

2026 South Dakota Legislature

House Bill 1257**AMENDMENT 1257B
FOR THE INTRODUCED BILL**

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~~ amend the**
3 **definition of an abortion.**

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

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

6 Terms used in this chapter mean:

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

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

15 (b) Treatment to resolve a miscarriage;

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

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

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

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

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

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

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

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

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

13 **22-17-5.1.** Any person who administers to any pregnant female or who prescribes
14 or procures for any pregnant female any medicine, drug, or substance or uses or employs
15 any instrument or other means with intent thereby to procure ~~commits~~ an abortion ~~is~~
16 guilty of a Class 6 felony as defined in § 34-23A-1, unless there is appropriate and ~~in the~~
17 reasonable medical judgment that performance of an ~~attending physician an~~ abortion is
18 necessary to preserve the life of the pregnant female, is guilty of a Class 6 felony.

19 **~~Section 2. That a NEW SECTION be added to chapter 22-17:~~**

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

27 ~~The attending physician, exercising reasonable medical judgement, shall make~~
28 ~~reasonable efforts, under the circumstances, to preserve both the life of the pregnant~~
29 ~~female and the life of her unborn child, unless in reasonable medical judgment, the~~

1 ~~termination of the pregnancy in that manner would pose a greater risk of death of the~~
2 ~~pregnant female.~~

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

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

9 ~~An abortion may not be construed as necessary to preserve the life of the pregnant~~
10 ~~female if:~~

11 ~~(1) The abortion is based on the physician's belief that the female may or will take~~
12 ~~action to harm herself; or~~

13 ~~(2) The abortion is based on a claim or diagnosis that relates to a psychological or~~
14 ~~emotional condition of the pregnant female.~~

15 **Section 3. That § 22-17-6 be AMENDED:**

16 ~~22-17-6. Any person who intentionally kills a human fetus, an unborn child by~~
17 ~~causing an injury to its the child's mother, which is not authorized by chapter 34-23A, is~~
18 ~~guilty of a Class 4 felony.~~

19 **Section 4. That § 22-17-13 be AMENDED:**

20 ~~22-17-13. A person is guilty of a Class B felony if, with the intent to cause a~~
21 ~~pregnant mother to undergo an abortion against her will, the person:~~

22 ~~(1) Threatens With the intent to cause a pregnant mother to undergo an abortion~~
23 ~~against her will, the person threatens to commit, against the pregnant mother or~~
24 ~~any other person within the pregnant mother's presence:~~

25 ~~(a) Homicide, murder, or manslaughter, under chapter 22-16;~~

26 ~~(b) Aggravated assault, under § 22-18-1.1; or~~

27 ~~(c) Kidnapping, under chapter 22-19; and~~

1 ~~(2) — The threat, as described in subdivision (1) of this section, results in the death of~~
 2 ~~the unborn human being, as defined under § 34-23A-1 child.~~

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

6 **Section 3. That § 34-23A-1 be AMENDED:**

7 **34-23A-1.** Terms used in this chapter mean:

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

- 15 (a) Medical treatment that is provided to a pregnant female and results in the
 16 accidental or unintentional death of the unborn child;
- 17 (b) Treatment to resolve a miscarriage;
- 18 (c) The treatment or removal of an ectopic pregnancy;
- 19 (d) The removal from the uterus of a deceased unborn child; or
- 20 (e) Any medical procedure performed for the purpose of saving the life or
 21 preserving the health of the unborn child;

22 (1A) "Abortion facility," a place where abortions are performed;

23 (1B) "Department," the South Dakota Department of Health;

24 (1C) "Ectopic pregnancy," the implantation of an embryo outside the uterus, in an
 25 abnormal location in the uterus, or in a scarred portion of the uterus;

26 (2) "Fetus," the biological offspring, including the implanted embryo or unborn child,
 27 of human parents;

28 (3) "Fertilization," that point in time when a male human sperm penetrates the zona
 29 pellucida of a female human ovum;

30 (4) "Human being," an individual living member of the species of Homo sapiens,
 31 including the unborn human being during the entire embryonic and fetal ages from
 32 fertilization to full gestation;

- 1 (5) "Medical emergency," any condition which, on the basis of the physician's good
 2 faith clinical judgment, so complicates the medical condition of a pregnant woman
 3 as to necessitate the immediate abortion of her pregnancy to avert her death or
 4 for which a delay will create serious risk of substantial and irreversible impairment
 5 of a major bodily function;
- 6 (6) "Miscarriage," the spontaneous loss of a pregnancy, including the circumstances of
 7 an inevitable miscarriage, an incomplete miscarriage, a missed miscarriage, and a
 8 septic miscarriage;
- 9 (7) "Parent," one parent or guardian of the pregnant minor or the guardian or
 10 conservator of the pregnant woman;
- 11 ~~(7)~~(8) "Physician," a person licensed under the provisions of chapter 36-4 or a physician
 12 practicing medicine or osteopathy in the employ of the government of the United
 13 States or of this state;
- 14 ~~(8)~~(9) "Pregnant", the human female reproductive condition of having a living unborn
 15 child within the female's body, throughout every stage of the unborn child's life
 16 and development, from fertilization to full gestation and childbirth;
- 17 ~~(10)~~(9) "Probable gestational age of the unborn child," ~~what,~~that ~~which~~ in the judgment
 18 of the physician, ~~will,~~ with reasonable probability, ~~be the gestational age of the~~
 19 ~~unborn child at the time the abortion is planned to be performed;~~
- 20 ~~(11)~~ "Reasonable medical judgment," a medical judgment that would be made by a
 21 reasonably prudent physician, knowledgeable about the case and the treatment
 22 possibilities with respect to the medical condition involved; and
- 23 ~~(12)~~ "Unborn child," an individual organism of the species homo sapiens from
 24 fertilization until live birth.

25 **Section 3. That a NEW SECTION be added to chapter 34-23A:**

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

29 ~~(1)~~ Attesting that the abortion was necessitated by the pregnant female's medical
 30 condition;

31 ~~(2)~~ Setting forth the data supporting the determination that the procedure was
 32 necessary; and

1 ~~(3) — Attesting that all reasonable efforts were made to preserve both the life of the~~
2 ~~pregnant female and the life of her unborn child, as set forth in section 3 of this~~
3 ~~Act.~~

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

AMENDED