Chapter 106

(House Bill 1164)

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

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

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

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

(1) "Assisted reproduction procedure," a method of causing pregnancy, other than through sexual intercourse, including in vitro fertilization and transfer of embryos, intracytoplasmic sperm injection, and intracervical or intrauterine insemination;

(2) "Donor," an individual who donates reproductive material, whether for personal use or compensation; and

(3) "Reproductive material," a human sperm or ovum, or a human organism at any stage of development from fertilized ovum to embryo.

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

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

(1) Knowingly cause the use of reproductive material from a donor if the patient did not give written consent to receive the reproductive material from the donor; or

(2) Intentionally cause the use of the licensed health care provider's own reproductive material without the patient's written consent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The earliest of the dates on which:

(a) The individual first discovers evidence sufficient to bring an action against the licensed health care provider through deoxyribonucleic acid analysis;

(b) The individual first becomes aware of the existence of a record that provides evidence sufficient to bring an action against the licensed health care provider; or

(c) The licensed health care provider admits to the facts giving rise to the action.

Signed March 10, 2026