

2025 South Dakota Legislature

House Bill 1260**AMENDMENT 1260A
FOR THE INTRODUCED BILL**

1 **An Act to require that birth certificates and certain official documents reflect**
2 **biological sex.**

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

4 **Section 1. That § 32-12-3 be AMENDED:**

5 **32-12-3.** Every application under this chapter ~~shall state the full~~ must:

6 (1) State the applicant's:

7 (a) Full legal name or any other name taken for lawful purposes, date;

8 (b) Date of birth, social;

9 (c) Social security number, sex,;

10 (d) ~~Biological sex~~ Sex, as defined in § 34-25-1.1, ~~listed on the applicant's birth~~
11 ~~certificate;~~ and ~~current~~

12 (e) Current mailing address and residential address of the applicant, and
13 briefly; and

14 (2) Briefly describe the applicant.

15 The applicant shall state whether ~~he~~ the applicant has previously been licensed as
16 an operator, and, if so, when and by what state or country, and whether an application
17 has ever been refused, and, if so, the date of and reason for ~~such~~ the suspension,
18 revocation, or refusal. All applicants shall certify the information provided as true and
19 correct.

20 **Section 2. That § 32-12-17.10 be AMENDED:**

21 **32-12-17.10.** An operator's license, motorcycle operator's license, restricted
22 minor's permit, motorcycle restricted minor's permit, instruction permit, and motorcycle
23 instruction permit ~~shall~~ must bear ~~a~~:

24 (1) A distinguishing number assigned to the licensee, the holder;

25 (2) The holder's full legal name or any name lawfully taken, date;

- 1 (3) The holder's date of birth,~~gender,~~_;
- 2 (4) The holder's ~~biological~~ sex, as defined in § 34-25-1.1, ~~listed on the holder's birth~~
3 certificate;
- 4 (5) The holder's principal residence address,~~an;~~
- 5 (6) An indication if the licensee is holder:
- 6 (a) Is a donor pursuant to chapter 34-26,~~an indication if the licensee has;~~
- 7 (b) Has a living will pursuant to chapter 34-12D or a durable power of attorney
8 for health care pursuant to chapter 59-7,~~an indication if the licensee is;~~ or
- 9 (c) Is a veteran pursuant to the provisions of § 32-12-17.15,~~a;~~
- 10 (7) A full facial digital photograph,~~a~~ of the holder;
- 11 (8) A brief description of the licensee,~~the licensee's~~ holder;
- 12 (9) The holder's signature,~~security;~~
- 13 (10) Security features designed to deter forgery and counterfeiting, to promote an
14 adequate level of confidence in the authenticity of the cards, and to facilitate
15 detection of fraudulent cards,~~the;~~
- 16 (11) The issue date of the license,~~the or permit;~~
- 17 (12) The expiration date of the license,~~an or permit;~~
- 18 (13) An indication that the license or permit is temporary or limited term, ~~if the holder~~
19 has temporary lawful status in the United States,~~the;~~
- 20 (14) The name of this state;~~;~~ and a
- 21 (15) A security marking approved by the United States Department of Homeland
22 Security reflecting the level of compliance with 6 C.F.R. Part 37~~as amended~~
23 through (January 1, 2015).
- 24 The department shall indicate upon each license or permit the general class of
25 vehicles that the licensee may drive. The back of the license ~~shall~~ or permit must contain
26 a barcode. The department shall include in the barcode the name of this state, the
27 information printed on the license or permit, the card design revision date indicating the
28 most recent change or modification to the visible format of the card, and an indicator if
29 the license or permit is temporary or limited term. No barcode, or other means by which
30 information may be retrieved electronically, may contain the licensee's social security
31 number.

32 **Section 3. That § 32-12-17.2 be AMENDED:**

33 **32-12-17.2.** The Department of Public Safety may issue upon application a
34 nondriver identification card, similar in form but distinguishable in color from a driver

1 license, to any resident of this state. Each applicant for a nondriver identification card
2 shall, as part of the application, present to the department a certified copy of a birth
3 ~~certificate of birth~~ or another form of evidence of date of birth and identity as allowed by
4 § 32-12-3.1.

5 Except as provided in § 32-12-17.16, the fees for a nondriver identification card
6 are the same as prescribed for a driver license in § 32-12-16. Each nondriver identification
7 card expires on the holder's birthday in the fifth year following the issuance of the
8 nondriver identification card, or on the date of expiration of the applicant's authorized stay
9 in the United States as determined by the systematic alien verification for entitlements
10 system or alternate method approved by the United States Department of Homeland
11 Security or, if there is no expiration date, for a period no longer than one year from date
12 of issuance, whichever occurs first. Each nondriver identification card is renewable one
13 hundred eighty days before its expiration upon application and payment of the required
14 fee. Any nondriver identification card renewed before its expiration expires five years after
15 the holder's ensuing birthday, or on the date of expiration of the applicant's authorized
16 stay in the United States as determined by the systematic alien verification for
17 entitlements system or alternate method approved by the United States Department of
18 Homeland Security or, if there is no expiration date, for a period no longer than one year
19 from date of issuance, whichever occurs first.

