FOR AN ACT ENTITLED, An Act to refer to a vote of the people a bill to regulate the performance of certain abortions, to reinstate the prohibition against certain acts causing the termination of the life of an unborn human being, and to prescribe a penalty therefor.

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

Section 1. The following bill, which is hereby agreed to, is referred to a vote of the people of the State of South Dakota at the next general election:

FOR AN ACT ENTITLED: An Act to regulate the performance of certain abortions, to reinstate the prohibition against certain acts causing the termination of the life of an unborn human being, and to prescribe a penalty therefor.

BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA:

Section 1. The people of the State of South Dakota find:

(1) That all induced abortions, whether Surgically or chemically induced, terminate the life of an entire, unique, living human being, a human being separate from his or her mother, as a matter of scientific and biological fact;
(2) That the State of South Dakota possesses a duty to protect, and it is a legitimate exercise of the state's power to protect, the life of each human being within its borders, including those human beings living in utero;

(3) That submitting to an abortion subjects the pregnant woman to significant psychological and physical health risk;

(4) That in the majority of cases there is neither the typical physician-patient relationship nor sufficient counseling between a pregnant woman contemplating submitting to an abortion and the physician who performs the abortion. As a consequence of this and related factors, a large percentage of the decisions made by pregnant women to abort are not truly informed and voluntary;

(5) That a pregnant mother possesses certain intrinsic rights which enjoy affirmative protection under the Constitution of the United States, and under the Constitution and laws of the State of South Dakota, and that among these rights are the fundamental right of the pregnant mother to a relationship with her child, and her fundamental right to make decisions that advance the well-being and welfare of her child;

(6) The state has a right and duty to protect the life of the unborn child, and to protect the life, health, and well-being of any pregnant woman within its jurisdiction, and it is therefore necessary to reasonably balance these interests to allow abortions only in certain circumstances which are set forth within this Act.

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

Any person who knowingly performs an abortion, as defined in this Act, is guilty of a Class 4 felony.

This section does not apply if a licensed physician is performing an abortion for one of the
following reasons:

(1) The physician has made a good faith clinical judgment, consistent with the accepted standards of medical practice, the basis of which shall be specifically identified and documented in the woman's medical records, that an abortion is necessary to avert the death of the mother;

(2) The physician has made a good faith clinical judgment, consistent with the accepted standards of medical practice, the basis of which shall be specifically identified and documented in the woman's medical records, that an abortion is necessary because there is a serious risk of a substantial and irreversible impairment of the functioning of a major bodily organ or system of the mother should the pregnancy be continued;

(3) The woman has reported to the physician that the pregnancy is the result of a rape as defined in § 22-22-1; or an incest as defined in this Act, in which she was the victim; and in either circumstance the following conditions apply:

(a) The abortion is performed before the completion of the twentieth week following the mother's last menstrual period, as determined in the physician's good faith clinical judgment, consistent with the accepted standards of medical practice, and as confirmed by a sonogram and other conventional methods;

(b) If the rape or aggravated incest has been previously reported to law enforcement, then before performing the abortion, the physician or his agent shall obtain a copy of the written record of the report from law enforcement and maintain it in the woman's medical records;

(c) If the rape or aggravated incest has not been previously reported to law enforcement, then before performing the abortion, the physician or the physician's agent shall advise the woman that such a report must be made, and
shall report the rape or aggravated incest immediately by telephone or otherwise to the state's attorney or law enforcement of the county in which the rape or aggravated incest occurred, or, if the location is unknown, to the state's attorney or law enforcement of the county in which the report is made to the physician;

(d) The report required by this section shall include the name, address, and date of birth of the woman, and, to the best of the woman's ability, the date or dates of the reported rape or aggravated incest, the location where it occurred, and either the name and address of the perpetrator, if known, or, if not known, a description of the perpetrator;

(e) Prior to the abortion, the physician, or the physician's agent, shall obtain the woman's consent to collect a buccal or other biological sample from the woman, and to collect a tissue sample from the remains of the embryo or fetus, each sufficient to perform forensic DNA analysis. After obtaining such samples, the physician shall secure, clearly label and refrigerate the samples, until transferred to law enforcement;

(f) The physician, or the physician's agent, shall within twenty-four hours after the abortion is performed, contact law enforcement and advise that the physician has obtained samples pursuant to this section, and arrange with the law enforcement to transfer custody of the samples;

(g) The physician, or the physician's agent, shall provide the woman with the phone numbers and addresses of counseling services qualified in counseling victims of rape or incest in the area of her residence and also in the area in which the procedure is performed;
(h) The physician shall document all the actions taken pursuant to this section and shall maintain copies of all the documents and consents as part of the woman's permanent medical records;

(i) Nothing in this section limits a physician's duty to report any information required by any other provision of South Dakota law.

