

State of South Dakota

SEVENTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 1998

400B0813

SENATE JUDICIARY COMMITTEE
ENGROSSED NO. **SB235** - 2/9/98

Introduced by: The Committee on Judiciary at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to prevent criminals from suing their victims for damages.

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

3 Section 1. Terms used in this Act mean:

4 (1) "Convicted," includes a finding of guilt, whether or not the adjudication of guilt is
5 stayed or executed, an unwithdrawn judicial admission of guilt or guilty plea, a no
6 contest plea, a judgment of conviction, an adjudication as a delinquent child, or an
7 admission to a juvenile delinquency petition;

8 (2) "Course of criminal conduct," includes the acts or omissions of a victim in resisting
9 criminal conduct;

10 (3) "Crime," includes an offense named in §§ 22-16-4, 22-16-7, 22-16-9, 22-16-15, 22-
11 16-20, 22-16-41, 22-16-42, 22-18-1, 22-18-1.1, 22-19-1, 22-19A-1, 22-19A-2, 22-
12 22-1, 22-22-7, 22-30A-4, 22-32-1, 22-32-3, 22-32-8, chapter 22-33, or an attempt
13 to commit any of these offenses. The term includes a crime in other states which
14 would have been within this definition if the crime had been committed in this state;

15 (4) "Perpetrator," any person who has engaged in criminal conduct and includes a person

1 convicted of a crime;

2 (5) "Victim," a person who was the object of another's criminal conduct and includes a
3 person at the scene of an emergency who gives reasonable assistance to another
4 person who is exposed to or has suffered grave physical harm.

5 Section 2. A perpetrator assumes the risk of loss, injury, or death resulting from or arising
6 out of a course of criminal conduct involving a crime, as defined in this Act, engaged in by the
7 perpetrator or a person who aids or abets the perpetrator, as defined in § 22-3-3, and the crime
8 victim is immune from and not liable for any damages as a result of acts or omissions of the
9 victim if the victim used reasonable force. However, the perpetrator's assumption of risk does
10 not eliminate the crime victim's duty to protect against conditions upon the premises which the
11 crime victim knows or has reason to know may create an unreasonable risk of harm or which
12 may cause a foreseeable trespass by minors, nor does the assumption of risk apply to
13 perpetrators who are mentally incompetent.

14 Section 3. Notwithstanding other evidence that the victim may adduce relating to the
15 perpetrator's conviction of the crime involving the parties to a claim for relief, a certified copy
16 of a guilty plea, a court judgment of guilt, a court record of conviction, or an adjudication as a
17 delinquent child is conclusive proof of the perpetrator's assumption of the risk.

18 Section 4. If the perpetrator does not prevail in a claim for relief that is subject to this Act,
19 the court may award reasonable expenses, including attorney's fees and disbursements, to the
20 victim.

21 Section 5. Except to the extent needed to preserve evidence, any claim for relief in which the
22 defense set forth in this Act is raised shall be stayed by the court on the motion of the defendant
23 during the pendency of any criminal action against the plaintiff based on the alleged crime.

1 **BILL HISTORY**

2 1/26/98 First read in Senate and referred to Judiciary. S.J. 202

3 2/6/98 Scheduled for Committee hearing on this date.

4 2/6/98 Judiciary Do Pass Amended, Passed, AYES 5, NAYS 0. S.J. 358