



## 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.