

# State of South Dakota

EIGHTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2013

562U0404

SENATE STATE AFFAIRS

ENGROSSED NO. **SB 125** - 02/04/2013

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

Introduced by: Senators Begalka, Frerichs, Heineman (Phyllis), Jensen, Johnston, Kirkeby, Lederman, Olson (Russell), Otten (Ernie), and Sutton and Representatives Magstadt, Bolin, Craig, Erickson, Feickert, Greenfield, Haggar (Jenna), Hansen, Hickey, Hoffman, Kaiser, Kopp, May, Miller, Munsterman, Nelson, Olson (Betty), Rasmussen, Romkema, Russell, Schaefer, Sly, Solum, Steele, Tyler, Verchio, and Wick

1 FOR AN ACT ENTITLED, An Act to provide for the award of joint physical custody of  
2 children under certain circumstances.

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

4 Section 1. That § 25-5-7.1 be amended to read as follows:

5 25-5-7.1. In any custody dispute between parents, the court may order joint legal custody  
6 so that both parents retain full parental rights and responsibilities with respect to their child and  
7 so that both parents must confer on, and participate in, major decisions affecting the welfare of  
8 the child. In ordering joint legal custody, the court may consider the expressed desires of the  
9 parents and may grant to one party the ultimate responsibility over specific aspects of the child's  
10 welfare or may divide those aspects between the parties based on the best interest of the child.  
11 If it appears to the court to be in the best interest of the child, the court may order, or the parties  
12 may agree, how any such responsibility shall be divided. Such areas of responsibility may



1 include ~~the child's primary physical residence,~~ child care, education, extracurricular activities,  
2 medical and dental care, religious instruction, the child's use of motor vehicles, and any other  
3 responsibilities which the court finds unique to a particular family or in the best interest of the  
4 child. ~~If the court awards joint legal custody, it may also order joint physical custody in such~~  
5 ~~proportions as are in the best interests of the child, notwithstanding the objection of either~~  
6 ~~parent.~~

7 Section 2. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as  
8 follows:

9 If joint legal custody is awarded, pursuant to § 25-5-7.1, there is a rebuttable presumption  
10 that both parents have joint physical custody of their child. Joint physical custody of their child  
11 is defined as equal time sharing. The burden of overcoming the presumption rests on the parent  
12 challenging the presumption. The presumption may be overcome by demonstrating that joint  
13 physical custody would not be in the best interest of the child, that the distance between the two  
14 parents' residences makes joint physical custody reasonably impractical, or by one parent  
15 waiving the presumption. The party challenging the presumption must overcome the  
16 presumption by the greater convincing force of the evidence. Upon request by either parent, the  
17 court shall hold a hearing at which the parties may introduce evidence. The court shall issue  
18 findings of fact and conclusions of law upon request by either parent. The court shall require the  
19 parents to prepare and submit a parenting plan to the court reflecting parental preferences and  
20 agreement on the matters of substance concerning the child's education, upbringing, religious  
21 training, medical, and dental care. The parents shall share decision-making authority and  
22 responsibility as to the important decisions affecting the child's welfare.