



2026 South Dakota Legislature

House Bill 1257

Introduced by: **Representative** Soye

1 **An Act to regulate the performance and reporting of abortions necessary to preserve**
 2 **the life of a pregnant female and to provide a penalty therefor.**

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

4 **Section 1. That chapter 22-17 be amended with a NEW SECTION:**

5 Terms used in this chapter mean:

6 (1) "Abortion," the act of administering, prescribing, providing, selling, or using any
 7 drug, medicine, or other substance, or providing, selling, or using any device or
 8 instrument, with the intent to terminate a clinically diagnosable pregnancy,
 9 including the elimination of one or more unborn children in a multifetal pregnancy,
 10 with knowledge that the termination by those means will, with reasonable
 11 likelihood, cause the death of the unborn child, provided the term does not include:

12 (a) Medical treatment that is provided to a pregnant female and results in the
 13 accidental or unintentional death of the unborn child;

14 (b) Treatment to resolve a miscarriage;

15 (c) The treatment or removal of an ectopic pregnancy;

16 (d) The removal from the uterus of a deceased unborn child; or

17 (e) Any medical procedure performed for the purpose of saving the life or
 18 preserving the health of the unborn child;

19 (2) "Ectopic pregnancy," the implantation of an embryo outside the uterus, in an
 20 abnormal location in the uterus, or in a scarred portion of the uterus;

21 (3) "Miscarriage," the spontaneous loss of a pregnancy, including the circumstances of
 22 an inevitable miscarriage, an incomplete miscarriage, a missed miscarriage, and a
 23 septic miscarriage;

24 (4) "Pregnant", the human female reproductive condition of having a living unborn
 25 child within the female's body, throughout every stage of the unborn child's life
 26 and development, from fertilization to full gestation and childbirth;

1 (5) "Reasonable medical judgment," a medical judgment that would be made by a
2 reasonably prudent physician, knowledgeable about the case and the treatment
3 possibilities with respect to the medical condition involved; and

4 (6) "Unborn child," an individual organism of the species homo sapiens from
5 fertilization until live birth.

6 **Section 2. That § 22-17-5.1 be AMENDED:**

7 **22-17-5.1.** ~~Any person who administers to any pregnant female or who prescribes~~
8 ~~or procures for any pregnant female any medicine, drug, or substance or uses or employs~~
9 ~~any instrument or other means with intent thereby to procure~~ commits an abortion is
10 guilty of a Class 6 felony, unless there is appropriate and in the reasonable medical
11 ~~judgment that performance of an attending physician an abortion is necessary to preserve~~
12 ~~the life of the pregnant female, is guilty of a Class 6 felony.~~

13 **Section 3. That a NEW SECTION be added to chapter 22-17:**

14 For an abortion to be justified as necessary to preserve the life of a pregnant
15 female, as set forth in § 22-17-5.1, the attending physician, exercising reasonable medical
16 judgment, must determine that the female suffers from a physical disorder, physical
17 illness, or physical injury, including a life-endangering physical condition arising from the
18 pregnancy itself, and that the disorder, illness, or injury places the pregnant female at a
19 reasonably foreseeable risk of death, unless an abortion is performed. Nothing in this
20 section requires that the risk of death be imminent.

21 The attending physician, exercising reasonable medical judgement, shall make
22 reasonable efforts, under the circumstances, to preserve both the life of the pregnant
23 female and the life of her unborn child, unless in reasonable medical judgment, the
24 termination of the pregnancy in that manner would pose a greater risk of death of the
25 pregnant female.

26 An abortion justified under this section must take place at a hospital licensed
27 pursuant to chapter 34-12, unless, due to a medical emergency, it is necessary to perform
28 the abortion in another location. The person performing or inducing the abortion must be
29 a licensed physician.

30 The physician performing or inducing the abortion shall report the abortion to the
31 Department of Health in accordance with the requirements set forth in chapter 34-23A.

32 An abortion may not be construed as necessary to preserve the life of the pregnant
33 female if:

- 1 (1) The abortion is based on the physician's belief that the female may or will take
2 action to harm herself; or
3 (2) The abortion is based on a claim or diagnosis that relates to a psychological or
4 emotional condition of the pregnant female.

5 **Section 4. That § 22-17-6 be AMENDED:**

6 **22-17-6.** Any person who intentionally kills ~~a human fetus~~ an unborn child by
7 causing an injury to ~~its~~ the child's mother, ~~which is not authorized by chapter 34-23A,~~ is
8 guilty of a Class 4 felony.