20 The nondriver identification card must bear ~~an~~ an:

21 (1) An indication if the holder ~~has~~:

22 (a) Has a living will pursuant to chapter 34-12D or a durable power of attorney
23 for health care pursuant to chapter 59-7 ~~and an indication if the holder is~~,
24 or

25 (b) Is a veteran pursuant to the provisions of § 32-12-17.15; and

26 (2) The holder's ~~biological~~ sex, as defined in § 34-25-1.1, ~~listed on the holder's birth~~
27 ~~certificate~~.

28 Any nondriver identification card renewed during the thirty-day period following
29 the date of expiration expires five years from the holder's previous birthday, or on the
30 date of expiration of the applicant's authorized stay in the United States as determined by
31 the systematic alien verification for entitlements system or alternate method approved by
32 the United States Department of Homeland Security or, if there is no expiration date, for
33 a period no longer than one year from date of issuance, whichever occurs first.

34 **Section 4. That § 34-25-1.1 be AMENDED:**

- 1 **34-25-1.1.** Terms as used in this chapter mean:
- 2 (1) "Authorized representative," an attorney, physician, funeral director, or other
- 3 designated agent acting on behalf of the family;
- 4 ~~(1A)~~(2) "Autopsy," the ~~post-mortem~~ post-mortem dissection and examination of a dead
- 5 body, including fetal tissue older than twenty-four weeks;
- 6 ~~(3) — "Biological sex," the physical condition of being female or male, as determined by~~
- 7 ~~chromosomes and anatomy at birth, or as provided in section 8 of this Act;~~
- 8 ~~(2)~~(4)(3) "Certified copy," a vital record or part thereof issued and sealed by the state
- 9 registrar and other entities as authorized by the department;
- 10 ~~(3)~~(5)(4) "Dead body," a lifeless human body or parts thereof from the state of which it
- 11 may reasonably be concluded that death recently occurred;
- 12 ~~(4)~~(6)(5) "Death certificate," a record by means of which both the fact of death record
- 13 and the medical certificate have been completed and filed as required by the
- 14 department;
- 15 ~~(5)~~(7)(6) "Demographic information," the information required by the state registrar to
- 16 describe characteristics of a registrant, the family of a registrant, and geographic
- 17 locations pertinent to a registrant;
- 18 ~~(6)~~(8)(7) "Department," the Department of Health;
- 19 ~~(7)~~(9)(8) "Fact of death information," the information required by the state registrar to
- 20 record the time and place a death occurs and to identify the person who is
- 21 deceased. The term does not include information regarding cause and manner of
- 22 death;
- 23 ~~(8)~~(10)(9) "Fact of death record," the portion of the death certificate that contains the fact
- 24 of death information and demographic information;
- 25 (10) "Female," an individual who naturally has, had, will have, or would have, but for a
- 26 congenital anomaly or intentional or unintentional disruption, the reproductive
- 27 system that produces, transports, and utilizes eggs for fertilization;
- 28 ~~(9)~~(11) "Fetal death," death prior to the complete expulsion or extraction from its
- 29 mother of a product of human conception, irrespective of the duration of
- 30 pregnancy. The death is indicated by the fact that after ~~such~~ the expulsion or
- 31 extraction, the fetus does not breathe or show any other evidence of life ~~such as,~~
- 32 including the beating of the heart, pulsation of the umbilical cord, or definite
- 33 movement of voluntary muscles;
- 34 ~~(10)~~(12) "Fetus," the biological offspring, including the implanted embryo or unborn
- 35 child, of human parents;

