

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

439J0700

HOUSE BILL NO. 1191

Introduced by: Representatives McCaulley, Bartling, Begalka, Christensen, Davis, Deadrick (Thomas), Dykstra, Frost, Fryslie, Garnos, Gassman, Gillespie, Glenski, Hackl, Hanson, Haverly, Heineman, Hennies, Hunhoff, Juhnke, Klaudt, Koistinen, Konold, Kraus, Lange, Lintz, Madsen, McCoy, Michels, Miles, Novstrup, Olson (Ryan), Peterson (Bill), Peterson (Jim), Rave, Rhoden, Rounds, Schafer, Sebert, Smidt, Solum, Teupel, Van Etten, Van Gerpen, Weems, Wick, and Williamson and Senators Schoenbeck, Abdallah, Albers, Apa, Bogue, Earley, Greenfield, Jaspers, Kelly, Kleven, Kloucek, Koetzle, Koskan, McCracken, Moore, Napoli, Sutton (Duane), and Vitter

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

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

5 Section 1. The Legislature finds that the State of South Dakota has a compelling and
6 paramount interest in the preservation and protection of all human life within and subject to its
7 jurisdiction and that the preservation and protection of human life applies to all human life, born
8 or unborn.

9 Section 2. The Legislature finds that since neither constitutional law nor Supreme Court
10 decision has resolved the question of the beginning of life, it is within the proper sphere of state
11 legislative enactment to determine the question in light of the best scientific and medical
12 evidence. The Legislature therefor finds that unborn human life begins when the ovum is



1 fertilized by male sperm.

2 Section 3. The Legislature finds that the guarantee of due process of law under the South
3 Dakota Bill of Rights applies equally to born and unborn human life and that there is no other
4 justification for the taking of a guiltless human life by the state or by any person within and
5 subject to the jurisdiction of the state.

6 Section 4. The Legislature finds that there is no justification for protecting an unborn human
7 life in preference to the life of the mother if birth or continued pregnancy constitutes a clear and
8 immediate threat of death to the mother or serious risk of substantial and irreversible
9 impairment of a major bodily function.

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

12 No person may administer to, prescribe for, or procure for any pregnant woman any
13 medicine, drug, or other substance with the intent of causing or abetting the termination of an
14 unborn human life unless it is necessary to preserve the life of the pregnant woman, or if there
15 is a serious risk of substantial and irreversible impairment of a major bodily function. No person
16 may use or employ any instrument or procedure with the intent of causing or abetting the
17 termination of an unborn human life unless it is necessary to preserve the life of any pregnant
18 woman or if there is a serious risk of substantial and irreversible impairment of a major bodily
19 function.

20 Any violation of this section is a Class 5 felony.

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

23 No licensed physician who terminates an unborn human life in the exercise of reasonable
24 medical judgment and after determining in good faith that such termination of the unborn human

1 life is medically necessary to prevent the death of the pregnant woman or a serious risk of
2 substantial and irreversible impairment of a major bodily function of the pregnant woman is
3 guilty of violating section 5 of this Act.

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

6 Terms used in this Act mean:

7 (1) "Pregnant," the human female reproductive condition, of having a developing unborn
8 human life within her body after the fertilization of the ovum by male sperm;

9 (2) "Serious risk of the substantial and irreversible impairment of a major bodily
10 function," any medically diagnosed condition that so complicates the pregnancy of
11 the woman as to directly or indirectly cause the substantial and irreversible physical
12 impairment; and

13 (3) "Unborn human life," an individual organism of the species homo sapiens that begins
14 when the ovum is fertilized by male sperm until live birth.

15 Section 8. If any provision of this Act is found to be invalid, the remaining provisions are
16 severable.