FOR AN ACT ENTITLED, An Act to establish certain legislative findings, to reinstate the prohibition against certain acts causing the termination of an unborn human life, to prescribe a penalty therefor, and to provide for the implementation of such provisions under certain circumstances.

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

Section 1. The Legislature accepts and concurs with the conclusion of the South Dakota Task Force to Study Abortion, based upon written materials, scientific studies, and testimony of witnesses presented to the task force, that life begins at the time of conception, a conclusion confirmed by scientific advances since the 1973 decision of Roe v. Wade, including the fact that each human being is totally unique immediately at fertilization. Moreover, the Legislature finds, based upon the conclusions of the South Dakota Task Force to Study Abortion, and in recognition of the technological advances and medical experience and body of knowledge about abortions produced and made available since the 1973 decision of Roe v. Wade, that to fully
protect the rights, interests, and health of the pregnant mother, the rights, interest, and life of her
unborn child, and the mother's fundamental natural intrinsic right to a relationship with her
child, abortions in South Dakota should be prohibited. Moreover, the Legislature finds that the
guarantee of due process of law under the Constitution of South Dakota applies equally to born
and unborn human beings, and that under the Constitution of South Dakota, a pregnant mother
and her unborn child, each possess a natural and inalienable right to life.

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

No person may knowingly administer to, prescribe for, or procure for, or sell to any pregnant
woman any medicine, drug, or other substance with the specific intent of causing or abetting the
termination of the life of an unborn human being. No person may knowingly use or employ any
instrument or procedure upon a pregnant woman with the specific intent of causing or abetting
the termination of the life of an unborn human being.

Any violation of this section is a Class 5 felony.

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

Nothing in section 2 of this Act may be construed to prohibit the sale, use, prescription, or
administration of a contraceptive measure, drug or chemical, if it is administered prior to the
time when a pregnancy could be determined through conventional medical testing and if the
contraceptive measure is sold, used, prescribed, or administered in accordance with
manufacturer instructions.

Section 4. That chapter 22-17 be amended by adding thereto a NEW SECTION to read as
follows:

No licensed physician who performs a medical procedure designed or intended to prevent
the death of a pregnant mother is guilty of violating section 2 of this Act. However, the
physician shall make reasonable medical efforts under the circumstances to preserve both the
life of the mother and the life of her unborn child in a manner consistent with conventional
medical practice.

Medical treatment provided to the mother by a licensed physician which results in the
accidental or unintentional injury or death to the unborn child is not a violation of this statute.
Nothing in this Act may be construed to subject the pregnant mother upon whom any
abortion is performed or attempted to any criminal conviction and penalty.

Section 5. That chapter 22-17 be amended by adding thereto a NEW SECTION to read as
follows:

Terms used in this Act mean:

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

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

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

Section 6. That § 34-23A-2 be repealed.

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

Section 7. That § 34-23A-3 be repealed.

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

Section 8. That § 34-23A-4 be repealed.

§ 34-23A-4. An abortion may be performed following the twelfth week of pregnancy and
through the twenty-fourth week of pregnancy by a physician only in a hospital licensed under
the provisions of chapter 34-12 or in a hospital operated by the United States, this state, or any
department, agency, or political subdivision of either or in the case of hospital facilities not
being available, in the licensed physician's medical clinic or office of practice subject to the
requirements of § 34-23A-6.

Section 9. That § 34-23A-5 be repealed.

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

Section 10. If any court of law enjoins, suspends, or delays the implementation of a
 provision of this Act, the provisions of sections 6 to 9, inclusive, of this Act are similarly
 enjoined, suspended, or delayed during such injunction, suspension, or delayed implementation.

Section 11. If any court of law finds any provision of this Act to be unconstitutional, the
 other provisions of this Act are severable. If any court of law finds the provisions of this Act to
 be entirely or substantially unconstitutional, the provisions of §§ 34-23A-2, 34-23A-3, 34-23A-
 4, and 34-23A-5, as of June 30, 2006, are immediately reeffective.

Section 12. This Act shall be known, and may be cited, as the Women's Health and Human
Life Protection Act.