

State of South Dakota

NINETY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2017

295Y0297

HOUSE BILL NO. 1189

Introduced by: Representatives Latterell, Bartling, Brunner, Campbell, Clark, Dennert, DiSanto, Frye-Mueller, Goodwin, Gosch, Greenfield (Lana), Haggar, Haugaard, Howard, Jamison, Jensen (Kevin), Kaiser, Lake, Livermont, Marty, May, McPherson, Mills, Peterson (Sue), Pischke, Rasmussen, Schaefer, Tulson, York, and Zikmund and Senators Nelson, Bolin, Ewing, Greenfield (Brock), Jensen (Phil), Maher, Netherton, Russell, Stalzer, Tapio, and Wiik

1 FOR AN ACT ENTITLED, An Act to prohibit dismemberment abortions and to provide a
2 penalty therefor.

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

4 Section 1. That § 34-23A-1 be amended to read:

5 34-23A-1. Terms as used in this chapter mean:

6 (1) "Abortion," the use of any means to intentionally terminate the pregnancy of a
7 woman known to be pregnant with knowledge that the termination with those means
8 will, with reasonable likelihood, cause the death of the fetus;

9 (1A) "Abortion facility," a place where abortions are performed;

10 (1B) "Department," the South Dakota Department of Health;

11 (2) "Fetus," the biological offspring, including the implanted embryo or unborn child, of
12 human parents;



- 1 (3) "Fertilization," that point in time when a male human sperm penetrates the zona
2 pellucida of a female human ovum;
- 3 (4) "Human being," an individual living member of the species of Homo sapiens,
4 including the unborn human being during the entire embryonic and fetal ages from
5 fertilization to full gestation;
- 6 (5) "Dismemberment abortion," an abortion in which a fetus is dismembered and
7 extracted through the use of clamps, grasping forceps, tongs, scissors or similar
8 instruments that slice, crush, grasp, or otherwise sever a portion of the body of the
9 fetus to cut or rip it apart, even if the remains of the fetus, following the
10 dismemberment abortion are then removed through the use of suction. The term
11 dismemberment abortion does not include an abortion which solely uses suction to
12 dismember the body of the fetus by sucking fetal parts into a collection container;
- 13 (6) "Medical emergency," any condition which, on the basis of the physician's good faith
14 clinical judgment, so complicates the medical condition of a pregnant woman as to
15 necessitate the immediate abortion of her pregnancy to avert her death or for which
16 a delay will create serious risk of substantial and irreversible impairment of a major
17 bodily function;
- 18 ~~(6)~~(7) "Parent," one parent or guardian of the pregnant minor or the guardian or conservator
19 of the pregnant woman;
- 20 ~~(7)~~(8) "Physician," a person licensed under the provisions of chapter 36-4 or a physician
21 practicing medicine or osteopathy in the employ of the government of the United
22 States or of this state;
- 23 ~~(8)~~(9) "Probable gestational age of the unborn child," what, in the judgment of the
24 physician, will with reasonable probability be the gestational age of the unborn child

1 at the time the abortion is planned to be performed.

2 Section 2. That chapter 34-23A be amended by adding a NEW SECTION to read:

3 It is a Class 6 felony to intentionally perform, or attempt to perform, a dismemberment
4 abortion unless it is a medical emergency. No penalty may be assessed against the woman upon
5 whom the abortion is performed or attempted to be performed.

6 Section 3. That § 34-23A-29 be amended to read:

7 34-23A-29. In the case of the death of a human fetus or infant as the result of a partial-birth
8 or dismemberment abortion, the father of the human fetus or infant and, if the mother has not
9 attained the age of eighteen years at the time of the partial-birth or dismemberment abortion, the
10 maternal grandparents of the human fetus or infant may file a civil action to obtain appropriate
11 relief, unless the plaintiff consented to the partial-birth or dismemberment abortion or unless
12 the plaintiff's criminal conduct caused the pregnancy.

13 Section 4. That § 34-23A-30 be amended to read:

14 34-23A-30. Civil relief pursuant to § 34-23A-29 includes money damages for all injuries,
15 psychological or physical, that are proximately caused by a partial-birth or dismemberment
16 abortion in violation of § 34-23A-27. Any plaintiff with standing to sue pursuant to § 34-23A-
17 29 who has paid for the costs of a partial-birth or dismemberment abortion may recover treble
18 the costs in damages.