

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

633E0807

HOUSE BILL NO. 1293

Introduced by: Representative Teupel

1 FOR AN ACT ENTITLED, An Act to require a noxious weed disclosure statement in the
2 transfer of certain real property.

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

4 Section 1. That chapter 43-4 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Terms used in this Act mean:

7 (1) "Buyer," a person negotiating or attempting to become an owner of real property by
8 means of a transfer that is subject to this Act;

9 (2) "Noxious weed disclosure statement," the noxious weed disclosure statement as
10 required in this Act;

11 (3) "Seller," an owner of real property who is offering to sell real property that is subject
12 to this Act;

13 (5) "Transfer," a sale, exchange, installment sale contract, lease with an option to
14 purchase, other option to purchase, or a ground lease coupled with improvements.

15 Section 2. That chapter 43-4 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 The seller of any real property two acres or more in size shall furnish to a buyer a completed
3 copy of a noxious weed disclosure statement before the buyer makes a written offer. If after
4 delivering the noxious weed disclosure statement to the buyer or the buyer's agent and before
5 the date of closing for the property or the date of possession of the property, whichever comes
6 first, the seller becomes aware of any change of material fact that would affect the disclosure
7 statement, the seller shall furnish a written amendment disclosing the change of material fact.

8 Section 3. That chapter 43-4 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 If the noxious weed disclosure statement or a material amendment to the noxious weed
11 disclosure statement is delivered to the buyer after the buyer has made a written offer, the buyer
12 may terminate the offer by delivering a written notice of termination to the seller or the seller's
13 agent within three days after the noxious weed disclosure statement or amendment is delivered
14 in person or within six days after the noxious weed disclosure statement or amendment is
15 delivered by deposit in the mail.

16 Section 4. That chapter 43-4 be amended by adding thereto a NEW SECTION to read as
17 follows:

18 Except as provided in this section, no seller is liable for a defect or other condition in the real
19 property being transferred if the seller truthfully completes the noxious weed disclosure
20 statement. The seller shall perform each act and make each disclosure in good faith. A transfer
21 that is subject to this Act is not invalidated solely because a person fails to comply with the
22 provisions of this Act. However, a person who intentionally or who negligently violates the
23 provisions of this Act is liable to the buyer for the amount of the actual damages and eradication
24 expense suffered by the buyer as a result of the violation or failure. A court may also award the

1 buyer costs and attorney fees. Nothing in this section precludes or restricts any other rights or
2 remedies of the buyer.

3 Section 5. That chapter 43-4 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 This Act does not apply to the following transfers:

- 6 (1) Transfers pursuant to court order, including transfers ordered by probate court in the
7 administration of an estate, transfers between spouses resulting from a judgment of
8 dissolution of marriage or legal separation, transfer pursuant to a writ of execution,
9 transfers by a trustee in bankruptcy, transfers by eminent domain, transfers by
10 government agencies, and transfers resulting from a decree for specific performance;
- 11 (2) Transfers to a mortgagee by a mortgagor in default, transfers by any foreclosure sale
12 after default in an obligation secured by a mortgage, transfers by a mortgagee or a
13 beneficiary under a deed of trust who has acquired the real property by foreclosure
14 or by a deed in lieu of foreclosure or transfers by a collateral assignment of beneficial
15 interest;
- 16 (3) Transfers by a fiduciary in the course of the administration of a decedent's estate,
17 guardianship, conservatorship, or trust;
- 18 (4) Transfers from one co-owner to one or more other co-owners;
- 19 (5) Transfers made to a spouse, a child, a parent, a sibling, a grandchild, or a grandparent.

20 Section 6. That chapter 43-4 be amended by adding thereto a NEW SECTION to read as
21 follows:

22 A noxious weed disclosure statement required pursuant to this Act shall include the following
23 statement: "Do you have any statewide noxious weeds or any locally declared noxious weeds on
24 your property?" The statement shall include an answer of "Yes," "No," or "I do not know."