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

Each facility which performs abortions shall have a written policy on reporting rape and aggravated incest.

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

The Department of Health shall publish, within one hundred eighty days after the effective date of this Act, forms to aid physicians in the accurate collection and reporting of information pursuant to this Act. Such forms will include the texts of § 22-22-1, and of the definition of incest in subdivision (4) of section 8 of this Act, and of § 25-1-6. The department shall also provide, upon request, materials necessary to collect and preserve the biological samples required by this Act.

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

Nothing in section 2 of this Act prohibits the prescription, sale, use or administration of a contraceptive medicine, drug, substance or device, if prescribed, sold, used or administered prior to the time when it could be determined that the woman is pregnant through conventional medical testing, and if the contraceptive measure is prescribed or sold in accordance with manufacturer instructions.
Nothing in section 2 of this Act prohibits any person from assisting a pregnant mother in obtaining an abortion in any other state where such a procedure is legal.

Section 6. That chapter 22-17 be amended by adding thereto a NEW SECTION to read as follows:

Whenever a physician is performing an abortion permitted by the provisions of section 2 of this Act, 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.

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

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 Act.

Nothing in this Act subjects the pregnant mother upon whom any abortion is performed or attempted to any criminal conviction and penalty for an unlawful abortion.

No woman making a report of incest under this Act is subject to criminal prosecution for the incest.

No good faith report of rape or incest under this Act may provide the basis for any criminal prosecution against the woman making such a report.

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

Terms used in this Act mean:

(1) "Abortion," any procedure upon a pregnant mother, or use of any instrument upon a pregnant mother, or administration of any medicine or drug or substance or device to a pregnant mother, or prescription or procurement or sale of any medicine or drug
or substance or device for use by a pregnant mother, with the intent of causing or
abetting the termination of the life of an unborn human being;

(2) "Pregnant," the human female reproductive condition of having a living unborn child
within the mother's body, throughout the entire embryonic and fetal ages of the
unborn child from fertilization to full gestation and child birth;

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

(4) "Incest," an act of sexual penetration, as defined in § 22-22-2, involving persons who
are related to each other within the degrees of consanguinity within which marriages
are, by the laws of this state, declared void pursuant to § 25-1-6, or where one of the
persons is the child of the perpetrator or the child of a spouse or former spouse of the
perpetrator.

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

Chapters 187 and 188 of the 2005 Session Laws shall take effect pursuant to section 7 of
chapter 187, as amended by section 1 of chapter 188, only in the event that the provisions of
section 2 of this Act are declared unconstitutional or their enforcement is restrained.

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

Nothing in the provisions of chapters 22-17 and 34-23A permit any action that is prohibited
by this Act. To the extent that any provision of chapters 22-17 and 34-23A might be so
construed, the provisions of this Act take precedence.

Section 11. That chapter 22-17 be amended by adding thereto a NEW SECTION to read as
Nothing in this Act authorizes a physician to perform an abortion unless the physician complies with all other applicable provisions of law, including the applicable provisions of chapter 34-23A.

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

Any physician who performs an abortion pursuant to section 2 of this Act shall submit a written statement to the Department of Health setting forth the following information as it relates to each abortion performed by the physician:

(1) The subdivision of section 2 of this Act pursuant to which the abortion was performed;

(2) All of the facts and circumstances upon which the physician relied in complying with all of the requirements and conditions of that subdivision.

The written statement shall be submitted to the Department of Health at the end of each quarter of the year in which any abortion was performed by the physician. No statement made pursuant to this section may include the name of any pregnant mother having an abortion.

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

Any law enforcement authority receiving a report of any conduct that could be a violation of any section of this chapter shall, upon written request of the victim, provide the victim or her designee with a copy of the record of the report.

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

Any law enforcement authority receiving a report of any conduct that could be a violation...
Section 15. Nothing in this Act repeals, by implication or otherwise, any provision not explicitly repealed.

Section 16. If any provision of this Act is found to be unconstitutional or its enforcement temporarily or permanently restrained or enjoined by judicial order, the provision is severable; and the other provisions of this Act remain effective, except as provided in other sections of this Act.

Section 17. This Act shall be known, and may be cited, as the Prevention of Abortion as Birth Control Act.