. If the judge determines that the pregnant female is not mature, or if the pregnant female does not claim to be mature, the judge shall determine whether the performance of an abortion upon her without notification of her parent, guardian, or conservator would be in her best interests and shall authorize a physician to perform the abortion without such notification if the judge concludes that the pregnant female's best interests would be served thereby.

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

In any proceeding pursuant to subdivision 34-23A-7(3), the pregnant female may participate in proceedings in the court on her own behalf, and the court may appoint a guardian ad litem for her. The court shall, however, advise her that she has a right to court-appointed counsel and shall, upon her request, provide her with such counsel. Proceedings in the court under this subdivision shall be confidential and shall be given such precedence over other pending matters so that the court may reach a decision promptly and without delay so as to serve the best interests of the pregnant female. A judge of the court who conducts proceedings under this subdivision shall make in writing specific factual findings and legal conclusions supporting the decision and shall order a record of the evidence to be maintained including the judge's own findings and conclusions.

An expedited confidential appeal shall be available to any such pregnant female for whom the court denies an order authorizing an abortion without notification. An order authorizing an abortion without notification is not subject to appeal. No filing fees are required of any such pregnant female at either the trial or the appellate level. Access to the trial court for the purposes of such a petition

or motion, and access to the appellate courts for purposes of making an appeal from denial of the same, shall be afforded such a pregnant woman twenty-four hours a day, seven days a week. Notwithstanding any other provision of law, all pleadings, papers, and other documents filed pursuant to this section are confidential, are not public records, and are not open for inspection by any member of the public for any purpose.

Section 4. That § 34-23A-10.2 be amended to read as follows:

34-23A-10.2. A physician who, knowingly or in reckless disregard, violates § 34-23A-2.1, 34-23A-7, or 34-23A-10.1 is guilty of a Class 2 misdemeanor. The court in which a conviction of a violation of § 34-23A-2.1, 34-23A-7, or 34-23A-10.1 occurs shall report such conviction to the board of medical and osteopathic examiners.

No penalty may be assessed against the female upon whom the abortion is performed or attempted to be performed. No criminal penalty or civil liability for failure to comply with subsection 34-23A-10.1(2)(c) or that portion of subsection 34-23A-10.1(3) requiring a written certification that the woman has been informed of her opportunity to review the information referred to in subsection 34-23A-10.1(2)(c) may be assessed unless the department of health has made the printed materials available at the time the physician or the physician's agent is required to inform the female of her right to review them.

Section 5. That § 34-23A-22 be amended to read as follows:

34-23A-22. If any person performs an abortion willfully, wantonly, or maliciously in disregard to § 34-23A-2.1, 34-23A-7, or 34-23A-10.1, the person upon whom such an abortion has been performed, and the parent of a minor child upon whom such an abortion was performed, or any of them, may maintain an action against the person who performed the abortion not to exceed ten thousand dollars in punitive damages. Any person upon whom such an abortion has been attempted may maintain an action against the person who attempted to perform the abortion not to exceed five thousand dollars in punitive damages.

If judgment is rendered in favor of the plaintiff in any such action, the court shall also render judgment for a reasonable attorney's fee in favor of the plaintiff against the defendant. If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous or brought in bad faith, the court shall also render judgment for a reasonable attorney's fee in favor of the defendant against the plaintiff.

An Act to revise certain statutes pertaining to abortions.

I certify that the attached Act  
originated in the

HOUSE as Bill No. 1087

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

House Bill No. 1087  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

Received at this Executive Office  
this \_\_\_\_ day of \_\_\_\_\_ ,

19\_\_ at \_\_\_\_ M.

By \_\_\_\_\_  
for the Governor

The attached Act is hereby  
approved this \_\_\_\_\_ day of  
\_\_\_\_\_, A.D., 19\_\_

\_\_\_\_\_  
Governor

STATE OF SOUTH DAKOTA,  
ss.  
Office of the Secretary of State

Filed \_\_\_\_\_, 19\_\_  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State