

2020 South Dakota Legislature

House Bill 1225**AMENDMENT 1225A FOR THE INTRODUCED BILL**

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

1 **An Act to restrict the use of funds for abortion.**

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

3 **Section 1.** That a NEW SECTION be added:

4 **34-23C-1. Definitions.**

5 Terms used in this chapter mean:

- 6 (1) "Abortion referral," the act of recommending a pregnant woman to a doctor, clinic,
7 or other person or entity for the purpose of obtaining or learning about obtaining
8 a convenience abortion;
- 9 (2) "Affiliate," an individual or entity that, directly or indirectly, owns, controls, is
10 controlled by, or is under the common control of another person or entity, in whole
11 or in part, or a subsidiary, parent, or sibling entity;
- 12 (3) "Conception," fertilization;
- 13 (4) "Convenience abortion," is an elective or nontherapeutic abortion that means the
14 act of using or prescribing an instrument, medicine, drug, device, or another
15 substance or means with the intent to terminate the clinically diagnosable
16 pregnancy of a woman with knowledge that the termination by those means will
17 with reasonable likelihood cause the death of the unborn child. An act is not a
18 convenience abortion if the act is performed with the intent to:
- 19 (a) Save the life of the mother or resolve a medical emergency;
- 20 (b) Save the life or preserve the health of the unborn child;
- 21 (c) Remove a dead unborn child caused by spontaneous abortion;
- 22 (d) Remove an ectopic pregnancy;
- 23 (e) Abort and remove an unborn child that is the result of rape or incest
24 reported to a law enforcement agency; or

- 1 (f) Abort and remove an unborn child because of a fetal malformation that is
2 incompatible with the baby being born alive;
- 3 (5) "Emotional appeal," is a method of persuasion through sentiment, not logic, that
4 is designed to create an emotional response;
- 5 (6) "Facility," any public or private hospital, clinic, center, medical school, medical
6 training institution, health care facility, physician's office, infirmary, dispensary,
7 ambulatory surgical treatment center or other institution or location wherein
8 medical care is provided to any person;
- 9 (7) "Fertilization," as the term is defined in subdivision 34-23A-1(3);
- 10 (8) "Infertility prevention project," the infertility prevention project operated by the
11 United States centers for disease control and prevention;
- 12 (9) "Medical emergency," as the term is defined in subdivision 34-23A-1(5);
- 13 (10) "Lemon test," a three-prong test that was originally created by the United States
14 Supreme Court and now adopted by this state that is used to determine if
15 government action is unconstitutional under the Establishment Clause.
16 Government action violates the Establishment Clause if it fails to satisfy any of the
17 prongs. The test requires that state action or government policy:
- 18 (a) Have a valid secular purpose;
19 (b) Not have the effect of advancing, endorsing, or inhibiting religion; and
20 (c) Not foster excessive entanglement with religion;
- 21 (11) "Logical nexus," some relevant connection;
- 22 (12) "Minority HIV/AIDS initiative," the minority HIV/AIDS initiative operated by the
23 Office of Minority Health in the United States Department of Health and Human
24 Services;
- 25 (13) "Nongovernment group," a nonprofit organization exempt from federal income
26 taxation under Section 501(c)(3) or any other individual or group that is working
27 to:
- 28 (a) Advance:
- 29 (i) Birth;
- 30 (ii) The interests, knowledge, safety, health, and welfare of expecting
31 mothers;
- 32 (iii) The facilitation of quality, safe, and health adoption and the
33 cultivation of strong nurturing families;
- 34 (iv) The quality, strength, safeness, and effectiveness of the foster care
35 system;

