

State of South Dakota

EIGHTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2014

760V0660

HOUSE BILL NO. 1240

Introduced by: Representatives Latterell, Anderson, Campbell, Ecklund, Erickson, Feickert, Haggart (Don), Heinemann (Leslie), Hickey, Hoffman, Kopp, Magstadt, Nelson, Novstrup (David), Qualm, Rasmussen, Stalzer, and Steele and Senators Curd, Begalka, Holien, and Omdahl

1 FOR AN ACT ENTITLED, An Act to prohibit the performance of abortions due to Down
2 syndrome and to provide a penalty therefor.

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

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

6 This Act shall be known as the Down syndrome nondiscrimination Act.

7 Section 2. That chapter 34-23A be amended by adding thereto a NEW SECTION to read
8 as follows:

9 For purposes of this Act, Down syndrome, is a chromosome disorder associated with an
10 extra chromosome twenty-one, in whole or in part, or an effective trisomy for chromosome
11 twenty-one.

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

14 No person may perform or attempt to perform an abortion with knowledge that the pregnant



1 woman is seeking the abortion because the unborn child has been diagnosed with, or has had
2 a genetic screening indicating that the unborn child may have Down syndrome. Any person who
3 violates this section is guilty of a Class 1 misdemeanor. No penalty may be assessed against the
4 woman upon whom the abortion is performed or attempted to be performed.

5 Section 4. That chapter 34-23A be amended by adding thereto a NEW SECTION to read
6 as follows:

7 A pregnant mother who undergoes an abortion, or her survivors, where there has been an
8 intentional, knowing, or negligent failure to comply with the provisions of this Act, may bring
9 a civil action, and obtain liquidated damages in the amount of ten thousand dollars, plus
10 reasonable attorney's fees and costs jointly and severally from the physician who performed the
11 abortion and the abortion facility where the abortion was performed.

12 This amount shall be in addition to any damages that the woman or survivors may be
13 entitled to receive under any common law or statutory provisions, to the extent that she sustains
14 any injury. This amount shall also be in addition to the amounts that the woman or other
15 survivors of the deceased unborn child may be entitled to receive under any common law or
16 statutory provisions, including the wrongful death statutes of this state.

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

19 Nothing in this Act repeals, by implication or otherwise, any provision not explicitly
20 repealed.

21 Section 6. That chapter 34-23A be amended by adding thereto a NEW SECTION to read
22 as follows:

23 If a part of this Act is invalid, all valid parts that are severable from the invalid part remain
24 in effect. If a part of this Act is invalid in one or more of its applications, the part remains in

1 effect in all valid applications that are severable from the invalid applications.