9 **Section 5. That § 22-17-13 be AMENDED:**

10 **22-17-13.** A person is guilty of a Class B felony if, ~~with the intent to cause a~~
11 ~~pregnant mother to undergo an abortion against her will,~~ the person:

- 12 (1) ~~Threatens~~ With the intent to cause a pregnant mother to undergo an abortion
13 against her will, the person threatens to commit, against the pregnant mother or
14 any other person within the pregnant mother's presence:
15 (a) Homicide, murder, or manslaughter, under chapter 22-16;
16 (b) Aggravated assault, under § 22-18-1.1; or
17 (c) Kidnapping, under chapter 22-19; and
18 (2) The threat, as described in subdivision (1) of this section, results in the death of
19 the ~~unborn human being,~~ as defined under § 34-23A-1 child.

20 A charge brought under this section may be commenced ~~at any time~~ prior to the
21 time the victim attains age twenty-five or within seven years of the commission of the
22 crime, whichever is longer.

23 **Section 6. That § 34-23A-1 be AMENDED:**

24 **34-23A-1.** Terms used in this chapter mean:

- 25 (1) "Abortion," ~~the intentional termination of the life of a human being in the uterus~~
26 act of administering, prescribing, providing, selling, or using any drug, medicine,
27 or other substance, or providing, selling, or using any device or instrument, with
28 the intent to terminate the clinically diagnosable pregnancy, including the
29 elimination of one or more unborn children in a multifetal pregnancy, with
30 knowledge that the termination by those means will, with reasonable likelihood,
31 cause the death of the unborn child, provided the term does not include:

- 1 (a) Medical treatment that is provided to a pregnant female and results in the
 2 accidental or unintentional death of the unborn child;
 3 (b) Treatment to resolve a miscarriage;
 4 (c) The treatment or removal of an ectopic pregnancy;
 5 (d) The removal from the uterus of a deceased unborn child; or
 6 (e) Any medical procedure performed for the purpose of saving the life or
 7 preserving the health of the unborn child;
 8 (1A) "Abortion facility," a place where abortions are performed;
 9 (1B) "Department," the South Dakota Department of Health;
 10 (1C) "Ectopic pregnancy," the implantation of an embryo outside the uterus, in an
 11 abnormal location in the uterus, or in a scarred portion of the uterus;
 12 (2) "Fetus," the biological offspring, including the implanted embryo or unborn child,
 13 of human parents;
 14 (3) "Fertilization," that point in time when a male human sperm penetrates the zona
 15 pellucida of a female human ovum;
 16 (4) "Human being," an individual living member of the species of Homo sapiens,
 17 including the unborn human being during the entire embryonic and fetal ages from
 18 fertilization to full gestation;
 19 (5) "Medical emergency," any condition which, on the basis of the physician's good
 20 faith clinical judgment, so complicates the medical condition of a pregnant woman
 21 as to necessitate the immediate abortion of her pregnancy to avert her death or
 22 for which a delay will create serious risk of substantial and irreversible impairment
 23 of a major bodily function;
 24 (6) "Miscarriage," the spontaneous loss of a pregnancy, including the circumstances of
 25 an inevitable miscarriage, an incomplete miscarriage, a missed miscarriage, and a
 26 septic miscarriage;
 27 (7) "Parent," one parent or guardian of the pregnant minor or the guardian or
 28 conservator of the pregnant woman;
 29 ~~(7)~~(8) "Physician," a person licensed under the provisions of chapter 36-4 or a physician
 30 practicing medicine or osteopathy in the employ of the government of the United
 31 States or of this state;
 32 ~~(8)~~(9) "Pregnant", the human female reproductive condition of having a living unborn
 33 child within the female's body, throughout every stage of the unborn child's life
 34 and development, from fertilization to full gestation and childbirth;

- 1 (10) "Probable gestational age of the unborn child," ~~what,~~that which in the judgment of
2 the physician, will, with reasonable probability, be the gestational age of the
3 unborn child at the time the abortion is planned to be performed;
- 4 (11) "Reasonable medical judgment," a medical judgment that would be made by a
5 reasonably prudent physician, knowledgeable about the case and the treatment
6 possibilities with respect to the medical condition involved; and
- 7 (12) "Unborn child," an individual organism of the species homo sapiens from
8 fertilization until live birth.

9 **Section 7. That a NEW SECTION be added to chapter 34-23A:**

10 A physician who performs or induces an abortion for the purpose of preserving the
11 life of a pregnant female, as set forth in § 22-17-5.1 and section 3 of this Act, shall prepare
12 a document:

- 13 (1) Attesting that the abortion was necessitated by the pregnant female's medical
14 condition;
- 15 (2) Setting forth the data supporting the determination that the procedure was
16 necessary; and
- 17 (3) Attesting that all reasonable efforts were made to preserve both the life of the
18 pregnant female and the life of her unborn child, as set forth in section 3 of this
19 Act.

20 The document required under this section must be placed in the medical record of
21 the female patient no later than thirty days after the date of the procedure or after the
22 date on which the abortion-inducing drug, medicine, or substance was prescribed for or
23 provided to the pregnant female.