

State of South Dakota

EIGHTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2013

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HOUSE BILL NO. 1236

Introduced by: Representatives Hansen, Bolin, Cronin, Ecklund, Gosch, Heinemann (Leslie), Hickey, Kaiser, Latterell, Magstadt, Mickelson, Olson (Betty), Rounds, Sly, and Wick and Senators Novstrup (Al), Brown, Lederman, Olson (Russell), Rave, and Rhoden

1 FOR AN ACT ENTITLED, An Act to prohibit the recovery of damages in certain wrongful
2 birth and wrongful life civil suits based upon the lost opportunity to terminate the life of an
3 unborn child.

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

5 Section 1. No physician has a legal duty to perform a surgical or medical procedure for the
6 sole purpose of terminating the life of an unborn human being, at any age of gestation, for any
7 reason, regardless of who may request the physician to do so.

8 Section 2. No physician has a legal duty to test for, or advise a pregnant mother to test for,
9 a genetic illness of an unborn human being at any age of gestation for the purpose of obtaining
10 information to be considered in determining whether to terminate the life of an unborn human
11 being. Notwithstanding the provisions of this section the legal or professional duty of a
12 physician to test for conditions of the unborn human being for the purpose of treating such
13 conditions is in no way affected.

14 Section 3. No civil cause of action for wrongful birth is cognizable in any court in South



1 Dakota, and no damages may be recovered in a suit for wrongful birth.

2 Section 4. No civil cause of action for wrongful life is cognizable in any court in South
3 Dakota, and no damages may be recovered in a suit for wrongful life.

4 Section 5. The term, human being, as used in this Act, is the same as defined by subdivision
5 34-23A-1(4).

6 Section 6. The term, civil cause of action for a wrongful birth, means a civil cause of action
7 for money damages awarded to a parent or other relative or care giver of a minor child, born
8 with a physical illness, disease, congenital anomaly, or physical or mental disability, on the basis
9 that if the pregnant mother of such minor child had known of such illness, disease, congenital
10 anomaly or physical or mental disability, prior to the birth of the child, the pregnant mother
11 would have terminated the life of the unborn human being prior to live birth.

12 Section 7. The term, civil cause of action for wrongful life, means a civil cause of action for
13 money damages awarded to a person born with an illness, disease, congenital anomaly or
14 physical or mental disability, brought on the basis that had the pregnant mother of such person
15 known of such illness, disease, congenital anomaly or physical or mental disability, his or her
16 pregnant mother would have terminated the life of such person prior to his or her live birth.

17 Section 8. Nothing in this Act affects or precludes a civil cause of action for professional
18 negligence in the medical treatment of a pregnant mother and her unborn child, other than
19 claims for wrongful birth and wrongful life.