



2026 South Dakota Legislature

House Bill 1212

Introduced by: **Representative** Randolph

1 **An Act to revise provisions in order to strengthen protections for unborn children.**

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

3 **Section 1. That § 21-5-1 be AMENDED:**

4 **21-5-1.** ~~Whenever~~If the death ~~or injury of a person of an individual,~~ including an
 5 unborn child, ~~shall be is~~ caused by a wrongful act, neglect, or default, ~~and the act, neglect,~~
 6 ~~or default is such as would have entitled the party injured to maintain~~ that would otherwise
 7 entitle the individual to bring an action and recover damages ~~in respect thereto, if death~~
 8 ~~had not ensued, then and in every such case, the corporation which, or the person who,~~
 9 ~~would have been liable, if death had not ensued,~~ had the individual survived, the
 10 wrongdoer, or the personal representative of the estate of such person as such personal
 11 representative, ~~shall be the wrongdoer, is~~ liable, ~~to an action for damages,~~
 12 notwithstanding the death of the person injured, and although the death shall have been
 13 caused under such circumstances as amount in law to a felony; and when the action is
 14 against such personal representative, the damages recovered shall be a valid claim against
 15 the estate of such deceased person. However, an action under this section involving an
 16 unborn child shall be for the exclusive benefit of the mother or the lawfully married parents
 17 of the unborn child.

18 **Section 2. That a NEW SECTION be added to chapter 22-16:**

19 The provisions of this chapter apply equally to an offense committed against an
 20 unborn child. The provisions of this chapter do not apply to the unintentional death of an
 21 unborn child resulting from:

22 (1) Lifesaving procedures undertaken to preserve the life of a pregnant mother, if
 23 accompanied by reasonable and available steps to preserve the life of the mother's
 24 unborn child; or

25 (2) A spontaneous miscarriage.

1 The provisions of this chapter are in addition to any other provisions relating to the
2 injury or death of an unborn child. The provisions of this chapter supersede any other
3 provisions relating to the injury or death of an unborn child to the extent that those
4 provisions are in conflict with or are inconsistent with the provisions of this chapter.

5 **Section 3. That § 22-16-1.1 be REPEALED.**

6 ~~Homicide is fetal homicide if the person knew, or reasonably should have known,~~
7 ~~that a woman bearing an unborn child was pregnant and caused the death of the unborn~~
8 ~~child without lawful justification and if the person:~~

9 ~~(1) Intended to cause the death of or do serious bodily injury to the pregnant woman~~
10 ~~or the unborn child; or~~

11 ~~(2) Knew that the acts taken would cause death or serious bodily injury to the pregnant~~
12 ~~woman or her unborn child; or~~

13 ~~(3) If perpetrated without any design to effect death by a person engaged in the~~
14 ~~commission of any felony.~~

15 ~~Fetal homicide is a Class B felony.~~

16 ~~This section does not apply to acts which cause the death of an unborn child if~~
17 ~~those acts were committed during any abortion, lawful or unlawful, to which the pregnant~~
18 ~~woman consented.~~

19 **Section 4. That § 22-17-5.2 be REPEALED.**

20 ~~A female who undergoes an unlawful abortion, as set forth in § 22-17-5.1, may~~
21 ~~not be held criminally liable for the abortion.~~