

# State of South Dakota

EIGHTY-SIXTH SESSION  
LEGISLATIVE ASSEMBLY, 2011

463S0397

## HOUSE BILL NO. 1171

Introduced by: Representatives Jensen, Bolin, Brunner, Greenfield, Haggar, Hansen (Jon), Hickey, Hoffman, Hubbel, Kopp, Magstadt, Miller, Nelson (Stace), Olson (Betty), Rausch, Russell, Sly, Steele, Stricherz, Van Gerpen, Venner, Verchio, and Willadsen and Senators Kraus, Fryslie, Lederman, and Maher

1 FOR AN ACT ENTITLED, An Act to provide that the use of force by a pregnant woman for  
2 the protection of her unborn child is an affirmative defense to prosecutions for certain  
3 crimes.

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

5 Section 1. It is an affirmative defense to a prosecution for homicide as defined in § 22-16-1  
6 or assault as defined in § 22-18-1 or 22-18-1.1 that the defendant is a pregnant woman who used  
7 force or deadly force against another to protect her unborn child if:

8 (1) Under the circumstances as the pregnant woman reasonably believes them to be, she  
9 would be justified under § 22-16-35 in using force or deadly force to protect herself  
10 against the unlawful force or unlawful deadly force she reasonably believes to be  
11 threatening her unborn child; and

12 (2) She reasonably believes that her intervention and use of force or deadly force are  
13 immediately necessary to protect her unborn child.

14 Section 2. The affirmative defense provided in section 1 of this Act does not apply to:



- 1       (1)   Acts committed by anyone other than the pregnant woman;
- 2       (2)   Acts where the pregnant woman would be obligated to retreat, to surrender the
- 3           possession of a thing, or to comply with a demand before using force in self-defense.
- 4           However, the pregnant woman is not obligated to retreat before using force or deadly
- 5           force to protect her unborn child, unless she knows that she can thereby secure the
- 6           complete safety of her unborn child; or
- 7       (3)   The defense of human embryos existing outside of a woman's body.