

State of South Dakota

NINETY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2018

169Z0536

SENATE BILL NO. 110

Introduced by: Senators Novstrup, Greenfield (Brock), Jensen (Phil), Klumb, Langer, Maher, Monroe, Nelson, Netherton, Russell, Stalzer, Tapio, and Wiik and Representatives Haugaard, Campbell, Clark, DiSanto, Frye-Mueller, Glanzer, Goodwin, Gosch, Heinemann, Hunhoff, Jensen (Kevin), Johnson, Lake, Latterell, Marty, McPherson, Peterson (Sue), Rasmussen, Rhoden, Rounds, Schoenfish, Steinhauer, and York

1 FOR AN ACT ENTITLED, An Act to establish certain findings pertaining to pre-abortion
2 counseling practices by abortion providers in South Dakota and to amend provisions
3 regarding mandatory third-party pre-abortion counseling.

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

5 Section 1. That chapter 34-23A be amended by adding a NEW SECTION to read:

6 The Legislature finds that the Planned Parenthood facility in Sioux Falls, South Dakota is
7 the only abortion clinic in the state of South Dakota and approximately ninety-eight percent of
8 all abortions performed in South Dakota are performed at that Planned Parenthood facility.

9 Section 2. That chapter 34-23A be amended by adding a NEW SECTION to read:

10 The Legislature finds that the physicians, agents, and employees performing or assisting in
11 the performance of abortions and pre-abortion counseling at the Planned Parenthood facility in
12 Sioux Falls, South Dakota have been providing pre-abortion counseling that does not comply
13 with the mandatory disclosures required by subsections 34-23A-10.1(1)(b) and (e)(ii).



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

2 The Legislature finds that the physicians, agents, and employees performing or assisting in
3 the performance of abortions at the Planned Parenthood facility in Sioux Falls, South Dakota
4 provide pregnant mothers written disclosures that include the statement:

5 "Politicians in the State of South Dakota require us to tell you that some studies have
6 found that women who have had abortions have a higher rate of suicide or thoughts
7 of suicide than other women. We dispute this statement because it does not mean that
8 abortion causes suicide or thoughts of suicide. In fact, no research study has ever
9 established that abortion causes suicide or thoughts of suicide. Planned Parenthood
10 and other medical organizations around the world believe that whether a woman
11 chooses to have an abortion or to have a baby, her chance of having thoughts of
12 suicide or trying suicide will be the same."

13 Section 4. That chapter 34-23A be amended by adding a NEW SECTION to read:

14 The Legislature finds that the disclosure in section 3 of this Act, made at the Planned
15 Parenthood facility in Sioux Falls, South Dakota does not comply with subsection
16 34-23A-10.1(1)(e)(ii), and expressly denies the disclosure required by that subsection of South
17 Dakota's informed consent abortion law.

18 Section 5. That chapter 34-23A be amended by adding a NEW SECTION to read:

19 The Legislature finds that the failure to comply with the provisions of subsection
20 34-23A-10.1(1)(e)(ii) is contrary to the interests of pregnant mothers and pregnant mothers' need
21 to make informed and voluntary decisions, and is not in keeping with the spirit and purpose of
22 §§ 34-23A-1.3 to 34-23A-1.7, inclusive, and 34-23A-10.1, and the holding of the United States
23 Court of Appeals in *Planned Parenthood v. Rounds*, 686 F.3d 889 (8th Cir. 2012)(*en banc*) and
24 the final amended judgment of the U.S. District Court, dated December 28, 2012.

1 Section 6. That chapter 34-23A be amended by adding a NEW SECTION to read:

2 The Legislature finds that the physicians, agents, and employees performing or assisting in
3 the performance of abortions at the Planned Parenthood facility in Sioux Falls, South Dakota
4 provide pregnant mothers written disclosures that include the statement:

5 "Politicians in the State of South Dakota require us to tell you that, as a matter of
6 biology, the abortion will end a developing, living organism (an "embryo" or a
7 "fetus") of the human species ("Homo sapiens") that has a complete, separate genetic
8 makeup that is unique to that embryo or fetus."

9 Section 7. That chapter 34-23A be amended by adding a NEW SECTION to read:

10 The Legislature finds that the disclosure in section 6 of this Act, made at the Planned
11 Parenthood facility in Sioux Falls, South Dakota given to pregnant mothers considering an
12 abortion does not comply with subsection 34-23A-10.1(1)(b), and is confusing and inaccurate.

