



## 2026 South Dakota Legislature

# House Bill 1164

Introduced by: **Representative** Jorgenson

1 **An Act to establish the crime of fraudulent assisted reproduction and provide a**  
2 **penalty and civil liability therefor.**

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

4 **Section 1. That a NEW SECTION be added to chapter 22-22A:**

5 Terms used in sections 1 to 4 of this Act, inclusive, mean:

6 (1) "Assisted reproduction procedure," a method of causing pregnancy, other than  
7 through sexual intercourse, including in vitro fertilization and transfer of embryos,  
8 intracytoplasmic sperm injection, and intracervical or intrauterine insemination;  
9 (2) "Donor," an individual who donates reproductive material, whether for personal  
10 use or compensation; and  
11 (3) "Reproductive material," a human sperm or ovum, or a human organism at any  
12 stage of development from fertilized ovum to embryo.

13 **Section 2. That a NEW SECTION be added to chapter 22-22A:**

14 It is a Class 5 felony for a licensed health care provider, in the performance of an  
15 assisted reproduction procedure, to:

16 (1) Knowingly cause the use of reproductive material from a donor if the patient did  
17 not give written consent to receive the reproductive material from the donor; or  
18 (2) Intentionally cause the use of the licensed health care provider's own reproductive  
19 material without the patient's written consent.

20 It is not a defense to a violation of this section that the patient consented to an  
21 anonymous donor.

22 Notwithstanding any other provision of law, the applicable period of limitation for  
23 prosecution of a violation of this section does not begin to run until the date on which the  
24 violation is discovered and reported to law enforcement or any other governmental  
25 agency.

1   **Section 3. That a NEW SECTION be added to chapter 22-22A:**

2           The following individuals may bring a civil action against a licensed health care  
3           provider for performing an assisted reproduction procedure in violation of section 2 of this  
4           Act:

5           (1)   The patient who gives birth to a child as a result of the assisted reproduction  
6           procedure;

7           (2)   The surviving spouse of the patient under subdivision (1);

8           (3)   The intended parent of a child born as a result of the assisted reproduction  
9           procedure;

10           (4)   A child born as a result of the assisted reproduction procedure in violation of section  
11           2 of this Act; and

12           (5)   The donor whose reproductive material was used without the donor's consent or in  
13           a manner inconsistent with the donor's consent.

14           An individual who brings any action under subdivisions (1) to (4) of this section  
15           has a separate cause of action for each child born as a result of the assisted reproduction  
16           procedure. An individual who brings an action under subdivision (5) of this section has a  
17           separate cause of action for each patient who received an assisted reproduction procedure  
18           using the donor's reproductive material.

19           An individual who prevails in an action under this section is entitled to liquidated  
20           damages of ten thousand dollars, compensatory and punitive damages, and reasonable  
21           attorney's fees. An individual who prevails in any action brought pursuant to subdivisions  
22           (1) to (4) of this section is also entitled to all costs associated with the assisted  
23           reproduction procedure.

24           An action may be maintained under this section whether or not the licensed health  
25           care provider alleged to have violated section 2 of this Act is charged or convicted of the  
26           alleged crime.

27   **Section 4. That a NEW SECTION be added to chapter 22-22A:**

28           Notwithstanding any other provision of law, an individual shall commence a civil  
29           action pursuant to section 3 of this Act no later than five years after:

30           (1)   The eighteenth birthday of the child born as a result of the assisted reproduction  
31           procedure; or

32           (2)   The earliest of the dates on which:

- 1       (a) The individual first discovers evidence sufficient to bring an action against
- 2       the licensed health care provider through deoxyribonucleic acid analysis;
- 3       (b) The individual first becomes aware of the existence of a record that provides
- 4       evidence sufficient to bring an action against the licensed health care
- 5       provider; or
- 6       (c) The licensed health care provider admits to the facts giving rise to the
- 7       action.