

# State of South Dakota

NINETY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2016

265X0060

HOUSE ENGROSSED NO. **SB 72** - 03/07/2016

Introduced by: Senators Monroe, Brown, Cammack, Greenfield (Brock), Haggar (Jenna), Heineman (Phyllis), Holien, Jensen (Phil), Novstrup (David), Olson, Omdahl, Rampelberg, Rusch, and Shorma and Representatives Latterell, Anderson, Bolin, Brunner, Campbell, Craig, Deutsch, DiSanto, Greenfield (Lana), Haggar (Don), Harrison, Haugaard, Heinemann (Leslie), Holmes, Klumb, Langer, Marty, May, Mickelson, Novstrup (Al), Partridge, Peterson (Kent), Qualm, Rasmussen, Ring, Rounds, Russell, Schoenbeck, Stalzer, Steinhauer, Tulson, Verchio, Westra, Wiik, Willadsen, Wollmann, and Zikmund

1 FOR AN ACT ENTITLED, An Act to prohibit the abortion of an unborn child who is capable  
2 of experiencing pain and to provide a penalty therefor.

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

4 Section 1. That chapter 34-23A be amended by adding a NEW SECTION to read:

5 The Legislature finds that:

6 (1) The state has a compelling state interest in protecting the lives of unborn children  
7 from the stage at which substantial medical evidence indicates that they are capable  
8 of feeling pain;

9 (2) There is substantial medical evidence that an unborn child is capable of experiencing  
10 pain by twenty weeks after fertilization.

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

12 Terms used in this Act mean:



- 1 (1) "Post-fertilization age," the age of an unborn child as calculated from fertilization;
- 2 (2) "Probable post-fertilization age of the unborn child," what, in reasonable medical  
3 judgment, will with reasonable probability be the post-fertilization age of the unborn  
4 child at the time the abortion is planned to be performed or induced;
- 5 (3) "Reasonable medical judgment," a medical judgment that would be made by a  
6 reasonably prudent physician, knowledgeable about the case and the treatment  
7 possibilities with respect to the medical conditions involved;
- 8 (4) "Woman," a female human being whether or not she has reached the age of majority.

9 Section 3. That chapter 34-23A be amended by adding a NEW SECTION to read:

10 It is a Class 1 misdemeanor to intentionally or recklessly perform, or attempt to perform, an  
11 abortion of an unborn child capable of feeling pain unless it is a medical emergency. No penalty  
12 may be assessed against the woman upon whom the abortion is performed, or attempted to be  
13 performed.

14 Section 4. That chapter 34-23A be amended by adding a NEW SECTION to read:

15 For purposes of this Act, an unborn child is capable of feeling pain when the physician  
16 performing, or attempting to perform, the abortion or another physician upon whose  
17 determination that physician relies, determines that the probable post-fertilization age of the  
18 unborn child is twenty or more weeks.

19 In determining the post-fertilization age of the unborn child, the physician shall make  
20 inquiries of the pregnant woman and perform medical examinations and tests that a reasonably  
21 prudent physician would perform to accurately diagnose the post-fertilization age of an unborn  
22 child.

23 Section 5. That chapter 34-23A be amended by adding a NEW SECTION to read:

24 No medical emergency may form the basis for an exception to section 3 if it is based on a

1 claim or diagnosis that the pregnant mother will engage in conduct which she intends to result  
2 in her death or other self harm.

3 Section 6. That chapter 34-23A be amended by adding thereto a NEW SECTION to read  
4 as follows:

5 When an abortion of an unborn child capable of feeling pain is necessary due to a medical  
6 emergency, the physician shall deliver the child in the manner which, in reasonable medical  
7 judgment, provides the best opportunity for the unborn child to survive, but only if it is  
8 consistent with preserving the pregnant mother's life and preventing an irreversible impairment  
9 of a major bodily function of the pregnant woman.

10 Section 7. That § 34-23A-34 be amended to read as follows:

11 34-23A-34. The Department of Health shall prepare a reporting form for physicians which  
12 shall provide for the collection of the following information:

- 13 (1) The month, day, and year of the induced abortion;
- 14 (2) The method of abortion used for each induced abortion;
- 15 (3) The approximate gestational age, in weeks, of the unborn child involved in the  
16 abortion;
- 17 (4) The age of the mother at the time of the abortion and, if the mother was younger than  
18 sixteen years of age at the time the child was conceived, the age of the father, if  
19 known;
- 20 (5) The specific reason for the induced abortion, including the following:
  - 21 (a) The pregnancy was a result of rape;
  - 22 (b) The pregnancy was a result of incest;
  - 23 (c) The mother could not afford the child;
  - 24 (d) The mother did not desire to have the child;

