

# State of South Dakota

## EIGHTY-SECOND SESSION LEGISLATIVE ASSEMBLY, 2007

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### HOUSE BILL NO. 1293

Introduced by: Representatives DeVries, Gilson, Glenski, Heineman, Howie, Hunt, Jerke, Koistinen, Miles, Nelson, Noem, Novstrup (Al), Novstrup (David), Olson (Betty), Steele, Van Etten, Weems, and Wick and Senators Apa, Kloucek, Maher, Napoli, Peterson (Jim), Schmidt (Dennis), and Smidt (Orville)

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

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

5 Section 1. The Legislature finds:

- 6 (1) That a pregnant mother possesses certain inherent rights, that these are natural  
7 intrinsic rights which enjoy affirmative protection under the Constitution of the  
8 United States, and under the Constitution and laws of the State of South Dakota, and  
9 that among these rights are the fundamental right of the pregnant mother to her  
10 relationship with her child, her fundamental right to make decisions that advance the  
11 well-being and welfare of her child, and her interest in her own health;
- 12 (2) That the pregnant mother's relationship with her child is inherently beneficial to the  
13 mother; that a mother's unique relationship with her child during pregnancy is one of  
14 the most intimate and important relationships, and one most worthy of legal



1 protection; that the history and tradition of our nation has recognized this relationship  
2 as one that has intrinsic beauty and benefit to both the mother and the child; and that  
3 this relationship is recognized as one of the touchstones, and at the core, of all  
4 civilized society;

5 (3) That all induced abortions, whether surgically or chemically induced, terminate the  
6 life of an entire, unique, living human being, a human being separate from his or her  
7 mother, as a matter of scientific and biological fact, and terminate that pregnant  
8 mother's existing natural relationship with her child;

9 (4) That a physician performing an abortion terminates the life of one of the physician's  
10 patients to whom the physician owes a professional and legal duty, which duty is  
11 extinguished, under existing law, by the exercise of a written consent to an abortion  
12 by the pregnant mother of the unborn child;

13 (5) That a large percentage of the decisions made by pregnant mothers to give up their  
14 rights and interests in their relationship with their children by submitting to an  
15 abortion, are not truly informed and voluntary; that there are inherently coercive  
16 aspects to the abortion procedure; and that often the uninformed and difficult nature  
17 of the decision is seriously compounded by the practices of abortion providers;

18 (6) That an abortion is an unworkable method for a pregnant mother to give up,  
19 surrender, or waive her fundamental right to her relationship with her child;

20 (7) That in the majority of cases there is no normal or traditional physician-patient  
21 relationship or counseling between a pregnant mother contemplating submitting to  
22 an abortion and the physician who performs the abortion;

23 (8) That submitting to an abortion subjects the pregnant woman to significant health  
24 risks; that the abortion procedure is inherently dangerous to the psychological and

1 physical health of the woman; that an abortion places most women at greater risk for  
2 psychological distress, depression, suicidal ideation and suicide than carrying her  
3 child to full term and giving birth;

4 (9) That the State of South Dakota possesses a duty to protect, and it is a legitimate  
5 exercise of the State's power to protect, the natural intrinsic rights and interests of a  
6 pregnant mother in her relationship with her child; in her ability to protect the well-  
7 being of her child; and her own health;

8 (10) That the State of South Dakota possesses a duty to protect, and it is a legitimate  
9 exercise of the State's power to protect, the life of each human being within its  
10 borders, including those human beings living in utero;

11 (11) That it is neither practical nor possible for the State to simultaneously protect these  
12 fundamental rights and interests of pregnant mothers and the lives of their children,  
13 and, at the same time, provide legal authority or protection for the act of a physician  
14 who terminates the lives of these mothers' unborn children by an abortion; that  
15 protection of these rights of the mothers are in conflict with protection of the act of  
16 the physician which terminates these rights by terminating the life of the unborn  
17 child;

18 (12) That the right and duty of the State to protect and preserve the life of the unborn child  
19 cannot co-exist with a law that authorizes the termination of that life by the  
20 physician;

21 (13) That it is now clear that the State of South Dakota can either protect the mother's  
22 fundamental natural intrinsic rights, or protect the physician's act that terminates and  
23 adversely affects them, but that the State cannot effectively protect both; and that the  
24 State's duty is to protect the natural and intrinsic rights of the pregnant mother and

1 the life of her unborn child, and must, therefore, prohibit physicians from terminating  
2 these rights and interests by the performance of abortions, to the fullest reasonable  
3 extent federal law shall permit, consistent with the provisions of this Act.

