

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

736N0633

SENATE BILL NO. 172

Introduced by: Senators Duenwald, Apa, Greenfield, and McNenny and Representatives Hackl, Hunt, Novstrup (Al), Olson (Betty), and Wick

1 FOR AN ACT ENTITLED, An Act to require that a certain statement of law be read by the
2 attending physician to any pregnant woman prior to performing an abortion.

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

4 Section 1. That § 34-23A-10.1 be amended to read as follows:

5 34-23A-10.1. No abortion may be performed unless the physician first obtains a voluntary
6 and informed written consent of the pregnant woman upon whom the physician intends to
7 perform the abortion, unless the physician determines that obtaining an informed consent is
8 impossible due to a medical emergency and further determines that delaying in performing the
9 procedure until an informed consent can be obtained from the pregnant woman or her next of
10 kin in accordance with chapter 34-12C is impossible due to the medical emergency, which
11 determinations shall then be documented in the medical records of the patient. A consent to an
12 abortion is not voluntary and informed, unless, in addition to any other information that must
13 be disclosed under the common law doctrine, the physician provides that pregnant woman with
14 the following information:

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



- 1 (a) The name of the physician who will perform the abortion;
- 2 (b) That the abortion will terminate the life of a whole, separate, unique, living
3 human being;
- 4 (c) That the pregnant woman has an existing relationship with that unborn human
5 being and that the relationship enjoys protection under the United States
6 Constitution and under the laws of South Dakota;
- 7 (d) That by having an abortion, her existing relationship and her existing
8 constitutional rights with regards to that relationship will be terminated;
- 9 (e) A description of all known medical risks of the procedure and statistically
10 significant risk factors to which the pregnant woman would be subjected,
11 including:
 - 12 (i) Depression and related psychological distress;
 - 13 (ii) Increased risk of suicide ideation and suicide;
 - 14 (iii) A statement setting forth an accurate rate of deaths due to abortions,
15 including all deaths in which the abortion procedure was a substantial
16 contributing factor;
 - 17 (iv) All other known medical risks to the physical health of the woman,
18 including the risk of infection, hemorrhage, danger to subsequent
19 pregnancies, and infertility;
- 20 (f) The probable gestational age of the unborn child at the time the abortion is to
21 be performed, and a scientifically accurate statement describing the
22 development of the unborn child at that age; and
- 23 (g) The statistically significant medical risks associated with carrying her child to
24 term compared to undergoing an induced abortion.

1 The disclosures set forth above shall be provided to the pregnant woman in
2 writing and in person no later than two hours before the procedure is to be
3 performed. The physician shall ensure that the pregnant woman signs each
4 page of the written disclosure with the certification that she has read and
5 understands all of the disclosures, prior to the patient signing a consent for the
6 procedure. If the pregnant woman asks for a clarification or explanation of any
7 particular disclosure, or asks any other question about a matter of significance
8 to her, the explanation or answer shall be made in writing and be given to the
9 pregnant woman before signing a consent for the procedure and shall be made
10 part of the permanent medical record of the patient;

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

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

16 (b) That the father of the unborn child is legally responsible to provide financial
17 support for her child following birth, and that this legal obligation of the father
18 exists in all instances, even in instances in which the father has offered to pay
19 for the abortion;

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

23 (d) That she has a right to review all of the material and information described in
24 § 34-23A-1, §§ 34-23A-1.2 to 34-23A-1.7, inclusive, § 34-23A-10.1, and

1 § 34-23A-10.3, as well as the printed materials described in § 34-23A-10.3,
2 and the website described in § 34-23A-10.4. The physician or the physician's
3 agent shall inform the pregnant woman, orally or in writing, that the materials
4 have been provided by the State of South Dakota at no charge to the pregnant
5 woman. If the pregnant woman indicates, at any time, that she wants to review
6 any of the materials described, such disclosures shall be either given to her at
7 least twenty-four hours before the abortion or mailed to her at least seventy-
8 two hours before the abortion by certified mail, restricted delivery to
9 addressee, which means the postal employee can only deliver the mail to the
10 addressee;

11 (3) A printed notice, provided to and read to the pregnant woman, by the physician who
12 is to perform the abortion, of the following statement of law: "It is against the law for
13 anyone, regardless of their relationship to you, to force or coerce you to have an
14 abortion. By law, we cannot perform an abortion on you unless we have your freely
15 given voluntary consent. It is against the law to perform an abortion on you against
16 your will."

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