

2025 South Dakota Legislature

House Bill 1260**AMENDMENT 1260B
FOR THE HOUSE STATE AFFAIRS ENGROSSED 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) Sex, as defined in § 34-25-1.1; ~~and current~~

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

13 (2) Briefly describe the applicant.

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

19 **Section 2. That § 32-12-3.1 be AMENDED:**

20 **32-12-3.1.** Any applicant as provided for in this chapter shall, on making
21 application for an operator's license, motorcycle operator's license, restricted minor's
22 permit, motorcycle restricted minor's permit, instruction permit, motorcycle instruction
23 permit, or nondriver identification card, present to the examiner one of the following
24 documents in order to establish identity ~~and,~~ date of birth, and sex, as defined in § 34-
25 25.1.1:

- 1 (1) A certified copy of ~~a~~ an original United States birth certificate issued at or near the
2 time of birth, filed with the state office of vital records or equivalent agency;
- 3 (2) A consular report of birth abroad (United States Department of State form FS-240,
4 DS-1350, or FS-545);
- 5 (3) A valid, unexpired permanent resident card (form I-551 issued by the United States
6 Department of Homeland Security or Immigration and Naturalization Services);
- 7 (4) An unexpired employment authorization document issued by the United States
8 Department of Homeland Security (form I-766 or I-688B);
- 9 (5) An unexpired foreign passport with a valid, unexpired United States visa affixed
10 accompanied by the approved I-94 form documenting the applicant's most recent
11 entrance into the United States;
- 12 (6) A certificate of naturalization issued by the United States Department of Homeland
13 Security (form N-550 or N-570);
- 14 (7) A certificate of citizenship form N-560 or N-561 issued by the United States
15 Department of Homeland Security;
- 16 (8) A valid driver license issued by this state or another state that meets the
17 requirements of 6 C.F.R. Part 37 as amended through January 1, 2015, and is
18 acceptable by federal agencies for official purposes;
- 19 (9) Any other document designated by the Department of Homeland Security by
20 publication in the Federal Register that establishes identity, sex, and date of birth;
21 or
- 22 (10) A valid, unexpired United States passport.

23 For all documentation offered by the applicant to provide evidence of identity, sex,
24 date of birth, social security number or nonwork authorized status, address of principal
25 residence, and lawful status, the department shall make a copy of the documentation and
26 shall retain the copy for ten years. All documents retained under this section are
27 confidential.

28 The examiner may, as part of a documented exceptions process, accept other
29 evidence of identity and date of birth of any applicant and lawful status of any United
30 States citizen only if the examiner is satisfied that the applicant cannot, for good reason
31 beyond the applicant's control, produce such primary documents. The examiner shall
32 record the acceptance of any alternative document under the exceptions process. The
33 Department of Public Safety may not require new evidence of birth at the time an
34 application is made by a person holding an operator's license, motorcycle operator's
35 license, restricted minor's permit, motorcycle restricted minor's permit, instruction permit,

1 motorcycle instruction permit, or nondriver identification card, if that person's driver
 2 license or nondriver identification card meets the requirements of 6 C.F.R. Part 37 as
 3 amended through January 1, 2015, is acceptable by federal agencies for official purposes,
 4 and is turned in to the department with the application. Any person who obtains a driver
 5 license or nondriver identification card pursuant to this section fraudulently or by use of a
 6 fraudulently obtained document is guilty of a Class 1 misdemeanor.

7 **Section 3. That § 32-12-17.10 be AMENDED:**

8 **32-12-17.10.** An operator's license, motorcycle operator's license, restricted
 9 minor's permit, motorcycle restricted minor's permit, instruction permit, and motorcycle
 10 instruction permit ~~shall~~ must bear ~~a~~:
 11 (1) A distinguishing number assigned to the licensee, the holder;
 12 (2) The holder's full legal name or any name lawfully taken, date;
 13 (3) The holder's date of birth, gender;
 14 (4) The holder's sex, as defined in § 34-25-1.1;
 15 (5) The holder's principal residence address, an;
 16 (6) An indication if the licensee is holder:
 17 (a) Is a donor pursuant to chapter 34-26, an indication if the licensee has;
 18 (b) Has a living will pursuant to chapter 34-12D or a durable power of attorney
 19 for health care pursuant to chapter 59-7, an indication if the licensee is; or
 20 (c) Is a veteran pursuant to the provisions of § 32-12-17.15, a;
 21 (7) A full facial digital photograph, a of the holder;
 22 (8) A brief description of the licensee, the licensee's holder;
 23 (9) The holder's signature, security;
 24 (10) Security features designed to deter forgery and counterfeiting, to promote an
 25 adequate level of confidence in the authenticity of the cards, and to facilitate
 26 detection of fraudulent cards, the;
 27 (11) The issue date of the license, the or permit;
 28 (12) The expiration date of the license, an or permit;
 29 (13) An indication that the license or permit is temporary or limited term, if the holder
 30 has temporary lawful status in the United States, the;
 31 (14) The name of this state; and a
 32 (15) A security marking approved by the United States Department of Homeland
 33 Security reflecting the level of compliance with 6 C.F.R. Part 37 as amended
 34 through (January 1, 2015).

