

# State of South Dakota

EIGHTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2014

229V0393

## HOUSE BILL NO. 1162

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

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

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

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

7 Terms as used in this Act mean:

- 8 (1) "Sex-selective abortion," the performance of an abortion with knowledge that the  
9 pregnant mother is seeking the abortion due to the sex of the unborn child;
- 10 (2) "Sex-determining test," any scientific test that is capable of determining the sex of  
11 an unborn child.



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

3 No person may knowingly, recklessly, or negligently perform or attempt to perform a sex-  
4 selective abortion. A violation of this section is a Class 6 felony. No penalty may be assessed  
5 against the pregnant mother upon whom the abortion is performed or attempted to be performed.

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

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

- 10 (a) Which type of test the pregnant mother used to determine the sex of her  
11 unborn child;
- 12 (b) The approximate gestational age of the unborn child, in weeks, when the  
13 pregnant mother took the sex-determining test;
- 14 (c) What is the sex of the unborn child; and
- 15 (d) Whether the mother is seeking an abortion due to the sex of the unborn child.

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

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

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

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

1 as follows:

2 The sex of the unborn child and the following information:

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

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

6 (i) A home blood test;

7 (ii) A home urine test;

8 (iii) A blood test at a medical clinic;

9 (iv) An ultrasound;

10 (v) An amniocentesis test; or

11 (vi) Another specified type of test;

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

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

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

17 A pregnant mother who undergoes an abortion, or her survivors, where there has been an  
18 intentional, knowing, or negligent failure to comply with the provisions of sections 2, 3, 4, and  
19 5 of this Act, may bring a civil action, and obtain liquidated damages in the amount of ten  
20 thousand dollars, plus reasonable attorney's fees and costs jointly and severally from the  
21 physician who performed the abortion and the abortion facility where the abortion was  
22 performed.

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

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

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

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

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

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