- 1 **(b) Provide:**
- 2 **(i) Ultrasound testing;**
- 3 **(ii) The employment opportunities of single mothers who are expecting;**
- 4 **(iii) Counseling and therapy for expecting or new mothers; or**
- 5 **(iv) Community for expecting or new mothers;**
- 6 **(14) "Nonsecular sham," a policy, a course, or principle of action adopted or proposed**
- 7 **by a state actor which endorses, respects, or favors the beliefs of a particular**
- 8 **religion where the pre-eminent and primary force driving the state's action is not**
- 9 **genuine, but is a sham that ultimately has a primary religious objective. The term**
- 10 **refers to a type of policy that is predicated on a series of unproven faith-based**
- 11 **assumptions and naked assertions that are implicitly religious;**
- 12 **(15) "Personal responsibility education program," the program administered by the**
- 13 **administration for children and families in the United States Department of Health**
- 14 **and Human Services to educate adolescents on abstinence and contraception for**
- 15 **the prevention of pregnancy and sexually transmitted infections;**
- 16 **(16) "Physician," as the term is defined in subdivision 34-23A-1(7);**
- 17 **(17) "Pregnant" or "pregnancy," the female reproductive condition of having an unborn**
- 18 **child in the woman's uterus;**
- 19 **(18) "Promote," to advocate for, assist with, encourage, or popularize through**
- 20 **advertising or publicity;**
- 21 **(19) "Public funds", any funds received or controlled by this state or any agency or**
- 22 **political subdivision thereof, including funds derived from federal, state, or local**
- 23 **taxes, gifts or grants from any source, public or private, federal grants or**
- 24 **payments, or intergovernmental transfers;**
- 25 **(20) "Reasonable observer," a person of ordinary prudence who views a policy from an**
- 26 **objective standard point in the context of the state's longstanding practice through**
- 27 **the lens of self-evident neutral, natural, and noncontroversial transcultural**
- 28 **morality and who has not been desensitized by so-called evolving standards of**
- 29 **decency that are predicated on a current cultural mindset that seeks to normalize**
- 30 **practices that were otherwise considered to be self-evidently immoral, obscene,**
- 31 **injurious, unnatural, or subversive to human flourishing;**
- 32 **(21) "Religion," a set of unproven answers to the greater questions like "why are we**
- 33 **here," "what should we be doing as humans," "how do we get our identity," and**
- 34 **"what happens after death," that are predicated on an institutionalized or**

1 noninstitutionalized faith-based worldview flowing out of a community that is
2 organized, full, and has a code by which members may guide their daily lives;

3 (22) "Secular humanism," a faith-based worldview that is also referred to as
4 postmodern western individualistic moral relativism, expressive individualism, or
5 leftism. A belief system that is protected by the Free Exercise Clause of the First
6 Amendment of the United States Constitution and S.D. Const., Art. VI, § 3 and
7 centered on the unproven assumption that there are no moral absolutes and that
8 on one moral doctrine should be used as the superior basis for law and policy. The
9 term includes a series of unproven faith-based assumptions and naked assertions
10 that suggest that morality and truth are man-made conventions and that at the
11 heart of liberty is man's ability to define his own meaning of the universe. The term
12 refers to a religion that does not fulfill any compelling state interest but instead
13 tends to erode community standards of decency and promote licentiousness. The
14 term refers to the unproven belief that convenience abortions are moral or
15 plausible. The term includes sexual orientation orthodoxy and non-secular self-
16 asserted sex-based identity narratives. The term refers to the belief that man is
17 merely a bundle of chemicals, animated pieces of meat, or accidental particles and
18 that nature is all there is. The term refers to the unproven faith-based assumption
19 or Nietzschean theory that man evolved from monkeys and should, therefore, love
20 one another just because;

21 (23) "Secular policy," a course or principle of action adopted or proposed by a state
22 actor that is natural, neutral, and noncontroversial that is based on self-evident
23 morality and objective truth from the reasonable observer perspective. The term
24 includes government procedure or state action that generally accomplishes its
25 goals and does not tend to put religion over nonreligion or one religion over another
26 or does not convey to a reasonable observer that the state favors one religion. The
27 term includes a course of government action where the pre-eminent and primary
28 force driving the policy is genuine, not a sham, and not merely secondary to a
29 religious objective;

30 (24) "Secular abortion," the act of using or prescribing an instrument, medicine, drug,
31 device, or another substance or means with the intent to terminate the clinically
32 diagnosable pregnancy of a woman with knowledge that the termination by those
33 means will with reasonable likelihood cause the death of the unborn child, when
34 carried out to:

35 (a) Save the life of the mother or resolve a medical emergency;

- 1 (b) Save the life or preserve the health of the unborn child;
2 (c) Remove a dead unborn child caused by spontaneous abortion;
3 (d) Remove an ectopic pregnancy;
4 (e) Abort and remove an unborn child that is the result of rape or incest
5 reported to a law enforcement agency; or
6 (f) Abort and remove an unborn child because of a fetal malformation that is
7 incompatible with the baby being born alive;
8 (25) "Taxpayer standing," standing of a taxpayer to file a lawsuit against the
9 government actor that is directly or symbolically engaging in practices that violate
10 the Establishment Clause of the First Amendment after it actually or prospectively
11 engaged in action that potentially failed at least one prong of the Lemon Test or
12 coercion test. The term includes a test that requires a minimal logical nexus in
13 order to be invoked by a taxpayer when the government is directly or symbolically
14 endorsing a religion in a coercive manner in violation of the Lemon Test;
15 (26) "The fund," the South Dakota Foster Care And Adoption Initiative Fund;
16 (27) "Unborn child," the offspring of human beings from fertilization until birth.

