

INITIATIVE PETITION

WE, THE UNDERSIGNED qualified voters of the state of South Dakota, petition that the following proposed law be submitted to the voters of the state of South Dakota at the general election on November 4, 2008 for their approval or rejection pursuant to the Constitution of the State of South Dakota.

The substance of the proposed law is as follows:
Be it enacted by the people of South Dakota.

AN ACT TO PROTECT THE LIVES OF UNBORN CHILDREN, AND THE INTERESTS AND HEALTH OF PREGNANT MOTHERS, BY PROHIBITING ABORTIONS EXCEPT IN CASES WHERE THE MOTHER'S LIFE OR HEALTH IS AT RISK, AND IN CASES OF RAPE AND INCEST

Section 1. That chapter 22-17 be amended by adding thereto a NEW SECTION to read as follows:

The people of the State of South Dakota find:

- (1) That all induced abortions, whether surgically or chemically induced, terminate the life of an entire, unique, living human being, a human being separate from his or her mother, as a matter of scientific and biological fact;
- (2) That the State of South Dakota possesses a duty to protect the life of all human beings within the state, and it is a legitimate exercise of the state's power to protect the life of all human beings within the state, including those human beings living in utero;
- (3) That submitting to an abortion subjects the pregnant woman to significant psychological and physical health risks, and that in the majority of cases there is neither the typical physician-patient relationship nor sufficient counseling between a pregnant woman contemplating submitting to an abortion and the physician who performs the abortion;
- (4) That a pregnant woman possesses certain intrinsic rights which enjoy affirmative protection under the Constitution of the United States, and under the Constitution and laws of the State of South Dakota, and that among these rights are the fundamental right of the pregnant woman to her relationship with her child, and her fundamental right to make decisions that advance the well-being and welfare of her child;
- (5) The state has a right and duty to protect the life of the unborn child, and to protect the life, health, and well-being of any pregnant woman within its jurisdiction, and it is therefore necessary to reasonably balance these interests to allow abortions only in certain circumstances which are set forth within this Act;
- (6) That the state has an established history of working to protect the life of the unborn child, and the life, health, and well-being of pregnant women within its jurisdiction.

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

Except as permitted by section 3, 4, 5, or 6 of this Act, any person who knowingly performs any procedure upon a pregnant woman, or uses any instrument upon a pregnant woman, or administers any medicine or drug or substance or device to a pregnant woman, or prescribes or procures or sells any medicine or drug or substance or device for use by a pregnant woman, or employs any other means, with the intent of causing the termination of the life of an unborn human being, is guilty of performing an illegal abortion, which is a Class 4 felony.

Section 3. Life of the Pregnant Woman Exception. That chapter 22-17 be amended by adding thereto a NEW SECTION to read as follows:

No person may be prosecuted under section 2 of this Act if a licensed physician has made a judgment that an abortion is necessary to avert the death of the pregnant woman, unless in reaching that judgment the physician knowingly disregards accepted standards of medical practice. The basis of that judgment shall be specifically identified and documented in the woman's medical records.

Section 4. Health of the Pregnant Woman Exception. That chapter 22-17 be amended by adding thereto a NEW SECTION to read as follows:

No person may be prosecuted under section 2 of this Act if a licensed physician has made a judgment that an abortion is necessary because there is a serious risk of a substantial and irreversible impairment of the functioning of a major bodily organ or system of the pregnant woman should the pregnancy be continued and which risk could be prevented through an abortion, unless in reaching that judgment the physician knowingly disregards accepted standards of medical practice. The basis of that judgment shall be specifically identified and documented in the woman's medical records.

Section 5. Rape of the Pregnant Woman Exception. That chapter 22-17 be amended by adding thereto a NEW SECTION to read as follows:

No person may be prosecuted under section 2 of this Act if the woman has reported to the licensed physician that her pregnancy is the result of a rape as defined in § 22-22-1, in which she was the victim, and the physician has complied with sections 7 and 8 of this Act.

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

No person may be prosecuted under section 2 of this Act if the woman has reported to the licensed physician that her pregnancy is the result of incest as defined in section 14 of this Act, and the physician has complied with sections 7 and 8 of this Act.

Section 7. Condition for Rape and Incest Exceptions. That chapter 22-17 be amended by adding thereto a NEW SECTION to read as follows:

Any abortion performed pursuant to section 5 or 6 of this Act must be performed before the completion of the twentieth week following the date of the pregnant woman's last menstrual period, as determined by the physician, according to accepted standards of medical practice, and as confirmed by ultrasound. Any physician who knowingly disregards accepted standards of medical practice in making this determination is subject to a Class 4 felony.

