

## 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 and to prescribe a penalty therefor.

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

Section 1. The Legislature finds that the State of South Dakota has a compelling and paramount interest in the preservation and protection of all human life and finds that the guarantee of due process of law under the South Dakota Bill of Rights applies equally to born and unborn human beings.

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

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

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

Section 5. The Legislature finds that a pregnant mother, together with the unborn human child, each possess a natural and inalienable right to life under the South Dakota Bill of Rights.

Section 6. 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 unless it is necessary to preserve the life of the pregnant woman, or if there is a serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman. 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 unless it is necessary to preserve the life of the pregnant woman, or if there is a serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman.

Any violation of this section is a Class 5 felony.

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

Nothing in section 6 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 8. 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 or a serious risk of substantial and irreversible impairment of a major

bodily function of the pregnant woman is guilty of violating section 6 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 of 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 9. 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 child birth;
- (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) "Serious risk of the substantial and irreversible impairment of a major bodily function," any medically diagnosed condition that so complicates the pregnancy of the woman as to directly or indirectly cause the substantial and irreversible physical impairment of the pregnant woman;
- (4) "Fertilization," that point in time when a male human sperm penetrates the zona pellucida of a female human ovum.

Section 10. That § 34-23A-2 be repealed.

Section 11. That § 34-23A-3 be repealed.

Section 12. That § 34-23A-4 be repealed.

Section 13. That § 34-23A-5 be repealed.

Section 14. If any provision of this Act is found to be unconstitutional, the provision is severable; and the other provisions of this Act remain effective.

Section 15. Nothing in this Act may be construed to repeal, by implication or otherwise, any provision not explicitly repealed.

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

An Act to establish certain legislative findings, to reinstate the prohibition against certain acts causing the termination of an unborn human life and to prescribe a penalty therefor.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1191

\_\_\_\_\_  
Chief Clerk

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\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

House Bill No. 1191  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

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Received at this Executive Office this \_\_\_\_\_ day of \_\_\_\_\_ ,

20\_\_\_\_ at \_\_\_\_\_ M.

By \_\_\_\_\_  
for the Governor

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The attached Act is hereby approved this \_\_\_\_\_ day of \_\_\_\_\_ , A.D., 20\_\_\_\_

\_\_\_\_\_  
Governor

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STATE OF SOUTH DAKOTA,  
ss.

Office of the Secretary of State

Filed \_\_\_\_\_ , 20\_\_\_\_  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State