17 **Section 2.** That a NEW SECTION be added:

18 **34-23C-2. Appropriations--Restriction.**

- 19 (1) An agency or instrumentality of the state is prohibited from appropriating or
20 awarding a grant of public funds to pay the direct or indirect costs of performing,
21 inducing, referring, or counseling in favor of convenience abortions because such
22 state action fails the Lemon Test and violates the First Amendment Establishment
23 Clause of the United States Constitution and S.D. Const. Art. VI, § 3 for:
24 (a) Constituting a nonsecular sham;
25 (b) Cultivating indefensible legal weapons against nonobservers of the religion
26 of Secular Humanism; and
27 (c) Having the effect of excessively entangling the government with the religion
28 of Secular Humanism;
29 (2) Pursuant to the First Amendment Establishment Clause of the United States
30 Constitution, S.D. Const. Art. VI, § 3, and the state's compelling interest to
31 discourage licentiousness, an agency or instrumentality of the state may not grant,
32 appropriate, or distribute a grant of public funds to an individual or entity that:

- 1 (a) Performs convenience abortions, induces convenience abortions, provides
2 convenience abortion referrals, or counsels in favor of convenience
3 abortions; and
- 4 (b) Is an affiliate of a person or entity that performs abortions, induces
5 abortions, provides abortion referrals, or counsels in favor of convenience
6 abortions because such appropriations have the effect of endorsing
7 nonsecular practices that excessively entangles the government with the
8 religion of Secular Humanism;
- 9 (3) Pursuant to the First Amendment Establishment Clause of the United States
10 Constitution, S.D. Const., Art. VI, § 3, and the state's compelling interest to uphold
11 community standards of decency, an agency or instrumentality of the state may
12 not appropriate or award a grant to pay the direct or indirect costs of performing,
13 inducing, referring, or counseling in favor of convenience abortions including
14 without limitation:
- 15 (a) Administrative costs and expenses;
16 (b) Overhead costs;
17 (c) Employee salaries;
18 (d) Rent and mortgage payments; and
19 (e) Telephone and other utility payments;
- 20 (4) Pursuant to the First Amendment Establishment Clause of the United States
21 Constitution, S.D. Const., Art. VI, § 3, and the state's compelling interest to
22 discourage licentiousness, all state agencies shall ensure no funds received from:
- 23 (a) The Violence Against Women Act;
24 (b) The Breast and Cervical Cancer Mortality Prevention Act;
25 (c) The Infertility Prevention Project;
26 (d) The HIV/AIDS Initiative;
27 (e) The Infant Mortality Reduction Initiative;
28 (f) The Infant Vitality Initiative;
29 (g) The Personal Responsibility Education Program; or
30 (h) Any other similar federal program;
- 31 may be used to perform or promote elective abortions, contract with any entity
32 that performs or promotes elective abortions, or become or continue to be an
33 affiliate of any entity that performs or promotes elective abortions;

- 1 (5) Any officer or employee of the state who knowingly authorizes the use of public
2 funds prohibited by this section shall be dismissed from that person's office or
3 position and the person's employment shall be immediately terminated; and
4 (6) Any taxpayer of this state or its political subdivisions shall have taxpayer standing
5 to bring suit in a court of competent jurisdiction to enforce the provisions of this
6 section. The prevailing party may seek attorney fees, costs, and other forms of
7 equitable relief.

8 **Section 3.** That a NEW SECTION be added:

9 **34-23C-3. Foster care and adoption initiatives fund--Creation--Purposes.**

10 There is hereby created a fund in the state treasury to be known as the foster care
11 and adoption initiatives fund. The purpose of the fund is to provide grant funding for foster
12 care and adoption services and initiatives. The fund shall consist of:

- 13 (1) Appropriations from the Legislature;
14 (2) Moneys collected from any fees imposed on elective abortion providers; and
15 (3) Funds that would have otherwise been appropriated to facilities providing elective
16 abortions.

17 All interest earned on the fund shall be credited to the fund.

18 The secretary of the Department of Social Services shall evaluate activities
19 conducted under this section each year and, on or before February fifteenth, submit an
20 annual report containing the evaluation to the Executive Board. The report must include
21 the manner in which the funds in the account were maintained and distributed.

22 **Section 4.** That a NEW SECTION be added:

23 **34-23C-4. Discrimination--Actions.**

24 No hospital or any other state actor shall discriminate against or discipline a person
25 because of the person's moral religious beliefs in favor or against convenience abortion or
26 secular abortion ideology and practices.

27 No private or denominational hospital shall be required to permit its facilities to be
28 utilized for the performance of convenience abortions.

29 No person shall be required, as a condition of training, employment, pay,
30 promotion, or privileges, to agree to perform or participate in the performing of
31 convenience abortions.

1 A civil action for damages or reinstatement of employment, or both, may be
2 brought for any violation of this section. The prevailing party may seek attorney fees,
3 costs, and other forms of equitable relief.