1 The department shall indicate upon each license or permit the general class of
2 vehicles that the licensee may drive. The back of the license ~~shall~~ or permit must contain
3 a barcode. The department shall include in the barcode the name of this state, the
4 information printed on the license or permit, the card design revision date indicating the
5 most recent change or modification to the visible format of the card, and an indicator if
6 the license or permit is temporary or limited term. No barcode, or other means by which
7 information may be retrieved electronically, may contain the licensee's social security
8 number.

9 **Section 4. That § 32-12-17.2 be AMENDED:**

10 **32-12-17.2.** The Department of Public Safety may issue upon application a
11 nondriver identification card, similar in form but distinguishable in color from a driver
12 license, to any resident of this state. Each applicant for a nondriver identification card
13 shall, as part of the application, present to the department a certified copy of ~~a~~ an original
14 birth certificate of birth issued at or near the time of birth, or another form of evidence of
15 date of birth ~~and~~, identity, and sex, as defined in § 34-25-1.1, as allowed by § 32-12-3.1.

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

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

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

1 (a) Has a living will pursuant to chapter 34-12D or a durable power of attorney
 2 for health care pursuant to chapter 59-7 ~~and an indication if the holder is;~~
 3 or

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

5 (2) The holder's sex, as defined in § 34-25-1.1.

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

12 **Section 5. That § 34-25-1.1 be AMENDED:**

13 **34-25-1.1.** Terms ~~as~~ used in this chapter mean:

14 (1) "Authorized representative," an attorney, physician, funeral director, or other
 15 designated agent acting on behalf of the family;

16 ~~(1A)~~(2) "Autopsy," the ~~post mortem~~ post-mortem dissection and examination of a dead
 17 body, including fetal tissue older than twenty-four weeks;

18 ~~(2)~~(3) "Certified copy," a vital record or part thereof issued and sealed by the state
 19 registrar and other entities as authorized by the department;

20 ~~(3)~~(4) "Dead body," a lifeless human body or parts thereof from the state of which it may
 21 reasonably be concluded that death recently occurred;

22 ~~(4)~~(5) "Death certificate," a record by means of which both the fact of death record and
 23 the medical certificate have been completed and filed as required by the
 24 department;

25 ~~(5)~~(6) "Demographic information," the information required by the state registrar to
 26 describe characteristics of a registrant, the family of a registrant, and geographic
 27 locations pertinent to a registrant;

28 ~~(6)~~(7) "Department," the Department of Health;

29 ~~(7)~~(8) "Fact of death information," the information required by the state registrar to
 30 record the time and place a death occurs and to identify the person who is
 31 deceased. The term does not include information regarding cause and manner of
 32 death;

33 ~~(8)~~(9) "Fact of death record," the portion of the death certificate that contains the fact of
 34 death information and demographic information;

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

1 including the tabulation, analysis, and publication of statistical data derived from
2 such records;
3 ~~(16) "Vital records," records of birth, death, fetal death, burial, marriage, divorce, and~~
4 ~~data related thereto as entered on forms prescribed by the department.~~

5 **Section 6. That § 34-25-8 be AMENDED:**

6 **34-25-8.** The birth of every child born in this state ~~shall~~ must be registered as
7 ~~provided in~~ required by this chapter. Within seven days after the date of each live birth,
8 there ~~shall~~ must be filed with the department by electronic means, if a facility has ~~such~~
9 the capabilities, or otherwise if electronic means are not available, a certificate of ~~such~~
10 birth. The certificate ~~shall~~ must be upon the form prescribed by the department and must
11 contain the child's:

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

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

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

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

27 **Section 7. That § 34-25-51 be AMENDED:**

28 **34-25-51.** ~~A~~ Except as otherwise provided in this chapter, a vital record may be
29 amended in accordance with rules promulgated by the department pursuant to chapter 1-
30 26. Each request for amending a birth, death, or marriage certificate, after one year from
31 the event, ~~shall~~ must be accompanied by an ~~eight-dollar~~ eight-dollar fee to the department
32 for amending the record and filing the affidavit.

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

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

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

8 (2) Upon a finding of a court, by clear and convincing evidence, that the information
9 listed on the birth certificate was factually incorrect at the time it was recorded; or

10 (3) To correct the sex of a child born with a congenital anomaly, if additional testing is
11 required to accurately identify the sex. The sex may be corrected, within one year
12 from the date of birth, upon submission by the child's attending physician of a
13 notarized affidavit, together with supporting documentation, identifying the child's
14 sex as male or female.