- 1 ~~(11)~~(13) "Final disposition," the burial, interment, cremation, or other disposition of a
 2 dead body or fetus;
- 3 ~~(12)~~(14) "Institution," any establishment, public or private, ~~which~~ that provides in-
 4 patient medical, surgical, or diagnostic care or treatment, or nursing, custodial, or
 5 domiciliary care to two or more unrelated individuals, or to which ~~persons~~
 6 individuals are committed by law;
- 7 ~~(13)~~(15) "Live birth," the complete expulsion or extraction from its mother of a product
 8 of human conception, irrespective of the duration of pregnancy, which, after such
 9 expulsion or extraction, breathes or shows any other evidence of life ~~such as,~~
 10 including the beating of the heart, pulsation of the umbilical cord, or definite
 11 movement of voluntary muscles, whether or not the umbilical cord has been cut or
 12 the placenta is attached;
- 13 ~~(14)~~(16) "Medical certificate," the portion of the death certificate that contains the
 14 information regarding the cause and manner of death;
- 15 ~~(15)~~(17) "Male," an individual who naturally has, had, will have, or would have, but for
 16 a congenital anomaly or intentional or unintentional disruption, the reproductive
 17 system that produces, transports, and utilizes sperm for fertilization;
- 18 (18) "Sex," an individual's biological sex, either female or male;
- 19 (19) "Vital records," records of birth, death, fetal death, burial, marriage, divorce, and
 20 data related thereto as entered on forms prescribed by the department; and
- 21 ~~(18)~~(20) "System of vital registration system," the process by which vital records
 22 are collected, completed, amended, certified, filed, preserved, and incorporated
 23 into the official records of the office of vital records, and activities related thereto
 24 including the tabulation, analysis, and publication of statistical data derived from
 25 such records;
- 26 ~~(16)~~ "Vital records," records of birth, death, fetal death, burial, marriage, divorce, and
 27 data related thereto as entered on forms prescribed by the department.

28 **Section 5. That § 34-25-8 be AMENDED:**

29 **34-25-8.** The birth of every child born in this state ~~shall~~ must be registered as
 30 ~~provided in~~ required by this chapter. Within seven days after the date of each live birth,
 31 there ~~shall~~ must be filed with the department by electronic means, if a facility has ~~such~~
 32 the capabilities, or otherwise if electronic means are not available, a certificate of ~~such~~
 33 birth. The certificate ~~shall~~ must be upon the form prescribed by the department and must
 34 contain the child's biological sex:

- 1 (1) Date of birth;
- 2 (2) Place of birth; and
- 3 (3) Sex.

4 For certificates of birth filed after seven days, but within one year from the date of
5 birth, the department may, by rules promulgated pursuant to chapter 1-26, require
6 additional evidence in support of the facts of birth.

7 Informational copies of birth records ~~shall~~ must be available to any person who can
8 identify the birth record by providing the name of the person on the birth record, the date
9 of birth, the mother's maiden name, or additional information required to locate the
10 record. Nothing in this section prohibits the release of information that is contained on a
11 birth record ~~which would~~ and does not identify any ~~person~~ individual named in the record.

12 If one hundred years have elapsed after the date of birth, the records of the birth
13 in the custody of the department ~~shall~~ must become available to the public without
14 restriction. The department shall promulgate rules, pursuant to chapter 1-26, to provide
15 for the continued safekeeping of these records.

16 **Section 6. That § 34-25-51 be AMENDED:**

17 **34-25-51.** ~~A~~ Except as otherwise provided in this chapter, a vital record may be
18 amended in accordance with rules promulgated by the department pursuant to chapter 1-
19 26. Each request for amending a birth, death, or marriage certificate, after one year from
20 the event, ~~shall~~ must be accompanied by an ~~eight dollar~~ eight-dollar fee to the department
21 for amending the record and filing the affidavit.

22 **Section 7. That a NEW SECTION be added to chapter 34-25:**

23 ~~Except as provided in section 8 of this Act, the biological sex listed on a birth~~
24 ~~certificate may only be amended in accordance with a court order upon a finding that the~~
25 ~~individual's biological sex is inaccurate.~~

26 ~~This section does not apply to~~

27 ~~The date of birth, place of birth, or sex listed on a birth certificate may only be~~
28 ~~amended in the following manners:~~

- 29 (1) To correct clerical or data errors identified by the health care facility at which the
30 child was born. The errors may be corrected at any time upon submission by the
31 health care facility of a notarized affidavit, together with supporting
32 documentation;

- 1 (2) Upon a finding of a court, by clear and convincing evidence, that the information
2 listed on the birth certificate was factually incorrect at the time it was recorded; or
3 (3) To correct the sex of a child born with a congenital anomaly, if additional testing is
4 required to accurately identify the sex. The sex may be corrected, within one year
5 from the date of birth, upon submission by the child's attending physician of a
6 notarized affidavit, together with supporting documentation, identifying the child's
7 sex as male or female.

8 **~~Section 8. That a NEW SECTION be added to chapter 34-25:~~**

- 9 ~~If a child is born with a physiological disorder that renders the child's biological sex not~~
10 ~~identifiable at birth as male or female, based upon externally observable reproductive~~
11 ~~anatomy, the attending physician must make a presumptive determination of the child's~~
12 ~~biological sex. That determination may be amended, at any time, based on genetic analysis~~
13 ~~and an evaluation of the child's naturally occurring internal and external reproductive~~
14 ~~anatomy.~~