13 Section 8. That chapter 34-23A be amended by adding a NEW SECTION to read:

14 The Legislature finds that the failure to comply with subsection 34-23A-10.1(1)(b) is
15 contrary to the interests of pregnant mothers and pregnant mothers' need to make truly informed
16 and voluntary decisions, and is not in keeping with the spirit and purpose of the law and the
17 holdings of the United States Court of Appeals in *Planned Parenthood v. Rounds*, 530 F.3d 724
18 (8th Cir. 2008)(*en banc*) and the United States District Court, entered August 20, 2009, *Planned*
19 *Parenthood v. Rounds*, 650 F.Supp. 2d 972, 976 (S.D., S. Div. 2009).

20 Section 9. That chapter 34-23A be amended by adding a NEW SECTION to read:

21 The Legislature finds that the physicians, agents, and employees performing or assisting in
22 the performance of abortions at the Planned Parenthood facility in Sioux Falls, South Dakota
23 have provided written disclosures before an abortion that do not adequately disclose or
24 adequately explain the mandatory disclosures required by subsections 34-23A-10.1(1)(c) and

1 (d).

2 Section 10. That chapter 34-23A be amended by adding a NEW SECTION to read:

3 The Legislature finds that the physicians, agents, and employees performing or assisting in
4 the performance of abortions at the Planned Parenthood facility in Sioux Falls, South Dakota
5 provide written disclosures to pregnant mothers considering an abortion that include the
6 statement:

7 "Politicians in the State of South Dakota require us to tell you that you are legally and
8 constitutionally protected against being forced to have an abortion."

9 Section 11. That chapter 34-23A be amended by adding a NEW SECTION to read:

10 The Legislature finds that, while the statement in section 10 of this Act is a true statement,
11 the statement fails to adequately provide, explain, or discuss the disclosures actually required
12 by subsections 34-23A-10.1(1)(c) and (d) which requires a disclosure "(c) [t]hat the pregnant
13 woman has an existing relationship with that unborn human being and that the relationship
14 enjoys protection under the United States Constitution and under the laws of South Dakota," and
15 "(d) [t]hat by having an abortion, her existing relationship and her existing constitutional rights
16 with regards to that relationship would be terminated."

17 Section 12. That chapter 34-23A be amended by adding a NEW SECTION to read:

18 The Legislature finds that failure to adequately provide and discuss the disclosures required
19 by subsections 34-23A-10.1(1)(c) and (d) is contrary to the interests of pregnant mothers
20 considering an abortion and the required disclosures are important for the pregnant mothers to
21 fully understand that the pregnant mother has an existing relationship with her unborn child
22 while the child is in utero, that the law recognizes this relationship has value to her, and that by
23 terminating that relationship she loses something of great value to herself, and gives up one of
24 the greatest rights she has in all of life.

1 Section 13. That chapter 34-23A be amended by adding a NEW SECTION to read:

2 The Legislature finds and reaffirms that it is essential to the ability of a pregnant mother to
3 make a truly informed and voluntary consent to an abortion, and essential to the legal protection
4 of her constitutional rights to maintain her relationship with her child, and that she have a full
5 appreciation and understanding of the disclosures required by subsections 34-23A-10.1(1)(b),
6 (c) and (d).

7 Section 14. That chapter 34-23A be amended by adding a NEW SECTION to read:

8 The Legislature finds that the use of the phrase "politicians in the State of South Dakota
9 require us to tell you that..." is antithetical to the purpose and effectiveness of the disclosures,
10 and evidences a hostility to the required disclosures and signals to the pregnant mothers that the
11 required disclosures, to the extent they are made at all, should be ignored.

12 Section 15. That chapter 34-23A be amended by adding a NEW SECTION to read:

13 The Legislature finds that the physicians, agents, and employees who perform or assist in
14 the performance of abortions at the Planned Parenthood facility in Sioux Falls, South Dakota
15 have proven to be unreliable providers and counselors of the disclosures required by
16 subsections 34-23A-10.1(1)(b), (c), (d), and (e)(ii), such that it is in the interests of the pregnant
17 mothers that disclosures required by subsections 34-23A-10.1(1)(b), (c), and (d) be included in
18 the mandatory third party counseling provided by registered pregnancy help centers as
19 authorized by § 34-23A-59.