4 **Section 5.** That a NEW SECTION be added:

5 **34-23C-5. Applicability.**

6 The restrictions under § 34-23C-2 do not apply to funding available through the
7 state's plan for medical assistance as required by Title XIX of the federal Social Security
8 Act, if and only if the Hyde Amendment applies and blocks public funds from being
9 appropriated to convenience abortion providers in the state of South Dakota because:

- 10 (1) The underlying legal basis for the Hyde Amendment is the First Amendment
11 Establishment Clause of the United States Constitution; and
12 (2) The First Amendment Establishment Clause of the United States Constitution
13 mirrors the restrictions under S.D. Const., Art. VI, § 3.

14 This chapter does not affect the funding of a hospital, medical school, or university.

15 **Section 6.**

16 (1) This Act does not create or recognize:

- 17 (a) A right to experience or provide a convenience abortion; or
18 (b) A right to public funds, a contract, or a grant; and

19 (2) The purpose of this Act is not to:

- 20 (a) Prove or disprove that life begins at conception;
21 (b) Abolish or criminalize convenience abortion practices or ideology or other
22 Secular Humanist practices or ideology; or
23 (c) Limit convenience abortion practice to a time certain; and

24 (3) The purpose of this Act is to:

- 25 (a) Distinguish secular abortion from convenience abortion;
26 (b) Reinforce that all members of the general assembly and all executive and
27 judicial officers are bound by oath or affirmation pursuant to Article VI of
28 the United States Constitution to not create or enforce policies that violate
29 the Establishment Clause or Free Exercise Clause of the First Amendment
30 of the United States Constitution regardless of the members' or officers'
31 party affiliation or personal religious beliefs;

- 32 (c) Codify the well-established jurisprudence that emotional appeals, even
33 good ones, cannot be used to usurp the Establishment Clause of the First

1 Amendment of the United States Constitution or S.D. Const., Art. VI, § 3 in
2 an effort to justify appropriating public funds to convenience abortion
3 providers;

4 (d) Restore the integrity of the Fourteenth Amendment Equal Protection and
5 Substantive Due Process Clause that the judicial branch has misused
6 because there is no right of privacy mentioned or implied in the United
7 States Constitution and because the Substantive Due Process and the Equal
8 Protection Clauses of the Fourteenth Amendment have nothing to do with
9 convenience abortions and do not require the state to endorse, respect,
10 promote, or fund convenience abortion practices that are inherently
11 nonsecular procedures;

12 (e) Establish that:

13 (i) Convenience abortion ideology is inseparably linked to the religion
14 of Secular Humanism;

15 (ii) While Secular Humanism is a religion for the purposes of the First
16 Amendment Establishment Clause as the United States Supreme
17 Court already resolved, Secular Humanism is a disfavored religion
18 because it involves indecent speech that tends to erode community
19 standards of decency and promote licentiousness;

20 (iii) This state has a protected and compelling interest to uphold
21 community standards of decency and to discourage licentiousness;

22 (iv) It is the policy of this state to favor childbirth and family planning
23 services that do not include convenience abortions or the promotion
24 of convenience abortions within the continuum of care or services;

25 (v) The state of South Dakota has a compelling interest to not only help
26 unborn children flourish but also born children who are subject to
27 adoption or who are placed in the foster care system; and

28 (vi) Public funds that might have been appropriated to convenience
29 abortion providers in the past could be redirected to adoption and
30 foster care services to better enable human flourishing without
31 violating the Constitution of the United States or of this state
32 because such an appropriation amounts to a secular policy and a
33 secular use of public funds; and

34 (4) This Act is constructed on the premise that:

35 (a) The state of South Dakota is part of a Constitutional Republic;

- 1 (b) The United States Constitution is the supreme sovereign law of this country
2 that preempts all State and Federal law;
- 3 (c) The First Amendment of the United States Constitution applies to the state
4 of South Dakota through the Fourteenth Amendment of the United States
5 Constitution;
- 6 (d) The Establishment Clause of the First Amendment of the United States
7 Constitution and S.D. Const., Art. VI, § 3 prohibits the appropriation of
8 public funds to convenience abortion providers because such an
9 appropriation constitutes state action that fails the prongs of the Lemon
10 Test:
- 11 (i) Constituting a nonsecular sham;
12 (ii) Cultivating an indefensible legal weapon against nonobservers of the
13 religion of Secular Humanism; and
14 (iii) Having the effect of excessively entangling the government with the
15 religion of Secular Humanism;
- 16 (e) The Free Exercise Clause of the First Amendment of the United States
17 Constitution affords a person the right to hold nonsecular moral beliefs in
18 favor or against convenience abortion practices without fear of
19 discrimination by a state actor;
- 20 (f) The right to form and express a religious belief is distinct from the right to
21 practice it; and
- 22 (g) Nonsecular practices that excuse acts of licentiousness or justify practices
23 inconsistent with the peace or safety of the state can be restricted by the
24 state because the freedom of religion is not absolute.