Section 8. Reporting and Counseling Requirements. That chapter 22-17 be amended by adding thereto a NEW SECTION to read as follows:

- Before performing an abortion pursuant to section 5 or 6 of this Act, the physician shall meet the following requirements:
- (1) Advise the woman that a report of the rape or incest must be made, and prior to performing the abortion shall report the rape or incest immediately by telephone or otherwise to the state's attorney or law enforcement of the county in which the rape or incest occurred, or, if the location is unknown, to the state's attorney or law enforcement of the county in which the report is made to the physician. The report shall include the name, address, and date of birth of the woman, and, to the best of the woman's ability, the date or dates of the reported rape or incest, the location where it occurred, and either the name and address of the perpetrator, if known, or, if not known, a description of the perpetrator and, in the case of incest, a description of the relationship between the pregnant woman and the perpetrator;
 - (2) Obtain the woman's consent to collect a buccal or other biological sample from the woman, and a tissue sample from the remains of the embryo or fetus, each sufficient to perform forensic DNA analysis. The physician shall collect, secure, clearly label, and refrigerate the samples, and within twenty-four hours arrange with law enforcement to transfer custody of the samples;
 - (3) Provide the woman with the phone numbers and addresses of counseling services qualified in counseling victims of rape and incest in the area of her residence and also in the area in which the procedure is performed;
 - (4) Document all the actions taken pursuant to this section and maintain copies of all the documents and consents as part of the woman's permanent medical records.

Nothing in this section limits a physician's duty to report any information required by any other provision of South Dakota law.

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

Each facility that performs abortions shall have a written policy on reporting rape and incest.

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

The Department of Health shall publish, within one hundred eighty days after the effective date of this Act, forms to aid physicians in the accurate collection and reporting of information pursuant to this Act. The forms shall include the text of § 22-22-1, §25-1-6, and the definition of incest in section 14 of this Act, and such other information as the department shall conclude is necessary or helpful and appropriate to aid physicians. The department shall also provide, upon request, materials necessary to collect and preserve the biological samples required by this Act.

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

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

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

Section 12. That chapter 22-17 be amended by adding thereto a NEW SECTION to read as follows:

Whenever a physician is performing an abortion permitted by section 3 or 4 of this Act, the physician shall make reasonable medical efforts under the circumstances to preserve both the life of the pregnant woman and the life of her unborn child in a manner consistent with accepted standards of medical practice. Any physician, who knowingly disregards accepted standards of medical practice in failing to make such efforts, is subject to a Class 4 felony.

Section 13. That chapter 22-17 be amended by adding thereto a NEW SECTION to read as follows:

Medical treatment provided to the pregnant woman by a licensed physician that results in the accidental or unintentional injury or death of the unborn child is not a violation of this Act.

Nothing in this Act subjects the pregnant woman upon whom any abortion is performed or attempted to any criminal conviction and penalty for an unlawful abortion.

No good faith report of rape or incest made under this Act may provide the basis for any criminal prosecution against the woman making such a report.

No woman making a report of incest who is eligible to obtain a legal abortion under section 6 of this Act may be prosecuted for the sexual conduct resulting in the pregnancy.

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

- Terms used in this Act mean:
- (1) "Pregnant," the human female reproductive condition of having a living unborn child within the pregnant woman's body, throughout the entire embryonic and fetal ages of the unborn child from fertilization to full gestation and child birth;
 - (2) "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;
 - (3) "Incest," an act of sexual penetration, as defined in § 22-22-2, in which the woman was less than eighteen years of age at the time of sexual penetration and in which:
 - (a) The male performing the sexual penetration was related to the woman within the degrees of consanguinity within which marriages are, by the laws of this state, declared void pursuant to § 25-1-6, or
 - (b) The woman was the child of the spouse or former spouse of the male performing the sexual penetration.

Section 15. 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 its enforcement is temporarily or permanently restrained or enjoined by judicial order.

Section 16. 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 17. 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 18. 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 3, 4, 5, or 6 of this Act shall submit a written statement to the Department of Health setting forth the following information as it relates to each abortion performed by the physician:

- (1) The section 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 section.
- 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 woman having an abortion, but the physician shall provide a copy of the patient's records with the patient's names redacted, if requested by the Department of Health in writing.

Section 19. That chapter 22-17 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 20. That chapter 22-17 be amended by adding thereto a NEW SECTION to read as follows:

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 Act.

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

This Act shall be known, and may be cited, as An Act to Protect the Lives of Unborn Children, ~~and the Interests and Health of Pregnant Mothers~~ ^{with} by Prohibiting Abortions Except in Cases Where the Mother's Life or Health is at Risk, and in Cases of Rape and Incest.

December, 2007
Chris Nelson
SECRETARY OF STATE

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