

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

439J0700

HOUSE ENGROSSED NO. **HB 1191** - 02/10/2004

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives McCaulley, Bartling, Begalka, Christensen, Davis, Deadrick (Thomas), Dykstra, Frost, Fryslie, Garnos, Gassman, Gillespie, Glenski, Hackl, Hanson, Haverly, Heineman, Hennies, Hunhoff, Juhnke, Klaudt, Koistinen, Konold, Kraus, Lange, Lintz, Madsen, McCoy, Michels, Miles, Novstrup, Olson (Ryan), Peterson (Bill), Peterson (Jim), Rave, Rhoden, Rounds, Schafer, Sebert, Smidt, Solum, Teupel, Van Etten, Van Gerpen, Weems, Wick, and Williamson and Senators Schoenbeck, Abdallah, Albers, Apa, Bogue, Earley, Greenfield, Jaspers, Kelly, Kleven, Kloucek, Koetzle, Koskan, McCracken, Moore, Napoli, Sutton (Duane), and Vitter

1 FOR AN ACT ENTITLED, An Act to establish certain legislative findings, to reinstate the
2 prohibition against certain acts causing the termination of an unborn human life, and to
3 prescribe a penalty therefor.

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

5 Section 1. The Legislature finds that the State of South Dakota has a compelling and
6 paramount interest in the preservation and protection of all human life within and subject to its
7 jurisdiction and that the preservation and protection of human life applies to all human beings,
8 born or unborn.

9 Section 2. The Legislature finds that since neither constitutional law nor Supreme Court
10 decision has resolved the question of the beginning of life, it is within the proper sphere of state
11 legislative enactment to determine the question of fact in light of the best scientific and medical



1 evidence. The Legislature finds that the life of a human being begins when the ovum is fertilized
2 by male sperm. The Legislature finds that the explosion of knowledge derived from new
3 recombinant DNA technologies over the past twenty-five years has reinforced the validity of the
4 finding of this scientific fact.

5 Section 3. The Legislature finds that, based upon the evidence derived from thirty years of
6 legalized abortions in this country, the interests of pregnant mothers protected under the South
7 Dakota Bill of Rights have been adversely affected as abortions terminate the constitutionally
8 protected fundamental interest of the pregnant mother in her relationship with her child and
9 abortions are performed without a truly informed or voluntary consent or knowing waiver of the
10 woman's rights and interests. The Legislature finds that the state has a duty to protect the
11 pregnant mother's fundamental interest in her relationship with her unborn child.

12 Section 4. The Legislature finds that abortion procedures impose significant risks to the
13 health and life of the pregnant mother, including subjecting women to significant risk of severe
14 depression, suicidal ideation, suicide, attempted suicide, post traumatic stress disorders, adverse
15 impact in the lives of women, physical injury, and a greater risk of death than risks associated
16 with carrying the unborn child to full term and childbirth.

17 Section 5. The Legislature finds that the guarantee of due process of law under the South
18 Dakota Bill of Rights applies equally to born and unborn human beings and that there is no
19 justification for the taking of a guiltless human life by the state or by any person within and
20 subject to the jurisdiction of the state.

21 Section 6. The Legislature finds that a pregnant mother possesses her own natural and
22 inalienable right to life under the South Dakota Bill of Rights, and therefore has a right to seek
23 treatment necessary to protect her own life, subject to the requirements imposed upon a doctor
24 treating such pregnant mother set forth in this Act.

1 Section 7. That chapter 22-17 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 No person may knowingly administer to, prescribe for, or procure for, or sell to any pregnant
4 woman any medicine, drug, or other substance with the specific intent of causing or abetting the
5 termination of the life of an unborn human being. No person may knowingly use or employ any
6 instrument or procedure upon a pregnant woman with the specific intent of causing or abetting
7 the termination of the life of an unborn human being. Any licensed physician who provides
8 health care to a pregnant woman shall, in all cases, make every effort to preserve both the life
9 of the mother and the life of her unborn child. Medical treatment provided to the mother by a
10 licensed physician which results in the accidental or unintentional injury or death of the unborn
11 child is not a violation of this statute.

12 Any violation of this section is a Class 5 felony.

13 Section 8. That chapter 22-17 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 Nothing in this Act may be construed to prohibit the sale, use, prescription, or administration
16 of a contraceptive measure, drug or chemical, if it is administered prior to the time when a
17 pregnancy could be determined through conventional medical testing and if the contraceptive
18 measure is sold, used, prescribed, or administered in accordance with manufacturer instructions.

19 Section 9. That chapter 22-17 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 Subject to the provisions of section 7 of this Act, no licensed physician who performs a
22 medical procedure designed or intended to prevent the death of a pregnant mother is guilty of
23 violating section 5 of this Act. Nothing in this Act may be construed to subject the pregnant
24 mother upon whom any abortion is performed or attempted to any criminal conviction and

1 penalty.

2 Section 10. That chapter 22-17 be amended by adding thereto a NEW SECTION to read as
3 follows:

4 Terms used in this Act mean:

5 (1) "Pregnant," the human female reproductive condition, of having a living unborn
6 human being within her body throughout the entire embryonic and fetal ages of the
7 unborn child from fertilization to full gestation and child birth;

8 (2) "Unborn human being," an individual living member of the species homo sapiens
9 throughout the entire embryonic and fetal ages of the unborn child from fertilization
10 to full gestation and childbirth;

11 (3) "Fertilization," that point in time when a male human sperm penetrates the zona
12 pellucida of a female human ovum.

13 Section 11. That § 34-23A-2 be repealed.

14 ~~—34-23A-2. An abortion may be performed in this state only if it is performed in compliance~~
15 ~~with § 34-23A-3, 34-23A-4, or 34-23A-5.~~

16 Section 12. That § 34-23A-3 be repealed.

17 ~~—34-23A-3. An abortion may be performed by a physician during the first twelve weeks of~~
18 ~~pregnancy. The abortion decision and its effectuation must be left to the medical judgment of~~
19 ~~the pregnant woman's attending physician during the first twelve weeks of pregnancy.~~

20 Section 13. That § 34-23A-4 be repealed.

21 ~~—34-23A-4. An abortion may be performed following the twelfth week of pregnancy and~~
22 ~~through the twenty-fourth week of pregnancy by a physician only in a hospital licensed under~~
23 ~~the provisions of chapter 34-12 or in a hospital operated by the United States, this state, or any~~
24 ~~department, agency, or political subdivision of either or in the case of hospital facilities not~~

1 ~~being available, in the licensed physician's medical clinic or office of practice subject to the~~
2 ~~requirements of § 34-23A-6.~~

3 Section 14. That § 34-23A-5 be repealed.

4 ~~— 34-23A-5. An abortion may be performed following the twenty-fourth week of pregnancy~~
5 ~~by a physician only in a hospital authorized under § 34-23A-4 and only if there is appropriate~~
6 ~~and reasonable medical judgment that performance of an abortion is necessary to preserve the~~
7 ~~life or health of the mother.~~

8 Section 15. If any provision of this Act is found to be unconstitutional, the provision is
9 severable; and the other provisions of this Act remain effective.

10 Section 16. Nothing in this Act may be construed to repeal, by implication or otherwise, any
11 provision not explicitly repealed.

12 Section 17. If any provision of this Act is ever temporarily or permanently restrained or
13 enjoined by judicial order, the provisions of chapters 34-23A and 22-17 shall be enforced.
14 However, if such temporary or permanent restraining order or injunction is subsequently stayed
15 or dissolved, or otherwise ceases to have effect, all provisions of this Act that are not restrained
16 shall have full force and effect.