- 1 (e) The mother's emotional health was at risk;
- 2 (f) The mother would suffer substantial and irreversible impairment of a major
- 3 bodily function if the pregnancy continued;
- 4 (g) Other, which shall be specified;
- 5 (6) Whether the induced abortion was paid for by:
  - 6 (a) Private insurance;
  - 7 (b) Public health plan;
  - 8 (c) Other, which shall be specified;
- 9 (7) Whether coverage was under:
  - 10 (a) A-fee-for-service insurance company;
  - 11 (b) A managed care company; or
  - 12 (c) Other, which shall be specified;
- 13 (8) A description of the complications, if any, for each abortion and for the aftermath of
- 14 each abortion;
- 15 (9) The fee collected for performing or treating the abortion;
- 16 (10) The type of anesthetic, if any, used for each induced abortion;
- 17 (11) The method used to dispose of fetal tissue and remains;
- 18 (12) The specialty area of the physician;
- 19 (13) Whether the physician performing the induced abortion has been subject to license
- 20 revocation or suspension or other professional sanction;
- 21 (14) The number of previous abortions the mother has had;
- 22 (15) The number of previous live births of the mother, including both living and deceased;
- 23 (16) The date last normal menses began for the mother;
- 24 (17) The name of physician performing the induced abortion;

- 1 (18) The name of hospital or physician office where the induced abortion was performed;
- 2 (19) A unique patient number that can be used to link the report to medical report for  
3 inspection, clarification, and correction purposes but that cannot, of itself, reasonably  
4 lead to the identification of any person obtaining an abortion;
- 5 (20) Certain demographic information including:
  - 6 (a) State, county, and city of occurrence of abortion;
  - 7 (b) State, county, and city of residence of mother;
  - 8 (c) Marital status of mother;
  - 9 (d) Education status of mother;
  - 10 (e) Race ~~and hispanic origin~~ of mother;
- 11 (21) Certain Rhesus factor (Rh) information including:
  - 12 (a) Whether the mother received the Rh test;
  - 13 (b) Whether the mother tested positive for the Rh-negative factor;
  - 14 (c) Whether the mother received a Rho(D) immune globulin injection; ~~and~~
- 15 (22) The sex of the unborn child and the following information:
  - 16 (a) Whether the pregnant mother used a sex-determining test;
  - 17 (b) What type of sex-determining test the pregnant mother used; and
  - 18 (c) The approximate gestational age of the unborn child, in weeks, when the test  
19 was taken;
- 20 (23) The post-fertilization age of the unborn child and the following information:
  - 21 (a) How the post-fertilization age was determined or if a determination was not  
22 made, the basis of the determination that an exception existed;
  - 23 (b) Whether an intra-fetal injection was used in an attempt to induce fetal demise;
  - 24 (c) If the unborn child was deemed capable of experiencing pain, pursuant to

1 section 4 of this Act, the basis of the determination that it is a medical  
2 emergency;

3 (d) If the unborn child was deemed capable of experiencing pain pursuant to  
4 section 4 of this Act, whether the method of the abortion used was that, in  
5 reasonable medical judgment, provided the best opportunity for the unborn  
6 child to survive and, if such a method was not used, the basis of the  
7 determination that termination of the pregnancy in that manner would pose a  
8 greater risk either of the death of the pregnant woman or of the substantial and  
9 irreversible physical impairment of a major bodily function, not including a  
10 psychological or emotional condition, of the woman than other available  
11 methods.

12 Section 8. That chapter 34-23A be amended by adding a NEW SECTION to read:

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

15 Section 9. That § 34-23A-4 be amended to read:

16 34-23A-4. An abortion may be performed following the twelfth week of pregnancy and  
17 ~~through the twenty-fourth~~ through the twenty-second week of pregnancy by a physician only in  
18 a hospital licensed under the provisions of chapter 34-12 or in a hospital operated by the United  
19 States, this state, or any department, agency, or political subdivision of either or in the case of  
20 hospital facilities not being available, in the licensed physician's medical clinic or office of  
21 practice subject to the requirements of § 34-23A-6.

22 Section 10. That § 34-23A-5 be amended to read:

23 34-23A-5. An abortion may be performed following the ~~twenty-fourth~~ twenty-second week  
24 of pregnancy by a physician only in a hospital authorized under § 34-23A-4 and only ~~if there is~~

- 1 ~~appropriate and reasonable medical judgment that performance of an abortion is necessary to~~
- 2 ~~preserve the life or health of the mother~~ in the case of a medical emergency.