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

6 Any person who knowingly performs any procedure upon a pregnant mother, or who uses  
7 any instrument upon a pregnant mother, or who administers any medicine or drug or substance  
8 or device to a pregnant mother, or who prescribes or procures or sells any medicine or drug or  
9 substance or device for use by a pregnant mother, with the intent of causing or abetting the  
10 termination of the life of an unborn human being, is guilty of a Class 4 felony.

11 This section shall not apply if a licensed physician is performing a surgical or medical  
12 abortion for one of the following reasons:

- 13 (1) The physician has made an appropriate and reasonable medical judgment, the bases  
14 of which shall be specifically identified and documented in the pregnant mother's  
15 medical records, that the abortion is necessary to save the life of the mother;
- 16 (2) The physician has made an appropriate and reasonable medical judgment, the bases  
17 of which shall be specifically identified and documented in the pregnant mother's  
18 medical records, that the abortion is necessary in order to prevent a devastating and  
19 irreversible injury to the mother's health, which is likely to cause a very significant  
20 impairment of the functioning of a major bodily organ or system, and which is likely  
21 to cause a very significant impairment of the quality of the mother's life. However,  
22 the physician may only proceed with the abortion if a second physician, not  
23 associated in practice with the first, also makes the same judgment in writing after  
24 examining the pregnant mother and reviewing all appropriate medical records and

1 tests;

2 (3) The physician has determined that the pregnancy is the result of a rape, as that term  
3 is defined in § 22-22-1, in which cases, the following conditions apply:

4 (a) The abortion cannot be performed later than seventeen weeks following the  
5 date of the mother's last menstrual period, as confirmed by a sonogram and  
6 other conventional methods;

7 (b) Before performing the procedure the physician shall confirm by personally  
8 obtaining a copy of the record of the report from the entity to which the report  
9 was made that the pregnant mother had reported the rape within fifty days of  
10 the event to the appropriate law enforcement authorities, and, if the rape  
11 allegation is made pursuant to subdivision 22-22-1(5), shall confirm that the  
12 report contains the name and last known address of the alleged perpetrator,  
13 and, in all other instances, shall confirm that the report contains either the  
14 name and last known address of the alleged perpetrator or, if the identity of the  
15 perpetrator is unknown, contains a description of the alleged perpetrator to the  
16 best of the mother's ability;

17 (c) Before performing the procedure the physician shall obtain the consent of the  
18 mother to have a blood sample drawn or other biological sample collected  
19 from both herself and from the remains of the child, so that these can be  
20 provided by the physician to the appropriate law enforcement authorities so  
21 that DNA testing may be performed;

22 (d) The physician shall draw the blood samples or collect the other biological  
23 samples, and shall then secure and clearly label the samples, and shall take  
24 such steps as are appropriate and necessary to preserve the samples, until

1 transfer to the law enforcement authorities;

2 (e) The physician shall contact the law enforcement authorities by telephone, shall  
3 advise the law enforcement authorities that the physician has obtained samples  
4 pursuant to this section, and shall arrange with the law enforcement authorities  
5 to transfer custody of the samples to the authorities within twenty-four hours  
6 after the procedure is performed;

7 (f) The physician shall document all the actions taken pursuant to this subdivision  
8 and shall maintain copies of all the documents and consents as part of the  
9 mother's permanent medical records;

10 (4) The physician has determined that the pregnancy is the result of an incest, as that  
11 term is defined in § 22-22A-1, in which cases, the following conditions apply:

12 (a) The abortion cannot be performed later than seventeen weeks following the  
13 date of the mother's last menstrual period, as confirmed by a sonogram and  
14 other conventional methods;

15 (b) Before performing the procedure the physician shall obtain the consent of the  
16 mother to report the incest together with the name and last known address of  
17 the alleged perpetrator to the appropriate law enforcement authorities;

18 (c) Before performing the procedure the physician shall contact the appropriate  
19 law enforcement authorities by telephone, shall advise the law enforcement  
20 authorities that the physician is making a report of incest, pursuant to this  
21 section, and shall provide the name and address of the pregnant mother  
22 together with the name and last known address of the alleged perpetrator, as  
23 provided by the mother;

24 (d) Before performing the procedure the physician shall provide the mother with

1 the location of the office of the Department of Social Services nearest to the  
2 mother's residence and nearest to the location of the facility where the  
3 procedure is to be performed, and shall inform the mother that the department  
4 will upon request provide counseling and other supportive services to the  
5 mother;

6 (e) Before performing the procedure the physician shall obtain the consent of the  
7 mother to have a blood sample drawn or other biological sample collected  
8 from both herself and from the remains of the child, so that these can be  
9 provided by the physician to the appropriate law enforcement authorities so  
10 that DNA testing may be performed;

11 (f) The physician shall draw the blood samples or collect the other biological  
12 samples, shall secure and clearly label the samples, and shall take such steps  
13 as are appropriate and necessary to preserve the samples, until transfer to the  
14 law enforcement authorities;

15 (g) The physician shall contact the law enforcement authorities by telephone, shall  
16 advise the law enforcement authorities that the physician has obtained samples  
17 pursuant to this section, and shall arrange with the law enforcement authorities  
18 to transfer custody of the samples to the authorities within twenty-four hours  
19 after the procedure is performed;

20 (h) The physician shall document all the actions taken pursuant to this subdivision  
21 and shall maintain copies of all the documents and consents as part of the  
22 mother's permanent medical records.

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

1        Nothing in section 2 of this Act prohibits the prescription or sale or use or administration  
2        of a contraceptive medicine or drug or substance or device, if prescribed or sold or used or  
3        administered prior to the time when it could be determined that the woman is pregnant through  
4        conventional medical testing, and if the contraceptive measure is prescribed or sold in  
5        accordance with manufacturer instructions.

6        Nothing in section 2 of this Act prohibits any person from assisting a pregnant mother in  
7        obtaining an abortion in any other state where such a procedure is legal.

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

10       Whenever a physician is performing an abortion permitted by the provisions of section 2 of  
11       this Act, the physician shall make reasonable medical efforts under the circumstances to  
12       preserve both the life of the mother and the life of her unborn child in a manner consistent with  
13       conventional medical practice.

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

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

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

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

22       Terms used in this Act mean:

23       (1)    "Abortion," the use of any procedure or instrument or medicine or drug or substance  
24              or other means to intentionally terminate the pregnancy of a woman known to be



pregnant, with knowledge that the termination with reasonable likelihood will cause the death of the unborn child;

(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.

Section 7. 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 8. 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 9. That chapter 22-17 be amended by adding thereto a NEW SECTION to read as follows:

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 10. 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 shall submit a written statement to the Department of Health setting forth the following information as it relates to each and every 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 11. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as follows:

Any law enforcement authority receiving a report of a rape shall, upon written request of the victim, provide the victim or her designee with a copy of the record of the report.

Section 12. That chapter 22-22A be amended by adding thereto a NEW SECTION to read as follows:

Any law enforcement authority receiving a report of incest shall, upon written request of the victim, provide the victim or her designee with a copy of the record of the report.

Section 13. Nothing in this Act repeals, by implication or otherwise, any provision not explicitly repealed.

Section 14. 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

1 Act.

2 Section 15. This Act shall be known, and may be cited, as the Women's Health and Human

3 Life Protection Act.