State of South Dakota

EIGHTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2014

229V0393

HOUSE JUDICIARY ENGROSSED NO. HB 1162 -
02/12/2014

Introduced by: Representatives Haggar (Jenna), Anderson, Bolin, Cammack, Campbell, Craig, Cronin, Ecklund, Feickert, Gosch, Greenfield, Haggar (Don), Heinemann (Leslie), Hickey, Hoffman, Kaiser, Kopp, Langer, Latterell, Magstadt, Nelson, Novstrup (David), Olson (Betty), Peterson, Qualm, Rasmussen, Ring, Rounds, Schaefer, Schoenfish, Solum, Stalzer, Steele, Tulson, Tyler, Verchio, and Wick and Senators Rhoden, Begalka, Brown, Heineman (Phyllis), Holien, Hunhoff (Jean), Jones (Chuck), Kirkeby, Krebs, Lederman, Lucas, Maher, Monroe, Novstrup (Al), Omdahl, Otten (Ernie), Rampelberg, Rave, and Solano

FOR AN ACT ENTITLED, An Act to prohibit the practice of sex-selective abortions, to establish certain procedures to better ensure that sex-selective abortions are not practiced in South Dakota, and to provide penalties therefor.

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

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

Terms as used in this Act mean:

(1) "Sex-selective abortion," the performance of an abortion with knowledge that the pregnant mother is seeking the abortion due to the sex of the unborn child;

(2) "Sex-determining test," any scientific test that is capable of determining the sex of an unborn child.

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Insertions into existing statutes are indicated by underscores.
Deletions from existing statutes are indicated by ~~overstrikes~~.

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

No person may knowingly or in reckless disregard perform or attempt to perform a sex-selective abortion. A violation of this section is a Class 6 felony. No penalty may be assessed against the pregnant mother upon whom the abortion is performed or attempted to be performed.

Section 3. That § 34-23A-56 be amended by adding thereto a NEW SUBDIVISION to read as follows:

Inquire into whether the pregnant mother knows the sex of her unborn child and if so:

(a) Which type of test the pregnant mother used to determine the sex of her unborn child;

(b) The approximate gestational age of the unborn child, in weeks, when the pregnant mother took the sex-determining test;

(c) What is the sex of the unborn child; and

(d) Whether the mother is seeking an abortion due to the sex of the unborn child.

The physician shall consider whether the pregnant mother has experienced pressure or coercion to obtain an abortion due to the sex of the unborn child.

Section 4. That § 34-23A-10.1 be amended by adding thereto a NEW SUBDIVISION to read as follows:

A written statement that sex-selective abortions are illegal in the state of South Dakota and that a pregnant mother cannot have an abortion, either solely or partly, due to the unborn child's sex, regardless of whether that unborn child is a girl or a boy or whether it is of the pregnant mother's free will or the result of the use of pressure and coercion.

Section 5. That § 34-23A-34 be amended by adding thereto a NEW SUBDIVISION to read

as follows:

The sex of the unborn child and the following information:

(a) Whether the pregnant mother used a sex-determining test;

(b) What type of sex-determining test the pregnant mother used and specify the following information:

(i) A home blood test;

(ii) A home urine test;

(iii) A blood test at a medical clinic;

(iv) An ultrasound;

(v) An amniocentesis test; or

(vi) Another specified type of test;

(c) The approximate gestational age of the unborn child, in weeks, when the test was taken; and

(d) Whether the mother is seeking an abortion due to the sex of the unborn child.

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

A pregnant mother who undergoes an abortion, or her survivors, where there has been an intentional, knowing, or negligent failure to comply with the provisions of sections 2, 3, 4, and 5 of this Act, may bring a civil action, and obtain liquidated damages in the amount of ten thousand dollars, plus reasonable attorney's fees and costs jointly and severally from the physician who performed the abortion and the abortion facility where the abortion was performed.

This amount shall be in addition to any damages that the woman or survivors may be entitled to receive under any common law or statutory provisions, to the extent that she sustains

any injury. This amount shall also be in addition to the amounts that the woman or other survivors of the deceased unborn child may be entitled to receive under any common law or statutory provisions, including the wrongful death statutes of this state.

Section 7. That chapter 34-23A be amended by adding thereto a NEW SECTION to read as follows:

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

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

If a part of this Act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this Act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.