

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

529M0546

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1215** - 02/17/2006

Introduced by: Representatives Hunt, Brunner, Deadrick, Dykstra, Gillespie, Glenski, Haverly, Heineman, Howie, Hunhoff, Jensen, Jerke, Klaudt, Koistinen, Kraus, Krebs, Lange, McCoy, Michels, Miles, Nelson, Novstrup, Pederson (Gordon), Rausch, Rhoden, Tornow, Turbiville, Van Etten, Weems, Wick, and Willadsen and Senators Bartling, Abdallah, Earley, Kelly, Kloucek, Koskan, McNenny, Moore, Napoli, and Schoenbeck

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, to prescribe
3 a penalty therefor, and to provide for the implementation of such provisions under certain
4 circumstances.

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

6 Section 1. The Legislature accepts and concurs with the conclusion of the South Dakota
7 Task Force to Study Abortion, based upon written materials, scientific studies, and testimony
8 of witnesses presented to the task force, that life begins at the time of conception, a conclusion
9 confirmed by scientific advances since the 1973 decision of *Roe v. Wade*, including the fact that
10 each human being is totally unique immediately at fertilization. Moreover, the Legislature finds,
11 based upon the conclusions of the South Dakota Task Force to Study Abortion, and in
12 recognition of the technological advances and medical experience and body of knowledge about
13 abortions produced and made available since the 1973 decision of *Roe v. Wade*, that to fully



1 protect the rights, interests, and health of the pregnant mother, the rights, interest, and life of her
2 unborn child, and the mother's fundamental natural intrinsic right to a relationship with her
3 child, abortions in South Dakota should be prohibited. Moreover, the Legislature finds that the
4 guarantee of due process of law under the Constitution of South Dakota applies equally to born
5 and unborn human beings, and that under the Constitution of South Dakota, a pregnant mother
6 and her unborn child, each possess a natural and inalienable right to life.

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

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

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

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

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

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

24 No licensed physician who performs a medical procedure designed or intended to prevent

1 the death of a pregnant mother is guilty of violating section 2 of this Act. However, the
2 physician shall make reasonable medical efforts under the circumstances to preserve both the
3 life of the mother and the life of her unborn child in a manner consistent with conventional
4 medical practice.

5 Medical treatment provided to the mother by a licensed physician which results in the
6 accidental or unintentional injury or death to the unborn child is not a violation of this statute.

7 Nothing in this Act may be construed to subject the pregnant mother upon whom any
8 abortion is performed or attempted to any criminal conviction and penalty.

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

11 Terms used in this Act mean:

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

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

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

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

21 ~~34-23A-2. An abortion may be performed in this state only if it is performed in compliance~~
22 ~~with § 34-23A-3, 34-23A-4, or 34-23A-5.~~

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

24 ~~34-23A-3. An abortion may be performed by a physician during the first twelve weeks of~~

1 ~~pregnancy. The abortion decision and its effectuation must be left to the medical judgment of~~
2 ~~the pregnant woman's attending physician during the first twelve weeks of pregnancy.~~

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

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

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

11 ~~— 34-23A-5. An abortion may be performed following the twenty-fourth week of pregnancy~~
12 ~~by a physician only in a hospital authorized under § 34-23A-4 and only if there is appropriate~~
13 ~~and reasonable medical judgment that performance of an abortion is necessary to preserve the~~
14 ~~life or health of the mother.~~

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

18 Section 11. If any court of law finds any provision of this Act to be unconstitutional, the
19 other provisions of this Act are severable. If any court of law finds the provisions of this Act to
20 be entirely or substantially unconstitutional, the provisions of §§ 34-23A-2, 34-23A-3, 34-23A-
21 4, and 34-23A-5, as of June 30, 2006, are immediately reeffective.

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