20 Section 16. That § 34-23A-59 be amended to read:

21 34-23A-59. A pregnancy help center consultation required by §§ 34-23A-53 to 34-23A-59.2,
22 inclusive, shall be implemented as follows:

23 (1) The pregnancy help center shall be permitted to ~~interview~~:

24 (a) Interview the pregnant mother to determine whether the pregnant mother has

1 been subject to any coercion to have an abortion, or is being pressured into
2 having an abortion,~~and shall be permitted to inform;~~

3 **(b) Provide counseling in connection with any coercion or pressure;**

4 **(c) Inform** the pregnant mother in writing or orally, or both, ~~what of the~~
5 counseling, education, and assistance ~~that is~~ available to the pregnant mother
6 to ~~help~~ assist her maintain in maintaining her relationship with her unborn
7 child and ~~help her care in caring~~ for the child ~~both~~ through the pregnancy help
8 center or any other organization, faith-based program, or governmental
9 program;

10 **(d) Provide a statement orally and in writing to the pregnant mother that "an**
11 **abortion will terminate the life of a whole, separate, unique, living human**
12 **being," and provide counseling, in lay terms, necessary to explain this**
13 **disclosure, and to ascertain that the pregnant mother understands this**
14 **disclosure, and for the purpose of this disclosure, the definition of human**
15 **being found in subdivision 34-23A-1(4) applies; and**

16 **(e) Provide statements orally and in writing setting forth the disclosures required**
17 **by subsections 34-23A-10.1(1)(c) and (d) and provide counseling in lay terms**
18 **that explain those disclosures.** The pregnancy help center may, if it deems it
19 appropriate, discuss matters pertaining to adoption;

20 (2) ~~During the consultation interviews provided for by §§ 34-23A-53 to 34-23A-59.2,~~
21 ~~inclusive, no pregnancy help center, its agents or employees, may discuss The~~
22 ~~pregnancy help center, its agents, or employees may not:~~

23 **(a) Discuss** with any pregnant mother religion or religious beliefs, either of the
24 mother or the counselor, unless the pregnant mother consents in writing;

1 **(b)** Discuss the physical or psychological risks to a woman posed by an abortion.
2 However, if, during the mandatory pregnancy help center consultation
3 interview, the pregnant mother requests the opportunity to discuss the risks of
4 an abortion with pregnancy help center personnel, the pregnancy help center
5 may schedule a separate and distinct appointment for the pregnant mother to
6 meet with a physician for the purpose of discussing the physical and
7 psychological risks of abortion. Any requests shall be evidenced in writing
8 signed by the pregnant mother;

9 **(3)** The pregnancy help center is under no obligation to communicate with the abortion
10 provider in any way, and is under no obligation to submit any written or other form
11 of confirmation that the pregnant mother consulted with the pregnancy help center.
12 The pregnancy help center may voluntarily provide a written statement of assessment
13 to the abortion provider, whose name the woman shall give to the pregnancy help
14 center, if the pregnancy help center obtains information that indicates that the
15 pregnant mother has been subjected to coercion or that her decision to consider an
16 abortion is otherwise not voluntary or not informed. The physician shall make the
17 physician's own independent determination whether or not a pregnant mother's
18 consent to have an abortion is voluntary, uncoerced, and informed before having the
19 pregnant mother sign a consent to an abortion. The physician shall review and
20 consider any information provided by the pregnancy help center as one source of
21 information, which in no way binds the physician, who shall make an independent
22 determination consistent with the provisions of §§ 34-23A-53 to 34-23A-59.2,
23 inclusive, the common law requirements, and accepted medical standards;

24 **(4)** Any written statement or summary of assessment prepared by the pregnancy help

1 center as a result of counseling of a pregnant mother as a result of the procedures
2 created by §§ 34-23A-53 to 34-23A-59.2, inclusive, may be forwarded by the
3 pregnancy help center, in its discretion, to the abortion physician. If forwarded to the
4 physician, the written statement or summary of assessment shall be maintained as a
5 permanent part of the pregnant mother's medical records. Other than forwarding such
6 documents to the abortion physician, no information obtained by the pregnancy help
7 center from the pregnant mother may be released, without the written signed consent
8 of the pregnant mother or unless the release is in accordance with federal, state, or
9 local law;

10 (5) Commencing on September 1, 2016, the counseling authorized pursuant to this
11 section shall be conducted in accordance with the Uniform Policy and Procedures
12 Guidelines developed and promulgated by the South Dakota Association of
13 Registered Pregnancy Help Centers and adopted in 2015.

14 Nothing in §§ 34-23A-53 to 34-23A-59.2, inclusive, may be construed to impose any
15 liability upon a pregnancy help center. However, the failure of a pregnancy help center to
16 comply with the conditions of § 34-23A-58.1, 34-23A-59.1 or this section for being authorized
17 to provide the pregnancy help center counseling, if uncorrected, may result in the Department
18 of Health removing the pregnancy help center from the state's registry of pregnancy help centers.